

*State of New Jersey
Office of the State Comptroller
Audit Division*



***A PERFORMANCE AUDIT OF SELECTED
FISCAL AND OPERATING PRACTICES OF
THE BOROUGH OF ROSELLE***

For the period January 1, 2015 through June 30, 2017

Kevin D. Walsh
Acting State Comptroller

January 27, 2021

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BACKGROUND

The Borough of Roselle (Roselle or the Borough) is a municipality located in Union County, New Jersey. The Borough is three square miles in size and has a population of 21,085 residents according to the 2010 United States Census.

Roselle is incorporated under the borough form of municipal government. *N.J.S.A. 40A:60-1 et seq.* The borough council is comprised of six council members: one member is elected from each of the Borough's five wards for a three-year term, and one council-member-at-large is elected representing all wards. The council serves as the legislative body for the Borough. The mayor is elected to a four-year term and, in addition to exercising executive powers, presides at council meetings at which the mayor may vote only in the event of a tie. The borough administrator reports to the mayor and borough council and is responsible for the Borough's daily operations.

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our performance audit was to review the Borough's controls over selected fiscal and operating practices and to assess the Borough's compliance with statutory laws and policies and procedures for selected employee benefits, human resource operations, procurement, and certain fiscal operations. The scope of the audit covered January 1, 2015 through June 30, 2017, unless otherwise stated.

To accomplish our objectives, we reviewed relevant State statutes and regulations, federal regulations, Roselle policies and procedures, collective bargaining agreements, council meeting minutes, financial records, including budget reports and independent audit reports, and other supporting records. We also interviewed certain Borough personnel to obtain an understanding of their job responsibilities, overall operations, and the Borough's internal controls.

As part of our review, we selected samples of transactions for testing based on professional judgment. Our sample selections were designed to provide conclusions about the validity of the sampled transactions and the adequacy of internal controls and compliance with applicable statutes, regulations, policies, and procedures. Because we used non-statistical sampling methods, the results of our testing cannot be projected over the entire population of like transactions.

We performed this audit pursuant to the State Comptroller's authority set forth in *N.J.S.A. 52:15C-1 et seq.* We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

SUMMARY OF AUDIT RESULTS

Roselle lacked adequate internal controls to ensure its compliance with statutory requirements and internal policies and procedures related to the administration of employee payroll, health insurance benefits, personnel matters, and procurement of consulting services. These internal control deficiencies resulted in the improper use of Borough assets and improper expenditures totaling more than \$1.4 million.

Specifically, our audit found that Roselle:

- Lacked adequate oversight and monitoring of its employee health insurance benefits and health benefit opt-out waiver payments that resulted in almost \$800,000 of improper payments.
- Failed to promptly investigate and resolve an employee disciplinary action that resulted in approximately \$611,000 of continued salary payments.
- Improperly awarded contracts for consulting services that did not comply with state laws.
- Lacked adequate oversight, monitoring, and reporting of employees' use of Borough vehicles.

Roselle must improve its current practices, revise and develop policies and procedures, and increase management oversight to achieve greater operational effectiveness and improve compliance with State and federal regulations and its own internal policies and procedures.

We make eight recommendations to address the Borough's inadequate monitoring and oversight of fiscal and business operations.

AUDIT FINDINGS AND RECOMMENDATIONS

Health Benefits

The Borough's lack of oversight and failure to monitor employee health insurance benefits resulted in improper payments of approximately \$800,000.

Roselle provided health insurance coverage or health benefit opt-out waiver payments to 12 employees and 10 deceased retirees or their spouses who were ineligible for such benefits. These improper payments cost the taxpayers approximately \$800,000.

Borough employees are eligible for employer-provided health insurance coverage pursuant to the terms of the collective bargaining agreements and Borough policies and procedures. In 2016 and 2017, the Borough provided health insurance benefits to approximately 280 employees and retirees, at an approximate cost of \$13.4 million. The Borough's Personnel Policy Manual (Manual) states that employees that work less than 20 hours per week are ineligible to receive health insurance benefits.

Municipalities may provide a health benefit opt-out waiver payment to an employee who waives health benefit insurance coverage as long as the employee is entitled to the coverage and is eligible for other coverage. *N.J.S.A. 40A:10-17.1.*

Our audit included review of the Borough's health insurance benefits and health benefit opt-out waiver payments provided to the mayor, council members, municipal clerk, and employees who were married or partnered to each other between January 2015 and June 2017. Our testing included verification of employee eligibility for health insurance coverage or health benefit opt-out waiver payments in accordance with the statutory provision of *N.J.S.A. 40A:10-17.1* and Borough policy.

Health Benefit Opt-Out Waiver Payments

Mayor and Council Members

Our audit found that the Borough's expenditures of approximately \$257,000 for health insurance premiums or health benefit opt-out waivers for the mayor and council members were improper. The Borough advised us that it provided these benefits based on a resolution passed during the former mayor's tenure that authorized such benefits. OSC requested the resolution from Roselle officials but it was not provided. The Borough's Manual requires employees to work 20 hours or more per week to be eligible for coverage. The Borough did not provide evidence to substantiate that the mayor and council members documented the hours worked or that they had worked the minimum 20 hours per week to be eligible for such coverage.

Married Employees

Our audit found that Roselle provided duplicate benefits to two married couples, or four employees who were married to another employee, all of whom were working for the Borough. Roselle paid health insurance premiums for the employee and the employee's spouse while simultaneously providing the health benefit opt-out waiver payments to the other spouse. The payments for health insurance and opt-out waivers totaled approximately \$163,000 during our audit period. Because the employees were provided health insurance coverage, we conclude that the health benefit opt-out waiver payments of approximately \$33,000 constituted a duplication of benefits and therefore were improper and wasteful.

N.J.S.A. 40A:10-17.1 does not explicitly address what a municipality may do in these circumstances and no court has interpreted the statute in these circumstances. It is nevertheless clear that the Borough's payment of a health benefit opt-out waiver to the spouse declining health insurance coverage when the employee is actually covered by the health insurance of the co-worker spouse contradicts the intent of the law allowing the Borough to provide a waiver payment when health insurance is waived. In this case, because the health insurance was not actually waived, duplicate benefits were provided. This wasteful spending could easily be avoided through the exercise of greater fiscal prudence. In the future, the Borough should exercise its discretion in ways that better protect public funds.

The Department of Community Affairs, Division of Local Government Services has issued guidance in Local Finance Notice 2016-10¹ regarding health benefit opt-out waiver payments by municipalities. The guidance encourages a municipality's governing body to annually review and thoroughly discuss such a policy, its impact on the budget, and whether such waiver payments remain fiscally prudent. The annual review performed by the Borough should include an evaluation of actual cost savings, particularly in those instances in which both members of a married couple are employed by the Borough.

Suspended Employee

The Borough failed to comply with its Manual when it approved health benefit opt-out waiver payments totaling about \$48,000 to an employee who was suspended for more than six years. The Borough's Manual states that, "Employees who are suspended from work for more than thirty (30) consecutive days are not eligible for Borough-paid health benefits."

Health Benefits Provided to Deceased Retirees and Spouses

Our audit found that the Borough did not monitor its retirees' eligibility for continuing health insurance coverage or ensure that the Borough-provided health insurance benefits were discontinued or modified promptly upon the retiree's or spouse's death. This failure resulted in approximately \$461,000 of improper health insurance premiums for deceased retirees or spouses.

Pursuant to Borough Ordinance 2394-11, § 25-5(a), the Borough provides health insurance coverage to its retirees, their spouse and dependents. The ordinance allows coverage for the deceased retiree's surviving spouse until remarriage. As of April 2017, the Borough provided health insurance coverage to 103 retirees.

Our audit testing included verifying all 103 retirees' eligibility for health insurance coverage by comparing their social security numbers to death records. Our audit found that, between February 2008 and June 2017, the Borough failed to discontinue or modify health insurance coverage promptly when nine retirees and one spouse died. One retiree died in February 2008, but the Borough did not discontinue coverage until August 2016. In another instance, a retiree died in

¹Available at <https://www.nj.gov/dca/divisions/dlgs/lfns/16/2016-10.pdf>

January 2010, but the Borough did not revise the coverage from retiree and spouse to self-only coverage for the spouse. Furthermore, the surviving spouse died in July 2013, but the Borough did not discontinue coverage until August 2016.

As a means of comparison and for purposes of future cost savings, it is helpful to consider that the Borough's current practice of providing health insurance coverage to a retiree's dependents after the retiree's death is more generous than the insurance coverage offered to employees retired from state employment.

Cost Savings by Joining State Health Benefits Program

When selecting its private carrier, Roselle relied on its health insurance broker's analysis of healthcare insurance providers without undertaking any critical examination of the health insurance premiums used by the broker in the analysis.

Our audit included an analysis of the insurance premium rates offered by the Borough's private carrier compared to the State Health Benefits Program based on the Borough's employee enrollment as of July 1, 2015 through June 30, 2017. Our analysis compared the premiums of the Borough's plan with the rates for comparable coverage in the State Health Benefits Program. We determined that Roselle would have saved approximately \$1.9 million if the Borough had participated in the State Health Benefits Program.

The broker's analysis resulted in inaccurate estimates. The broker projected an estimated 12 percent annual increase in the State Health Benefits Program premiums for 2016 and 2017. The increases in insurance premiums for active employees between 2011 and 2016 under the State Health Benefits Program for single and family coverage have fluctuated from as little as 3.69 percent to as much as 12.59 percent. Four of the six years had rate increases of 8.23 percent or lower. The broker did not take the likelihood of a lower increase into account in order to give a fair estimate.

We have previously reported that the expense of broker fees is not incurred by a municipality that participates in the State Health Benefits Program. See *Cost Analysis of Selected Local Government*

*Units Joining the State Health Benefits Program.*² Thus, a broker has no incentive to promote the State Health Benefits Program as a healthcare option to clients and has a very clear incentive to discourage what may be the most financially sound approach. Because estimating health insurance costs requires specialized knowledge, municipal officials often place heavy reliance on a broker's recommendations and at times completely defer to a broker without adequately taking into account the financial self-interest of the broker.

In light of our conclusions that the Borough could have saved \$1.9 million had it participated in the State Health Benefits Program, and in view of the lack of the Borough's independent verification or analysis, it appears that the State Health Benefits Program was not fairly considered based on the data presented.

Although we recognize that estimating insurance premiums is a complex process requiring the examination and evaluation of many factors, such review of the choices available should not be made with blind trust in the broker's analysis. Given the inherent conflicts that brokers have in the analysis and recommendations of insurance carriers, the Borough must ensure accountability and transparency of the process and not simply defer to a person with a financial interest in persuading the Borough to not use the State Health Benefits Program.

Recommendations

1. Develop policies and procedures to verify the initial eligibility of employees for health insurance coverage or health benefit opt-out waiver payments. Appropriate controls are required to monitor the continued eligibility. Appropriate controls should also be instituted to identify and process terminations and coverage changes in a timely manner to prevent improper payments.
2. Periodically, the Borough should conduct a cost-benefit analysis of its health insurance costs and evaluate the costs of participating in the State Health Benefits Program. This analysis should include a thorough review of the insurance broker's estimates and the reasonableness of such estimates compared to actual results.

²Available at https://www.state.nj.us/comptroller/news/docs/shbp_audit_report.pdf

Human Resources

The Borough failed to take prompt disciplinary action and continued the paid suspension of the municipal clerk for more than six years.

The Borough failed to initiate or complete the investigation of events leading to an employee's disciplinary action. The municipal clerk was suspended with pay without any action being taken and remained in that status for over six years. The Borough's failure to take timely action resulted in approximately \$611,000 of payroll expense in addition to approximately \$48,000 in health benefit opt-out waiver payments discussed earlier in this report. The Borough's failure to resolve the disciplinary action in a timely way resulted in unnecessary costs.

In May 2012, Roselle suspended the municipal clerk with pay pending an investigation concerning the clerk's office. Borough officials did not provide any evidence that it conducted an investigation or took any other actions to resolve the suspension. In July 2018, the Borough agreed to the municipal clerk's resignation effective July 31, 2018. During the six-year period, Roselle failed to request a tenure hearing with the Department of Community Affairs, Division of Local Government Services, pursuant to the requirements of *N.J.S.A. 40A:9-133.7(b)*, or to take appropriate and timely action, including by pursuing any other legal remedy, to resolve the employment status of the clerk.

Recommendation

3. Implement policies and procedures regarding the process for timely review of employee discipline matters, including an investigation and any referrals that are required. These policies should include the appropriate processes for consulting legal counsel and notifying the Borough Council.

Municipal Vehicles

Roselle did not implement adequate internal controls for the assignment and monitoring of its permanently-assigned vehicles. The Borough also failed to comply with its own policies and procedures and federal tax requirements for monitoring and reporting employees' personal use of municipal vehicles.

Our audit found that the Borough did not comply with its own policies and procedures for documenting requests for and authorization of permanently-assigned vehicles and monitoring personal use of these vehicles. In addition, the Borough failed to report the personal use of the vehicles as a taxable fringe benefit pursuant to Internal Revenue Service (IRS) and the Borough's policies and procedures.

During our audit period, Roselle permanently assigned vehicles to 17 employees. In its Manual, the Borough allows employees to use Borough-owned vehicles to conduct Borough business and to commute to and from work.

Vehicle Requests and Authorizations

The Manual states that Borough-owned vehicles may only be assigned to an employee upon a written request from the employee's department head to the Borough Administrator, who has the sole discretion to approve the request. Our audit found that Roselle did not have evidence of the department head's written request for 15 of the 17 vehicles or the Business Administrator's approval for 4 of the 17 vehicles. The Borough's failure to document requests and approvals for the use of Borough-owned vehicles may result in the misuse of the vehicles.

Taxable Fringe Benefits and GPS Tracking

Roselle failed to comply with IRS regulations and internal policies and procedures required for reporting taxable fringe benefits. Our audit found that Roselle did not adequately monitor the employees' vehicle usage, which limits its ability to ensure appropriate use of the vehicles, proper tax reporting of commuting and personal use, and compliance with IRS regulations and its own policies and procedures.

The Borough allows employees to use the vehicles to commute to and from work. The employees' use of the Borough-owned vehicles for commutation is considered a taxable fringe benefit pursuant to IRS regulations. 26 C.F.R. § 1.61-21(f). The value of the fringe benefit is treated as taxable wages if the employee does not reimburse the Borough.

The Manual states that the employee "will be charged the IRS rate under the 'Commuting Rule' which will be deducted from the employee's pay in equal quarterly installments." Roselle did not require or monitor the mileage tracking by employees to distinguish between legitimate business use versus personal and commuting use and did not deduct the commutation rate from employees' pay as required by its policy and federal regulations.

In 2015, the Borough outfitted the permanently-assigned vehicles with Global Positioning Systems (GPS). The GPS data provides a record of all vehicle activity, including the date, location, times of departure and arrival, and mileage for all trips. Borough officials review the GPS reports on a limited basis and without detailed assessments of the mileage and determination of legitimate Borough business or personal use.

We judgmentally selected GPS reports for two months in 2016 for 4 of the 17 vehicles. Our review of these GPS reports noted the 4 vehicles were driven a total of 6,016 miles, which included 2,410 miles (40 percent) to and from non-Borough locations during evening, overnight and weekend hours. Although our audit does not make any conclusions on the appropriate business use of the vehicles at non-Borough locations, the information we reviewed demonstrates the importance of reviewing the GPS reports to assess whether vehicles are being used appropriately. The Borough's limited review of the GPS reports and failure to require detailed trip and mileage records for all vehicle trips prevents the Borough from distinguishing between the legitimate vehicle use for Borough business and the personal and commuting use that would lead to a requirement to report taxable fringe benefits.

Recommendations

4. Develop procedures and appropriate processes to ensure that all permanently-assigned vehicles to Borough employees are assigned through written requests and approvals in accordance with the Borough's policy.

5. Develop policies and procedures to require employees to account for their actual vehicle mileage, including details of all trips, such as the date, start and end time, trip location, purpose, and actual mileage. The procedures should include comparisons of the employee mileage reports with the actual GPS reports to identify personal and commuting uses. Any unusual or inappropriate vehicle use should be documented and addressed appropriately, including through employee discipline.
6. Implement the process to assess taxable fringe benefits for Borough employees' personal and commutation use of the Borough-owned vehicles in accordance with its policy and pursuant to Internal Revenue Service regulations.

Roselle First Initiative

The Borough did not properly procure or award contracts for consulting services in compliance with the Local Public Contracts Law.

Roselle First Initiative

In 2012, the Roselle First Initiative was created by the Borough to provide employment, career, and training assistance at no charge to Roselle residents. Since 2012, the Roselle First Initiative has been administered by a nonprofit organization (vendor). Our review concluded that the Borough's procurement of the vendor's services for 2015 and 2016 failed to comply with the Local Public Contracts Law. *N.J.S.A. 40A:11-1 et seq.*

In 2014, the Borough publicly advertised a Request for Qualifications for consulting services for the Roselle First Initiative, including but not limited to post-prison reentry services, for the period January 1, 2015 through December 31, 2015. In February 2015, the Council adopted two resolutions awarding a contract as part of a "Fair and Open Process established and exercised pursuant to *N.J.S.A. 19:44A-20.5*" and "without competitive bidding under the provisions of Local Public Contracts Law (*N.J.S.A. 40A:11-5(1)(a)(i)*) as an Extraordinary Unspecifiable Service." Although the Borough referred to the proposed services as extraordinary unspecifiable services in its resolutions, in the public notice of the contract award, the Borough characterized the contract as one for professional services. The Borough, however, incorrectly characterized the services in both instances; they are neither professional services, nor extraordinary unspecifiable services as defined under the Local Public Contracts Law.

The Local Public Contracts Law defines professional services as services "performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law." To perform such a service, the person "requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training." *N.J.S.A. 40A:11-2(6)*. Extraordinary unspecified services are defined as "services which are specialized and qualitative in nature requiring expertise, extensive training, and proven reputation in the field of endeavor."

N.J.S.A. 40A:11-2(7). The consulting services involved workforce placement and post-prison reentry services, neither of which require the vendors to maintain a license to perform any legally regulated services. Nor were the services qualitative in nature requiring expertise or extensive training as contemplated by Local Public Contracts Law. Because these services do not meet any exception from competitive bidding under the Local Public Contracts Law, the Borough should have either issued a bid pursuant to *N.J.S.A.* 40A:11-4 or a Request for Proposal pursuant to *N.J.S.A.* 40A:11-4.1(b)(2) or (m).

Payments Issued before Contract was Authorized/Signed

Our audit found that the Borough paid approximately \$146,000 to the vendor for 2015 services billed without a formal signed contract. The February 2015 resolutions initially awarded the vendor \$280,000 for the Roselle First Initiative and post-prison reentry services for a one-year term. Although the Request for Qualifications stated that the successful vendor would execute a formal written contract, the vendor never did so. The resolutions also lacked details regarding the scope of work and vendor obligations.

The Borough awarded the same vendor a contract for these services in 2016 by a resolution dated January 20, 2016. A formal contract for the 2016 services was signed on March 15, 2016. The Borough paid the vendor approximately \$10,000 for services from January 2016 through March 14, 2016 without a contract setting forth a clear scope of work and the responsibilities of the vendor. The absence of a contract leaves the Borough at risk if a legal dispute regarding the performance were to arise. A fully executed contract is needed for the Borough to effectively manage the contract and to ensure satisfactory performance.

Performance Outcomes of the Roselle First Initiative

In order to assess the outcomes of the Roselle First Initiative, we reviewed performance reports for 2015 and 2016. The vendor's monthly reports of program activity included a summary number of clients served in various activities (client intake, referrals, employment actions, etc.). For those clients successful in obtaining employment, the vendor provided the client and employer names. The reports did not include additional relevant client details (such as address and social security number) that would allow us to verify client employment with the Department of Labor and

Workforce Development and did not include an employer's verification or certification of employment.

Contrary to the 2014 Request for Qualifications that stated the Roselle First Initiative services were for Borough residents, our review of the vendor's performance reports noted that individuals with non-Roselle addresses were also reported as having received services.

Recommendations

7. Develop policies and procedures that ensure procurement of and awarding of consulting service contracts complies with the Local Public Contracts Law.
8. Develop policies and procedures that require consulting services to be documented with a formal written contract. The contracts should include a detailed scope of work and include all relevant terms defining the contract period, contract price and payment terms, reporting requirements that allow for verification of the performance, and outcomes as anticipated in the award of the contract. Payments for consulting services should be based on Borough policy and only after appropriate review and approval of whether services rendered meet the terms of the agreement.

REPORTING REQUIREMENTS

We provided a draft copy of this report to Roselle officials for their review and comment. Borough officials agreed with our audit findings and conclusions, and its response indicated they intend to implement corrective actions to address our recommendations. The Borough's comments were considered in preparing our final report and are attached as Appendix A.

We are required by statute to monitor the implementation of our recommendations. In accordance with *N.J.A.C. 17:44-2.8(a)*, within 90 days following the distribution of the final audit report, the Borough is required to provide a plan detailing the corrective action taken or underway to implement the recommendations contained in the report and, if not implemented, the reason therefore. We will review the corrective action plan to evaluate whether the steps taken by the Borough effectively implement our recommendations.

We thank the management and staff of the Borough for the courtesies and cooperation extended to our auditors during this engagement.



Appendix A - Auditee Response

BOROUGH OF ROSELLE

210 Chestnut Street, Roselle, New Jersey 07203

Everett Falt, RMC, QPA, CMR
ASSISTANT BOROUGH ADMINISTRATOR

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January 7, 2021

Ms. Yvonne Tierney, Audit Director
Office of the State Comptroller
PO Box 024
Trenton, New Jersey 08625

Dear Ms. Tierney.

The Borough of Roselle is in receipt of and has begun to review the Performance Audit of Selected Fiscal and Operating Procedures (the audit) for the period of January 1, 2015 through June 30, 2017, prepared by the State of New Jersey, Office of the State Comptroller ("OSC"), Audit Division. The Audit found the Borough lacked in four (4) areas: Lacked oversight and monitoring of its employee health insurance/opt-out waiver, failure to promptly address employee disciplinary matters, improperly awarded contracts for consulting services, and lacked oversight over employees use of Borough Vehicles.

The Borough accepts all findings and has proactively addressed or corrected many of the findings through changes in policies and procedures for example:

Finding: Lack oversight and monitoring of its employee health insurance benefit and opt out waiver payments that resulted in \$800,000 of improper payments.

Response: The Borough conducted an extensive audit of its employee roster in its' transition into the State Health Benefits Plan.

Finding: Failed to promptly investigate and resolve an employee disciplinary action that resulted in approximately \$611,000 of continued salary payments.

Response: The Borough has since terminated the former clerk in 2018.

Finding: Improperly awarded contracts for consulting services that did not comply with state laws.

Response: The Borough has since hired a Qualified Purchasing Agent (QPA) who complies with the Local Public Contract Law.

Finding: Lacked adequate oversight, monitoring, and reporting of employee's use of Borough vehicles.

Response: The Borough has adopted several policies including that of requiring all employees to receive a benefit on behalf the Borough as required by law. The Borough is also now maintaining a fixed-asset control log with all the Borough vehicles listed. Additionally, the Borough will issue vehicles annually being approved by the Administrator or Assistant Borough Administrator. 6

Finally, the Borough has the intention of adopting a comprehensive and robust corrective action plan in conjunction with our counsel to address all deficiencies explicitly. I thank you for working with our Borough and appreciate any feedback you can provide.

Cordially,

A handwritten signature in blue ink, appearing to read "Everett Falt". The signature is fluid and cursive, with the first name "Everett" written in a larger, more prominent script than the last name "Falt".

Everett Falt
Acting Borough Administrator

CC: Mohamed Jalloh, Borough Attorney
File