



Otsego County Public Administrator Estate Management

Report of Examination

Period Covered:

January 1, 2006 — December 12, 2007

2008M-85



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2008

Dear Local Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Representative governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Otsego County Public Administrator, entitled Estate Management. This audit was conducted pursuant to Article V, Section 1 of the State Constitution, and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Surrogate Court Procedure Act (SCPA) provides authority for Public Administrators within the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester and County Treasurers within New York State acting as administrators. The SCPA allows any reasonable and necessary expenses to be paid from estates in which costs have been incurred from administration of estates and stipulates the form and verification of all claims.

The Report and Guidelines of the Administrative Board for the Offices of the Public Administrators Pursuant to SCPA Section 1128 (Article 12) within the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester and County Treasurers within the State Acting as Administrators (Administrative Guidelines) provide guidance on recordkeeping, cash management, property management, payments of fees, selection of outside vendors, and performance of other administrative functions.

In Otsego County, the County Treasurer acts as the Public Administrator and is responsible for administering the estates of County residents who die intestate (without a will) and leave no known heirs or heirs who are not qualified or willing to administer the estate. In addition to the responsibilities outlined in the SCPA, the County Treasurer, as Public Administrator, also administers an estate if neither the executor nor any eligible beneficiary named in the decedent's will is able or willing to serve as Administrator. The Public Administrator uses private estate money to pay for estate related expenses. Public funds are not involved with the administering of estates.

Scope and Objective

The objective of our audit was to determine if the Otsego County Treasurer, serving as the Public Administrator, carried out estate management in accordance with the Surrogate Court Procedure Act and Administrative Guidelines for the period January 1, 2006 to December 12, 2007. Our audit addressed the following related questions:

- Did the Public Administrator properly account for transactions of and maintain central records for all estates she administered?
- Was the Public Administrator's use of public funds to pay for estate expenses proper?

Audit Results

We found that the Public Administrator did not properly account for the transactions of or maintain central records for all estates she administered. We reviewed a sample of eight estates under the administration of the Public Administrator and determined that she did not maintain a double-entry bookkeeping system¹ to record and summarize all the receipts and disbursements and did not maintain complete, central records for those estates.

We also found that the Public Administrator properly used public funds to pay for estate expenses. The Public Administrator used approximately \$1,670 of County funds to pay for the expenses of two estates that did not have liquid assets available. The County Surrogate Court Judge issued a Court order that authorized her to use public funds to pay for the estates' expenses. The Public Administrator reimbursed the County once cash assets were available.

Comments of Local Officials

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix A, have been considered in preparing this report. County officials do not agree with our recommendations and their comments are included in Appendix A. Our comments concerning the County officials' response can be found in Appendix B.

¹ In a double-entry transaction, an equal amount of money is always transferred from one account (or group of accounts) to another account (or group of accounts). Accountants (we) use the terms "debit" and "credit" to describe whether the money is being transferred to or from an account. Double-entry bookkeeping is used to record financial transactions by debiting at least one account and crediting at least another account, while keeping the total debits and credits within each transaction equal or balanced.

Introduction

Background

The Surrogate Court Procedure Act (SCPA) provides authority for Public Administrators within the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester and County Treasurers within New York State acting as administrators. The SCPA allows any reasonable and necessary expenses to be paid from estates in which costs have been incurred from administration of estates and stipulates the form and verification of all claims.

The Report and Guidelines of the Administrative Board for the Offices of the Public Administrators Pursuant to SCPA Section 1128 (Article 12) within the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester and County Treasurers within the State Acting as Administrators (Administrative Guidelines) were promulgated in 1995 by the Administrative Board for the Offices of the Public Administrators. Those guidelines provide guidance on recordkeeping, cash management, property management, payments of fees, selection of outside vendors, and performance of other administrative functions.

Otsego County is located in central New York State and, according to the 2000 Federal census, has a population of 61,676. In Otsego County, the County Treasurer acts as the Public Administrator and is responsible for administering the estates of county residents who die intestate (without a will) and leave no known heirs or heirs who are not qualified or willing to administer the estate. In addition to the responsibilities outlined in the SCPA, the County Treasurer, as Public Administrator, also administers an estate if neither the executor nor any eligible beneficiary named in the decedent's will is able or willing to serve as Administrator. The Public Administrator uses private estate money to pay for estate related expenses. Public funds are not involved with the administering of estates. The Public Administrator may choose to obtain the services of an attorney to act for her to administer estates. During our audit period the County Surrogate Court appointed the County Treasurer as the administrator of 18 estates. As of December 12, 2007, there were nine estates still open with total assets valued at approximately \$165,300. Total assets of the nine estates closed during our audit period were valued at approximately \$1.1 million.

Objective

The objective of our audit was to determine if the Otsego County Treasurer, serving as the Public Administrator, carried out estate management in accordance with the Surrogate Court Procedure Act

and Administrative Guidelines. Our audit addressed the following related questions:

- Did the Public Administrator properly account for transactions of and maintain central records for all estates she administered?
- Was the Public Administrator's use of public funds to pay for estate expenses proper?

**Scope and
Methodology**

We examined the estate management practices of the Public Administrator of Otsego County for the period January 1, 2006 to December 12, 2007.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix A, have been considered in preparing this report. County officials do not agree with our recommendations and their comments are included in Appendix A. Our comments concerning the County officials' response can be found in Appendix B.

The County Board of Representatives has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the County Board of Representatives should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Local Government Management Guide*. We encourage the County Board of Representatives to make this plan available for public review in the Clerk of the Board's office.

Centralized Records and Bookkeeping

The Administrative Guidelines require that the Public Administrator maintain a double-entry bookkeeping system² to record and summarize all receipts and disbursements for each estate she administers. The Administrative Guidelines require that the Public Administrator also maintain a central record for each estate under her administration with individually numbered entries for every item of personal property, every bank account, and other assets. The Public Administrator should use a uniform system of recording to the greatest extent possible. These master records allow the Public Administrator to itemize all property belonging to each estate accurately and completely.

We found that the Public Administrator did not properly account for the transactions of or maintain central records for all estates she administered. We reviewed four closed and four open estates, out of the 18 estates under the administration of the Public Administrator during our audit period, to determine if the Public Administrator maintained a central record and double-entry bookkeeping system for each estate. We reviewed bank statements, receipts and disbursements detail, canceled checks and other pertinent documents.³ We found that she did not maintain a bookkeeping system to record and summarize all the receipts and disbursements for any of those estates. Instead, she relied on the estates' attorneys who maintained a record of receipts and disbursements in checkbook registers. We also found that she did not maintain central records for those eight estates. Alternatively, the attorneys independently maintained complete records that included relevant legal documents, inventory listings, bank statements, bills and invoices, photos of the individual estates' property, and auction results. Although the Public Administrator also maintained individual files for the estates she administered, those files contained miscellaneous and incomplete documentation.

The Public Administrator informed us that she was not made aware of the Administrative Guidelines. She also indicated that she did not maintain a double-entry bookkeeping system or central records

² In a double-entry transaction, an equal amount of money is always transferred from one account (or group of accounts) to another account (or group of accounts). Accountants (we) use the terms "debit" and "credit" to describe whether the money is being transferred to or from an account. Double-entry bookkeeping is used to record financial transactions by debiting at least one account and crediting at least another account, while keeping the total debits and credits within each transaction equal or balanced.

³ See Appendix C, Audit Methodology and Standards, for a more detailed description of our testing.

because the majority of the estates she administered were insolvent and, therefore, this would have created additional work and complicated the management of estates.

When a double-entry bookkeeping system and central records are not maintained, it is difficult for the Public Administrator to properly monitor an estate's activities and provide adequate oversight of the attorneys hired to administer the estates. Although we found no material errors or irregularities, the failure to maintain an appropriate bookkeeping system and central records increases the risk that errors and irregularities could occur and go undetected and uncorrected.

Recommendations

1. The Public Administrator should maintain a double-entry bookkeeping system in accordance with Administrative Guidelines to record all receipts and disbursements for each estate under her administration.
2. The Public Administrator should maintain a central record in accordance with Administrative Guidelines, using a uniform system for each estate she administers that includes individually numbered entries for every item of personal and real property owned by the decedent.

Use of Public Funds

The Public Administrator has the authority to pay all reasonable and necessary expenses relating to the estates she administers. Estate expenses can include the payment of funeral expenses, real estate property fire insurance, taxes, medical bills, legal fees to the attorney administering the estate, filing fees to the Surrogate Court, and any other outstanding bills of the estate. The Public Administrator should only use private funds to pay estate related expenses unless directed by the Surrogate Court to use public funds for such purpose. When so directed by the Court, the Public Administrator should reimburse the County for public funds used as soon as private estates become available.

During our audit period, the Public Administrator recognized that she needed to pay for certain expenses of two estates that did not have liquid assets available. She petitioned the Surrogate Court to use Otsego County public funds to pay for fire insurance for the two estates' real property and funeral expenses and new locks on the real estate property of one of those estates. The Surrogate Court ordered her to pay the expenses with public money. As a result of the Court order, she used approximately \$1,670 of public money to pay for those expenses. The Public Administrator reimbursed the County once cash assets became available through the sale of the estates' real property.

We found that the Public Administrator properly used public funds to pay for certain estate expenses.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.



BOX 265 197 MAIN STREET COOPERSTOWN, NEW YORK 13326-0265
OFFICE OF THE COUNTY TREASURER TELEPHONE: (807) 547-4235 FAX: (807) 547-7579

July 15, 2008

[REDACTED]
Local Government and
School Accountability
State Comptrollers Office
New York State Office Building
44 Hawley Street, Room 1702
Binghamton, NY 13901

RE: Otsego County Public Administrator
Estate Management
Report of Examination
2008M-85
Period Covered: January 1, 2006-December 12, 2007

Dear [REDACTED]

This will serve as my response to your preliminary draft findings as discussed with your examiners June 26, 2008, along with my Corrective Action Plan (CAP) on the above referenced examination.

I concur with that portion of the executive summary which approved my expenditures for court ordered expenses in Public Administration estates. Recall, I was challenged as to whether this was a proper expenditure of public funds. You have confirmed I acted properly.

I respectfully disagree with that portion of the executive summary that claims I failed to operate in these Public Administration Estates with a centralized accounting system and did not maintain a double-entry system for recording purposes. I appreciate your acknowledgment that I was never made aware of the Administrative Guidelines, dated 1995. I have read these guidelines and it appears they have not been updated since that time. I am not aware of our Surrogate or County Attorney being provided a copy of these Guidelines. I understand the usefulness of the Guidelines for the six counties listed, Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester, however, there are requirements which are not practical for Chief Fiscal Officers of small counties, similar to Otsego County.

See
Note 1
Page 16

Upon your examiners suggestion, I visited the New York State Comptroller's website, and located the following audits of Public Administrator(s):

Report #FP00-190A, dated 6/25/03, New York County Public Administrator's Office
Report#2003-N-5, Richmond County Office of Public Administrator
Report #2002-N-11, Kings County Office of Public Administrator
Report #S9-7-30, dated February 2008, Erie County Office of Public Administrator
Report #S9-7-29, dated February 2008, Monroe County Office of Public Administrator
Report #2007-MS-4, Estate Management by Public Administrators: Erie, Monroe, Onondaga, Oneida, Schenectady and Dutchess Counties

All counties listed are much larger than Otsego and have designated an Office of Public Administrator, with the exception of Dutchess, and Schenectady Counties, the Commissioner of Finance are designated and Oneida County, the Comptroller is designated. I could not locate any Public Administrator audits of County Treasurers in size and scope as Otsego with similar estate activity.

For each recommendation included in the audit report, the following is my corrective action taken or proposed. For recommendations where corrective action has not been taken or proposed, I have included the following explanations.

1. Audit Recommendation:

The Public Administrator should maintain a double-entry bookkeeping system in accordance with Administrative Guidelines to record all receipts and disbursements for each estate under her administration.

Implementation Plan of Action(s):

I was not aware of the Administrative Guidelines and followed past practice because the majority of administered estates are insolvent. This type of record keeping is not practical and would complicate estate management. Local attorneys are hired to assist in the management of estates, therefore, checks and balances are provided in handling any assets.

See Note 2 Page 16

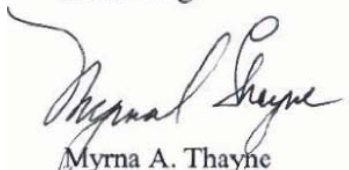
2. Audit Recommendation:

The Public Administrator should maintain a central record in accordance with Administrative Guidelines, using a uniform system for each estate she administers that includes individually numbered entries for every item of personal and real property owned by the decedent.

Implementation Plan of Action(s):

A separate file is maintained for all estates with the Surrogates file number. Assets are listed separately at this point in time. Should an assigned estate fall within the Administrative Guide, similar to the estate activity of the counties listed earlier, I will comply with more minutia detailed accounting.

See
Note 3
Page 16



Myrna A. Thayne
County Treasurer and
Public Administrator

July 15, 2008

- C: Chairman James P. Powers
Hon. Gregory Relic, Administration Committee
Hon. James V. Johnson, Administration Committee
Hon. Betty Anne Schwerd, Administration Committee
James E. Konstanty, County Attorney
Laura Child, Clerk of the Board
Surrogate's Court
File

APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

The Administrative Guidelines apply to county fiscal officers within New York State who are acting as administrators. The Otsego County Treasurer is, therefore, required to adhere to these Guidelines when acting as Public Administrator and to follow the requirements that apply in all counties of the State.

Note 2

The records maintained by the Public Administrator were not adequate to maintain full accountability for the assets in her custody, and they did not comply with the requirements of the Administrative Guidelines.

Note 3

We found that the attorneys, and not the Public Administrator, independently maintained complete records that included relevant legal documents, inventory listings, bank statements, bills and invoices, photos of the individual estates' property, and auction results.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by County officials to safeguard estate assets in which the Public Administrator has been entrusted. Our audit encompassed the period from January 1, 2006 through December 12, 2007. To accomplish the objective of this audit, our procedures included the following to obtain valid audit evidence:

- We interviewed appropriate County officials and employees, attorneys, legal aides, and the Public Administrator to determine the internal controls, procedures, systems, and records used to control estate assets.
- We reviewed the details of the County's general ledger miscellaneous account for activity related to the use, and subsequent reimbursement, of public funds to pay for estate-related expenses. We reviewed the Surrogate Court's records for Court orders authorizing the Public Administrator to use public funds to pay for estate-related expenses.
- We selected four open estates and four closed estates. We examined the attorneys' estate records including bank statements, receipts and disbursements detail, canceled checks and other pertinent documents to ensure that the disbursements and receipts were properly recorded and supported.
- We examined eight estates' bank accounts maintained by the attorneys to verify that estate moneys earned interest and were sufficiently collateralized.
- We reviewed eight estates' bank records maintained by the attorneys to determine if bank reconciliations were prepared on a timely basis.
- Through inquiry and inspection of eight estates' records maintained by the Public Administrator and attorneys, we determined if adequate and timely searches were conducted of the decedents' residences.
- Through inquiry and inspection of eight estates' records maintained by the Public Administrator and Attorneys, we determined if inventory lists, photos, or video records of estates' assets were created when the premises were initially searched and if logs were maintained to record who entered the decedents' residences.
- We compared a sample of five assets from one estate's inventory list maintained by the Public Administrator to the photo records of the estate assets and the auction results to ensure that those assets appeared in the photo records and were sold at the auction.
- We reviewed eight estates' records maintained by the Public Administrator for auction summaries to determine if assets were sold at public auction, to the highest bidder, and to an unrelated individual. We also reviewed those records to ensure that the Public Administrator supervised the auction sales.

- We selected a sample of fifteen assets from one estate's inventory listing maintained by the Public Administrator and traced those assets to the auction results to ensure that those assets were actually sold.
- Through inquiry and inspection of eight estates' files maintained by the attorneys, we verified that the attorneys hired to handle the estate for the Public Administrator did not receive compensation for searching for the distributees.
- We judgmentally selected ten estate files maintained by the attorneys and tested commissions paid to the current and prior Public Administrator.
- Through inquiry and inspection of records, we determined if the Public Administrator advertised annually in newspapers for vendors to provide services for the estates.

We based our performance criteria for this audit on the Surrogate Court Procedure Act (SCPA) and the Report and Guidelines for the Administrative Board for the Offices of Public Administrators Pursuant to SCPA Section 1128 (Article 12) within the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester and County Treasurers within the State Acting as Administrators (Administrative Guidelines).

The aforementioned SCPA and Administrative Guidelines contain requirements relating to recordkeeping procedures, cash management, property management, administrative functions, payment of fees, and selection of outside vendors.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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AND SCHOOL ACCOUNTABILITY

Steven J. Hancox, Deputy Comptroller
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