

# **A Performance Audit of Selected Fiscal and Operating Practices of the Township of Berlin**

## ***AUDIT DIVISION REPORT***

*Issued December 17, 2021*

*For the period January 1, 2016 through December 31, 2019*



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# Audit Authority

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We performed this audit pursuant to the State Comptroller's authority 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, 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.

## Background

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The Township of Berlin (Berlin or Township) is located in Camden County and covers 3.23 square miles with approximately 5,300 residents. Berlin is governed by a township council, comprised of a mayor and four council members. The mayor is elected for a four-year term while council members are elected for three-year terms. The mayor is responsible for the executive and administrative functions of the municipality. The mayor is assisted by the township clerk in these duties. Berlin's 2019 audit reported its current fund with total income of \$27.8 million and total expenditures of \$26.1 million.

## Executive Summary

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Berlin does not have adequate internal controls or effective oversight for certain fiscal and operating practices. The audit found that Berlin failed to comply with: (i) terms of its collective bargaining agreement related to unused sick leave; (ii) its own policies and procedures addressing timekeeping, new hires, and employee reimbursements; (iii) statutory requirements and its own policy regarding health benefits eligibility; (iv) statutory requirements related to its master plan; and (v) the Local Public Contracts Law regarding the procurement of a prescription drug insurance contract. The Township also lacked policies and procedures for its controls over municipal properties, municipal vehicle usage, and accounting system user access.

These deficiencies resulted in improper payments of more than \$325,000 and the potential for waste and abuse of taxpayer resources. This amount includes approximately \$79,000 of improper payments to the mayor for health insurance benefits and benefit opt-out waiver payments. In addition, the mayor received unsupported and unauthorized reimbursements of expenses that we could not determine were related to official Township business. Furthermore, we identified \$70,000 in potential savings to taxpayers related to untaxed, municipally-owned properties.

Berlin must take appropriate action to strengthen its internal controls to improve its current practices and implement effective management oversight to achieve greater operational effectiveness and improve compliance with applicable laws and regulations.

We make 13 recommendations to improve Berlin's operations and its compliance with applicable statutes and regulations.

# Audit Objectives

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The objectives of our performance audit were to review Berlin's controls over selected fiscal and operating practices and to assess its compliance with state laws, regulations, and its internal policies and procedures.

# Audit Scope

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The period January 1, 2016 through December 31, 2019.

# Audit Methodology

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To accomplish our objectives, we reviewed relevant statutes, regulations, Berlin's policies and procedures, council meeting minutes, collective bargaining agreements, audit reports, and other related financial records and supporting documents. In addition, we conducted interviews of certain Township personnel to obtain an understanding of their job responsibilities and Berlin's internal controls.

As part of our audit procedures, we used random and judgmental sampling approaches in selecting our samples of transactions to assess Berlin's compliance with laws and regulations as well as its own policies and procedures. Our sample selections were designed to provide conclusions about the validity of the sampled transactions, the adequacy of internal controls, and compliance with applicable laws, regulations, and policies and procedures with regard to the same. Because we used a non-statistical sampling approach, the results of our testing cannot be projected over the entire population of like transactions or contracts.

# Audit Findings and Recommendations

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## Payroll Practices

### Objective 1a

*To determine whether Berlin complied with state law, collective bargaining agreements, and its policies and procedures for processing supplemental payroll transactions.*

### Finding

Berlin improperly paid approximately \$60,000 to two employees for unused sick leave in violation of collective bargaining agreement terms.

### Criteria

- Berlin Township Police Association Contract Agreements (Police Agreements)
- Berlin Township Employee Personnel Policy Manual (Personnel Manual)
- Berlin Township Ordinances
- N.J.S.A. 40A:9-10.4 - Cap on Compensation for Unused Sick Leave Not Covered by Title 11A

### Methodology

To meet this objective, we:

- Interviewed personnel responsible for payroll and human resources;
- Reviewed Berlin's Personnel Manual, Ordinances, and Police Agreements;
- Identified supplemental payroll payments for sick leave, vacation leave, and miscellaneous pay (among other things) of \$1,247,303 for the period January 1, 2016 through September 17, 2019;
- Selected a judgmental sample of 15 supplemental payroll transactions for 11 employees totaling \$225,097; and
- Tested the sampled transactions to ensure they were properly calculated, authorized, supported, and in compliance with policies, procedures, and collective bargaining agreements.

### Audit Results

The Police Agreements allowed retiring police officers to receive a payment for unused sick leave. Our audit identified payments for unused sick leave to two police officers that were approved and issued, although neither officer had resigned or retired, contrary to the terms of the Police Agreements. The police officers requested, in written memoranda to the chief financial officer (CFO), mayor, and clerk, reimbursement for a portion of their unused sick leave balances. Both officers asked for the compensation due to financial hardships. In 2017, one officer requested and received payment of \$26,250 for 600 hours of unused sick leave. In 2019, another officer requested and received payment of \$33,432 in exchange for 680 hours of unused sick leave.

Upon evaluating the Police Agreements to determine whether Berlin properly issued the sick leave payments, we noted that the Township's current Police Agreement does not comply with N.J.S.A. 40A:9-10.4, which limits the payments for accrued sick time for municipal employees who began employment after May 21, 2010.<sup>1</sup> This statute was enacted in 2010 for the purpose of reducing property taxes.

The Police Agreement allows for sick leave payments after 15 years of continuous service other than at retirement and in excess of the cap allowed by statute for employees hired after May 21, 2010. The Police Agreement provides that employees hired prior to January 1, 2016 may receive accrued sick leave payments greater than the statutory limit, which creates a period of more than five years during which employees who were hired were provided employment terms inconsistent with state law. For employees hired after January 1, 2016 but prior to December 31, 2018 sick leave payments are capped at \$15,000 for retiring officers. For any employee hired after January 1, 2020 sick leave payments are eliminated. The Police Agreement does not include sick leave payment provisions for employees hired in 2019.

### **Cause**

The CFO, mayor, and clerk approved the unused sick leave payments in violation of the terms of the Police Agreements. The council meeting minutes documenting the approval for the unused sick leave payments did not include the details, including the officer or the specific computation of the payments.

### **Effect/Potential Effect**

The granting of payments contrary to or in excess of the Police Agreement provisions by the Township's management violates the municipality's own contractual obligations and potentially encourages other employees to request advance payments to which they are not entitled. Payments for leave at a time other than retirement may negatively impact the Township's budget and create the risk of unauthorized, excessive, or duplicate leave payments upon retirement.

### **Recommendations**

1. Develop policies and procedures for unused sick leave payments and ensure that all Township officials comply with the terms of collective bargaining agreements. In addition, Berlin must ensure that its collective bargaining agreements comply with state law and that any unused sick leave payments for the two police officers addressed in this report do not exceed the collective bargaining provisions upon their retirement.
2. Seek to revise the Berlin Township Police Association Contract Agreement to include caps for unused sick leave payments at retirement consistent with state law for employees hired in 2019.

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<sup>1</sup> See *In the Matter of Verona Board of Education*, P.E.R.C. No. 2022-5, 48 NJPER P27 (August 26, 2021); *Southampton Twp.*, P.E.R.C. No. 2018-57, 45 NJPER P8 (June 28, 2018). See also *An Investigation into the Fiscal Operations of the Borough of Palisades Park* (March 2, 2021) available at: <http://www.nj.gov/comptroller/reports/2021/approved/20210302.shtml>

## **Objective 1b**

*To determine whether Berlin complied with its policies and procedures for hiring and processing of payroll for new employees.*

### **Finding**

**Berlin hired an employee without council approval and paid that employee without supporting documentation of time worked.**

### **Criteria**

- Personnel Manual

### **Methodology**

To meet this objective, we:

- Interviewed personnel responsible for payroll and timekeeping;
- Reviewed policies and procedures related to new hires and timekeeping;
- Reviewed council meeting minutes; and
- Verified that payroll payments were issued based on supervisor-approved official time and attendance records.

### **Audit Results**

The Township council is responsible for approving all new employees prior to the start of employment. We identified an instance in which a Berlin official failed to obtain council approval. The police chief hired a new officer without council approval. Further, the police chief also approved payroll for that officer for 123 hours worked when time and attendance records for only 81 hours were submitted.

### **Cause**

The police chief did not comply with Berlin's hiring policies and procedures and approved payroll for a new officer without time and attendance records as required by Township policies. Township officials ignored and/or circumvented controls, and other staff failed to follow such controls, when they failed to comply with the Township's policies and procedures for hiring and compensating new employees. The payroll clerk and CFO improperly processed payroll without fully supported time and attendance records.

### **Effect/Potential Effect**

The failure to comply with policies and procedures creates an environment of public mistrust in the transparency and accountability of government operations. Internal controls that are ignored and/or circumvented pose significant risk for fraud, waste, and abuse. Berlin officials committed to the expenditure of public funds without council approval.

### **Recommendation**

3. Implement procedures to ensure that the council approves all new hires prior to the commencement of their employment with the Township, and no employee is included in payroll without such approval. In addition, payroll processes should include procedures to ensure that employees are paid for hours worked that are documented with supervisor-approved official time and attendance records.



# Health Insurance Benefits

## Objective 2a

*To determine whether Berlin had controls to ensure only eligible participants received health insurance benefits in accordance with its policies and procedures.*

### Finding

Berlin failed to ensure that health insurance coverage was provided only to eligible employees resulting in improper payments of approximately \$219,000.

### Criteria

- N.J.S.A. 52:14-17.26 - Definitions Relative to Health Care Benefits for Public Employees
- Personnel Manual

### Methodology

To meet this objective, we:

- Interviewed personnel responsible for payroll and health benefit administration;
- Reviewed statutes and the Personnel Manual; and
- Verified that all 46 employees covered by Berlin's health insurance plan were eligible for such coverage.

### Audit Results

Berlin participated in the State Health Benefits Program (SHBP) and had medical insurance coverage from January 1, 2016 through December 31, 2019. The Township had prescription coverage through the SHBP from January 1, 2017 through December 31, 2019. An appointed or elected officer may be considered an "employee" if paid regular salary or wages for the number of hours of work per week as determined by the governing body to be full-time but cannot be fewer than 20 hours per week. N.J.S.A. 52:14-17.26(c) (1). According to the Personnel Manual, employees who work at least 35 hours per week and have been employed for 60 days are eligible for health benefits. The Township had designated the mayor and council members as employees that qualified for health benefits.

Of the 46 employees tested, we identified 3 individuals who received benefits despite the absence of documentation that they worked the minimum required number of hours. Berlin provided health insurance coverage to two council members and prescription coverage to the mayor, but did not require or maintain official time and attendance records to substantiate that they worked 35 hours per week to meet eligibility requirements, as required by its policies and procedures. During our discussions with the two Berlin council members, they stated that their hours worked ranged from 5 to 20 hours per week and that Berlin did not use its time and attendance system for elected officials.

### Cause

Berlin officials failed to comply with its own policies and procedures to document that covered employees met the full-time work requirement.

### Effect/Potential Effect

Berlin provided health insurance coverage to ineligible employees resulting in improper payments of approximately \$219,000.

### Recommendation

4. Implement procedures requiring that all employees eligible for health benefits coverage document their time and attendance. These procedures must include appropriate management review and oversight to ensure that only eligible employees obtain health insurance coverage.

### Objective 2b

*To determine whether Berlin had controls to ensure health benefit opt-out waiver payments were administered in accordance with statutory requirements.*

### Finding

**Berlin's policies and procedures regarding health benefit opt-out waiver payments were inadequate resulting in \$46,463 in improper payments.**

### Criteria

- N.J.S.A. 52:14-17.26 - Definitions Relative to Health Care Benefits for Public Employees
- N.J.S.A. 52:14-17.31a - Employee Permitted to Waive Benefits Coverage under SHBP
- N.J.S.A. 40A:10-17.1 - County, Municipal, Contracting Unit Employee Permitted to Waive Healthcare Coverage
- New Jersey Division of Local Government Services, Local Finance Notice 2016-10
- New Jersey Division of Pensions and Benefits waiver form
- Employment contracts
- Collective bargaining agreement terms for health benefit opt-out waivers

### Methodology

To meet this objective, we:

- Interviewed personnel responsible for benefit administration;
- Reviewed statutes, Local Finance Notice 2016-10, Berlin's health benefit waiver policy, collective bargaining agreements, and employment contracts; and

- Verified that all 23 health benefit opt-out waiver payments to 9 employees issued during the audit period, totaling \$100,238, were issued to eligible employees and calculated pursuant to statutory requirements.

## **Audit Results**

N.J.S.A. 52:14-17.31a and N.J.S.A. 40A:10-17.1 authorize local units that provide employee health benefits through the SHBP or non-SHBP coverage to make annual payments to employees in exchange for waiving health benefits coverage. The waiver payments are limited to the lesser of 25 percent of the amount saved by the Township or \$5,000. Employees are prohibited from receiving a health benefit opt-out waiver payment if the alternate coverage is with the SHBP or the School Employees' Health Benefits Program.

The Department of Community Affairs, Division of Local Government Services issued guidance in Local Finance Notice 2016-10<sup>2</sup> regarding health benefit opt-out waiver payments by municipalities. The guidance encourages a municipality's governing body to annually review and thoroughly discuss its policies for such payments, the impact of the payments on the municipality's budget, and whether such waiver payments remain fiscally prudent.

Our review found Berlin's health benefit opt-out waiver policies and procedures were insufficient. We also found that they did not contain specific requirements such as: annual review of its waiver policies; processes for employees wishing to revoke waivers; submission of proof of alternate health insurance coverage; waiver calculation methodology or limits; employee health insurance contribution rates; and requirements for number of hours worked for health benefit opt-out waiver eligibility.

We recalculated all 23 SHBP opt-out waiver payments issued during the period January 1, 2016 through September 15, 2019 to verify the Township was calculating the correct waiver amount in accordance with statutory requirements. We also confirmed whether the Township maintained proof of alternate health benefits coverage and completed New Jersey Division of Pensions and Benefits waiver forms. We found exceptions with all 23 health benefit opt-out waiver payments, including:

- Inaccurate calculations and payments for 12 of 23 health benefit opt-out waiver transactions totaling \$46,463. The improper payments were the result of the payroll staff's failure to timely terminate opt-out waiver payments upon an employee's separation of employment, the use of inaccurate employee health insurance contribution rates, and payments made to employees who were not eligible for health insurance coverage, including the mayor;
- No evidence of alternate health insurance coverage for 21 of 23 waiver payments; and
- Incomplete Division of Pensions and Benefits waiver forms for 3 of 23 waiver payments.

## **Cause**

Berlin lacked adequate procedures to process health benefit opt-out waiver payments which led to improper payments. In addition, the CFO failed to ensure that employees submitted the required supporting documentation to substantiate the health benefit opt-out waiver payments.

<sup>2</sup> Available at <https://www.nj.gov/dca/divisions/dlgs/lfns/16/2016-10.pdf>

### **Effect/Potential Effect**

The Township issued improper health benefit opt-out waiver payments of \$46,463. The Township allowed the issuance of possibly erroneous waiver payments to employees that failed to provide proof of alternative health insurance.

### **Recommendation**

5. Revise policies and procedures for the administration of health benefit opt-out waiver payments that include controls to verify employee eligibility, ensure payment calculations are accurate and in compliance with state law limitations, and require supporting documentation of an employee's alternate health insurance coverage.

# Municipal Land Planning and Management

## Objective 3

***To determine whether Berlin properly managed, maintained, and marketed its municipally-owned properties to provide financial benefits to the taxpayers.***

### Finding

**Berlin did not effectively manage or maintain its unused, municipally-owned properties. In addition, Berlin failed to update its master plan in accordance with N.J.S.A. 40:55D-89 requirements.**

### Criteria

- N.J.S.A. 40:55D-28 - Master Plan - Preparation; Contents; Modification
- N.J.S.A. 40:55D-89 - Master Plan - Periodic Examination

### Methodology

To meet this objective, we:

- Interviewed key personnel;
- Reviewed the master plan and tax assessment records; and
- Performed site visits to 34 of 63 unused, municipally-owned properties to assess their current use, maintenance, and marketability.

### Audit Results

A municipality's planning board must prepare, adopt, or amend a master plan to guide the use of lands within the municipality in a manner that protects public health and safety and promotes the general welfare. N.J.S.A. 40:55D-28. The planning board must also, at least every 10 years, provide for a general reexamination of its master plan and development regulations. N.J.S.A. 40:55D-89. We found that Berlin's master plan was last adopted in 2007 despite multiple requests made by Berlin's engineer for funding to revise the master plan in 2017.

According to Berlin's tax assessment list as of August 2019, there were 63 Township-owned properties. We determined 34 of these properties sat idle. We assessed their marketability (i.e., the property's ability to be sold for revenue) and identified 18 properties as potentially marketable. We dismissed as unmarketable 16 properties that were inaccessible or impacted by easements or wetlands. The Township did not challenge our conclusion as to the marketability of the unused properties.

Our audit found that adjacent landowners illegally occupied or otherwise used 8 of the 18 properties without Township consent or knowledge. These eight properties were used by adjoining landowners as extensions of their own properties, including for purposes of parking vehicles. Two of the 18 properties were not properly maintained and included structures deemed unstable by the Township engineer. Our review of council meeting minutes noted that the Township engineer had recommended demolition of those structures 17 times between 2017 and 2019 for one property and 7 times between 2018 and 2019

for the other.

We found that none of the 18 properties had been advertised for sale. Not only could the properties have generated income to the Township from the sale itself, but had Berlin taken timely action to convey these properties to taxpaying owners, based on Berlin's 2019 tax rate and assessment, these properties could have generated approximately \$70,000 in property tax revenue per year, thereby generating ongoing tax savings for Township taxpayers. Most notable of the lost opportunities was 16.44 acres of undeveloped property located on Route 73 (a divided 4-lane state road) that could have possibly generated about \$50,000 in annual tax payments.

In its response to a draft of this report, Berlin wrote that "[i]t is difficult to ascertain the specific reasons why it was suggested that 18 properties were 'potentially marketable.'" It also noted "that many of the municipally owned properties are currently used for parks, sports and athletic fields, recreation uses, stormwater management basins, pump stations, a municipal library, drainage areas, concession stands and are otherwise still needed for public purposes." We determined that the 18 properties were potentially marketable because they were not inaccessible or impacted by easements or wetlands. None of the 18 properties we identified as potentially marketable is currently used for any of the purposes mentioned by the Township in its response. If the Township desires to use any of the properties for a public purpose, it should identify that purpose as part of the master planning process required by law.

### **Cause**

The Township did not have a policy to market unused properties. In addition, the council and mayor failed to act upon the recommendations of its engineer to update its master plan and demolish unstable structures on two Township-owned properties. The Township also failed to monitor its properties to ensure no unauthorized use.

### **Effect/Potential Effect**

Failure to update the master plan and inaction by the mayor and council to address unused, municipally-owned properties resulted in lost revenue from the sale of the properties and increased liability due to unauthorized use, and the risk associated with unstable structures. If Berlin had been successful in marketing and selling the properties in 2019, the tax burden on Township residents may have been reduced by \$70,000.

### **Recommendations**

6. Complete a reexamination of Berlin's master plan in compliance with *N.J.S.A. 40:55D-89*.
7. Develop and implement policies and procedures regarding the acquisition, maintenance, monitoring, marketability, and disposition of municipally-owned properties. These procedures must include adequate oversight to ensure that liability and risk are minimized for unstable structures, safety hazards, and unauthorized use.
8. Obtain legal advice regarding appropriate action related to the unauthorized use of the eight municipally-owned properties.

# Procurement of Insurance Contract

## Objective 4

***To determine whether Berlin complied with the Local Public Contracts Law and state regulations for the procurement and award of extraordinary unspecifiable service contracts.***

## Finding

**Berlin did not comply with the Local Public Contracts Law requirements in the award of its contract for prescription drug insurance coverage.**

## Criteria

- N.J.S.A. 40A:11-1 et seq. - Local Public Contracts Law
- N.J.S.A. 40A:11-5(m) - Exceptions
- N.J.A.C. 5:34-2.3 - Procedures for Implementation of the Exception

## Methodology

To meet this objective, we:

- Interviewed personnel responsible for procurement;
- Judgmentally selected one contract totaling \$757,000 out of six contracts totaling \$1,032,000 classified as an extraordinary unspecifiable service; and
- Reviewed procurement documents for the sampled contract to determine compliance with the Local Public Contracts Law.

## Audit Results

Pursuant to the Local Public Contracts Law, insurance, including the purchase of insurance coverage and consulting services, is considered to be an “extraordinary unspecifiable service.” N.J.S.A. 40A:11-5(m). Extraordinary unspecifiable service contracts that exceed the bid threshold may be negotiated and awarded by the governing body “without public advertising for bids and bidding.” N.J.S.A. 40A:11-5(1)(a)(ii).

When in excess of the bid threshold, and after documented effort by the contracting agent to secure competitive quotations, a contract for extraordinary unspecifiable services may be awarded after a designated administrative official of the governing body files a certificate describing the nature of the contract and the informal solicitation of quotes. N.J.S.A. 40A:11-6.1(b); N.J.A.C. 5:34-2.3. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall cause to be printed in its official newspaper a brief notice stating the nature, duration, service, and amount of the contract. The notice is also required to state that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality. N.J.S.A. 40A:11-5(1)(a)(i).

We reviewed procurement documents to determine if the Township obtained competitive quotes and if it published notice of the resolution awarding the contract and contract award. We found that in 2016, Berlin awarded a \$757,000 contract for prescription insurance coverage without making an effort to secure competitive quotations. Additionally, although the contract award was published in Berlin's official newspaper, the notice was inadequate. It did not state the contract duration or that the contract was available for public inspection in the clerk's office.

### **Cause**

The Township failed to follow state statutes and regulations applicable to the procurement of prescription insurance coverage.

### **Effect/Potential Effect**

Berlin's noncompliance with the Local Public Contracts Law may result in improperly awarded contracts and a lack of transparency in spending. In addition, the contract may not have provided the lowest cost for Berlin because it failed to seek or obtain any competitive quotations.

### **Recommendation**

9. Implement policies and procedures to ensure that contracts for insurance coverage are procured and awarded in compliance with the Local Public Contracts Law.



# Employee Reimbursements

## Objective 5

***To determine whether reimbursements to employees for municipal expenses were reasonable and properly supported.***

### Finding

**Berlin did not properly support employee reimbursements.**

### Criteria

- N.J.A.C. 5:30-9A.6 - Claimant Certification
- Berlin Township Ordinances

### Methodology

To meet this objective, we:

- Interviewed relevant personnel;
- Identified 126 employee reimbursements totaling \$54,605 for the period January 1, 2016 through July 26, 2019; and
- Selected a judgmental sample of 14 transactions totaling \$20,395 to determine whether the reimbursements were reasonable, approved, and paid based on supporting documentation.

### Audit Results

A Township ordinance requires that all payments must be authorized and approved through the proper issuance of a purchase order. See Berlin Ordinance §11-2. State regulations similarly require that all payments be supported with a detailed receipt. N.J.A.C. 5:30-9A.6(d)(1). Our testing found that 5 of the 14 transactions, accounting for \$10,930 of the \$20,395 tested, did not contain detailed receipts to support the reimbursement. For two of the five reimbursements lacking support, Berlin also failed to execute a purchase order in advance of the purchase as required by its ordinances. These two exceptions were for reimbursements requested by the mayor. The CFO authorized the payments and issued purchase orders only after the mayor had purchased the goods and services, which is a fundamental internal control deficiency that undermines policies that promote accountability and transparency when public funds are used.

The remaining three reimbursements were for the police chief. Although requested timely, they did not include proper supporting documentation. Because proper documentation was not provided, we were unable to determine whether the expenditures were necessary and reasonable Township expenses.

### Cause

The mayor and police chief failed to obtain approval and/or submit detailed receipts for reimbursement requests. In addition, the CFO presented purchase orders to the council for approval without proper sup-

porting documentation.

### **Effect/Potential Effect**

Processing reimbursements without sufficient documentation may lead to payments for unallowable expenses and increases the likelihood of fraud, waste, and abuse.

### **Recommendation**

10. Implement policies and procedures, including control activities and monitoring and oversight, to ensure that employee reimbursements are documented with detailed receipts in accordance with *N.J.A.C. 5:30-9A.6* and its own ordinances.

# Municipal Vehicles

## Objective 6a

*To determine whether Berlin had adequate controls for monitoring the use of municipal vehicles.*

### Finding

**Berlin lacked the control activities necessary to ensure compliance with its own policy regarding personal use of municipal-owned vehicles.**

### Criteria

- Personnel Manual
- Resolution 2019-201 - Policy on Personal Use of Berlin Township Owned Vehicles (Except for the Police Department)

### Methodology

To meet this objective, we:

- Interviewed relevant staff; and
- Reviewed documentation, including vehicle listings, fuel logs, and maintenance records.

### Audit Results

Our audit found that Berlin did not require employees who use municipal vehicles to maintain any type of record regarding vehicle use, including mileage, date and purpose of the trip, or personal or commutation use. Berlin did not have policies and procedures regarding assignment of municipal-owned vehicles to employees. In addition, Berlin lacked sufficient monitoring or oversight of its vehicles and had no process to determine if personal use or commutation had occurred. Berlin's Personnel Manual prohibited personal use of a Township-owned vehicle, and in December 2019, Berlin passed Resolution 2019-201, which also prohibited personal use of a Township-owned vehicle.

During the course of our audit, the mayor identified a vehicle used by an Office of Emergency Management part-time employee who responded only to emergency incidents. The mayor informed us that the police chief had assigned the vehicle to the part-time employee without prior approval by the mayor or council.

As a result of the information received from the mayor, we reviewed the emergency incident report records and fuel logs for the identified vehicle. Our audit found that during the four-year period January 1, 2016 through December 5, 2019, the employee, who according to payroll records resided in Berlin Township, reported to 33 emergency incidents. The average incident lasted 82 minutes. The fuel pump records indicated this vehicle was fueled on 90 separate occasions during that time, or almost twice a month, with a total of 927 gallons of fuel, an average of 28 gallons per incident. The vehicle was plainly used for purposes other than just responding to emergency incidents. Since the employee's actual work hours were not recorded and Berlin did not require official records for the vehicle's use, we were not able to conclude that mileage or

fuel was for official business and not personal use.

### **Cause**

Berlin lacked policies and procedures for the assignment of municipally-owned vehicles. In addition, the Township failed to implement appropriate controls and adequate monitoring over the use of its vehicles.

### **Effect/Potential Effect**

Without adequate controls and monitoring, improper or personal use of a Township-owned vehicle may occur. This may result in fraud, waste, and abuse of public resources.

### **Recommendation**

11. Develop policies and procedures addressing the assignment and responsibilities of assigned vehicles. These procedures should require the documentation of vehicle use and appropriate monitoring, and reporting commutation use as a taxable fringe benefit pursuant to Internal Revenue Service regulations.

### **Objective 6b**

*To determine whether Berlin periodically reviewed employee driving records and commercial driver license endorsements.*

### **Finding**

**Berlin did not verify formal driver license abstracts or ensure employees maintained required commercial driver license (CDL) endorsements.**

### **Criteria**

- Personnel Manual
- Berlin Township Department of Public Works Employee Association Contract (Contract)

### **Methodology**

To meet this objective, we:

- Interviewed relevant staff;
- Identified 34 employees, including 15 in the public works department, required to use Township vehicles; and
- Judgmentally selected the 15 public works employees to verify the actions taken by Berlin to comply with its policy and procedures.

## **Audit Results**

The Personnel Manual requires that any employee whose work involves the operation of a Township vehicle must hold a valid New Jersey State driver's license. The policy further stipulates that department heads or division supervisors should conduct periodic checks of employees' driver's licenses. In addition, public works employees are required to obtain a CDL at the start of employment or within 90 days of their hire date in accordance with their Contract.

We noted that Berlin officials obtained copies of employees' driver's licenses, but failed to obtain or verify driver license abstracts with the Motor Vehicle Commission contrary to its policy. Our testing included determining that the driver's licenses for all 15 public works employees were in good standing and had the required CDL endorsement. Our audit found one employee did not have the proper CDL endorsement.

## **Cause**

Berlin did not comply with its policy and failed to review driver license history abstracts or ensure that drivers maintained their CDL endorsements.

## **Effect/Potential Effect**

Failure to conduct reviews of driver's license validity and CDL endorsement increases the Township's liability and may subject Berlin to higher insurance and legal costs.

## **Recommendation**

12. Update and implement Berlin's vehicle use policy to include appropriate procedures with specific time periods to ensure that the driver license abstracts are reviewed and to verify that the CDL endorsements are current.

# Accounting Information System Controls

## Objective 7

*To determine whether Berlin maintained adequate accounting information system internal controls.*

### Finding

**Berlin failed to implement policies and procedures and adequate controls to prevent unauthorized user access to the accounting system. In addition, the Township did not monitor user account access privileges, which violated controls requiring appropriate segregation of duties.**

### Criteria

- N.J.A.C. 5:32-2.1 - Duties of a Chief Financial Officer
- Federal Information System Controls Audit Manual (FISCAM)<sup>3</sup>
- Personnel Manual

### Methodology

To meet this objective, we:

- Interviewed personnel responsible for administering the accounting information system;
- Reviewed Berlin's information system policies and procedures;
- Tested all 31 unique user identifications for accounting information system access as of November 14, 2019; and
- Assessed account information system user access changes between January 1, 2016 and August 14, 2019.

### Audit Results

The CFO is responsible for developing and implementing a system of internal controls to safeguard assets and monitor compliance of internal accounting control processes and procedures. N.J.A.C. 5:32-2.1. We tested the internal controls of the accounting information system. We relied on the FISCAM, which provides a methodology for performing information system audits. With respect to controlling user accounts, logical access to information should enforce segregation of duties; limit access to individuals with a valid business purpose; remove, disable, or secure access to unnecessary accounts; and disable or remove access for terminated individuals in a timely manner. FISCAM AC-3.1, pp. 222-23. Policies and procedures should consider segregation of application user privileges from the system administrator function. FISCAM AS-1.3.2, p. 365. As part of an effective system of controls, an entity should monitor, maintain, and continually adjust access authorizations and related controls to accommodate new and departing employees and changes in users' responsibilities and related access needs. FISCAM 3.2, pp. 198-99.

Our audit found that the Township's accounting system security controls were not adequate. Berlin had general policies and procedures regarding information technology including e-mail, voicemail, computer

<sup>3</sup>. <https://www.gao.gov/assets/80/77142.pdf>

and internet usage, and social media, but did not have policies and procedures governing the creation, modification, and deletion of accounting information system users. As a result, Berlin lacked sufficient application controls. Despite a lack of policy regarding accounting information system controls, we noted that Berlin performed some system maintenance to reduce user access levels, but it was not adequate. Specifically, we identified the following issues:

- The CFO was the system administrator and was not segregated from application user activity. The CFO had unrestricted access to make system access changes for all users and had the ability to process transactions without restrictions or approvals.
- Berlin did not implement proper segregation of duties. The finance clerk with job responsibilities limited to payroll, processing bills, and purchase orders had unrestricted access to various functions including: revenue, budget, fixed assets, and tax collection. Six individuals had unrestricted access to process payroll. The users included the CFO, prior CFO, finance clerk, clerk, assistant clerk, and independent auditor. Employees with unrestricted access have the ability to execute transactions outside the scope of the employee's responsibilities without management approval. Therefore, unrestricted access to payroll should be given to the CFO only. The Township did not properly segregate the ability of a system user to modify system access. The assistant clerk modified his own system access, which is outside the scope of his job responsibilities. The only employee that should be permitted to change system access levels should be the system administrator. Failure to segregate duties and limit system access diminishes the reliability of financial data and increases the risk of fraud.
- Berlin allowed multiple user accounts for three users, including the tax collector, tax clerk, and CFO, but did not limit the privileges for the accounts. Employees with multiple accounts processed different types of transactions with each user account. For example, the tax collector could process tax adjustments at one workstation and collect payments at another. In this case, users should be limited to a single account with the least privileges required to perform the duties within the accounting system to reduce the risk that someone will obtain excessive system access if an employee fails to log out of a work station.
- Eight user accounts had not accessed the accounting system within the last year and were not deactivated, including accounts of two employees that separated from Berlin.

Despite the lack of controls identified, we did not identify any inappropriate transactions.

### **Cause**

Berlin lacked policies and procedures regarding user access controls that created a poor control environment and provided insufficient safeguards of the accounting information system.

### **Effect/Potential Effect**

Failure to maintain adequate system access controls diminishes the reliability of financial data by increasing the risk of errors, theft, loss, destruction, and/or inappropriate disclosure of data.

### **Recommendation**

13. Develop policies and procedures and appropriate controls governing the accounting information system by:

- a) Establishing a system administrator or compensating control for the creation, modification, and monitoring of systems access, including by ensuring that the system administrator is independent from any accounting transaction process;
- b) Limiting system access to individuals with a valid business purpose;
- c) Limiting duplicate accounts to the least privileges required to perform job duties;
- d) Enforcing segregation of duties;
- e) Removing, disabling, or securing unnecessary accounts;
- f) Periodically reviewing system access and authorizations; and
- g) Deactivating accounts upon separation of employment.



# Reporting Requirements

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We provided a draft copy of this report to Berlin officials for their review and comment. Except as discussed below, the Township generally agreed with our audit findings and conclusions, and its response indicated they have taken steps and will continue to implement corrective actions to address our recommendations. The Township's comments were considered in preparing our final report and are attached as Appendix A. See our comment to the Township's response regarding the 18 potentially marketable properties discussed in the Municipal Land Planning and Management section of this report.

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 Township 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 Township effectively implement our recommendations.

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

CHRISTOPHER T. MORRIS  
Council President

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Council Members  
MARION BODANZA  
FRANK EPIFANIO  
SAM SYKES



PHYLLIS MAGAZZU  
Mayor

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CATHERINE UNDERWOOD  
Township Clerk

## **TOWNSHIP OF BERLIN**

MUNICIPAL BUILDING  
135 Route 73 South  
West Berlin, NJ 08091  
Phone (856) 767-1854

Ms. Carrie Meyer, CPA  
Deputy Director, Audit Division  
Office of the State Comptroller  
P.O. 024  
Trenton, NJ 08625-0024

November 29, 2021

Dear Ms. Meyer:

Please accept the following information as Berlin Township's official response to the Performance Audit the Office of the State Comptroller completed on the Township of Berlin. The following information was consolidated from numerous Township employees and appointed professionals. I would like to thank you for your professionalism and look forward to addressing and correcting the findings outlined in the report.

Respectfully,

Alexander P. Davidson, CPA, RMA  
Chief Financial Officer

CC:

Phyllis Magazzu, Mayor

Stuart Platt, Township Solicitor

Berlin Township ("Township") would like to take this opportunity to thank the Office of the Comptroller ("Comptroller") for its time conducting this Performance Audit of Selected Fiscal and Operating Practices ("Audit") and thank it for bringing these matters to the Township's attention. The Township takes these matters seriously and will move to address and correct these findings as soon as reasonably possible. The Township offers the following responses to the Audit findings:

## **PAYROLL PRACTICES**

### **Objective 1a**

The Township agrees that the two sick leave payments made to two police officers were not in accordance with the contractually negotiated agreement but were made based upon agreed upon terms with the collective bargaining unit. We would like to emphasize that neither of these officers were hired after May 21, 2010, the effective date of N.J.S.A. 40a:9-10.4. That law restricts payments of sick leave made to individuals hired after May 21, 2010, and these two individuals were not restricted under that law. The Township does intend to clarify the language in the collective bargaining agreement at the conclusion of its current term, December 31, 2021, to align with N.J.S.A. 40a:9-10.4.

### **Objective 1b**

The former Chief of Police hired the employee without the knowledge and approval of the Mayor and Council. When the Mayor and Council learned of this action, a ratifying resolution approving the hire was adopted. The Township has also implemented a new timekeeping system in the Police Department as of January 1, 2020, consistent with the Audit recommendation brought to the Township's attention by the Comptroller during the course of its audit.

## **HEALTH INSURANCE BENEFITS**

### **Objective 2a**

The Mayor has for many years worked 40 to 60 hours a week on average for the Township. The other council members noted have devoted a minimum of 20 hours a week to the Township. Based upon these hours, the elected officials were eligible for participation in the State Health Benefits Program for elected officials that were elected and have remained elected with no break in their term prior to the effective date of Chapter 2, P.L. 2010. The financial officials of the Township never advised any of the elected officials of the requirement to specifically document the actual hours worked each week. It is the Township's intention to correct this with a timekeeping system for the two elected officials that remain on the Township's health insurance which would substantiate that each of these officials work a minimum of 20 hours per week on Township business thereby permitting their continued enrollment in the State Health Benefits Program.

## **Objective 2b**

The Township's response to objective 2a applies to objective 2b as well. With the implementation of a time keeping system \$46,115 of the \$46,463 waiver payments in question would have been validated.

## **MUNICIPAL LAND PLANNING AND MANAGEMENT**

### **Objective 3**

The State Audit Team identified 18 municipally owned properties as "potentially marketable". The audit report suggested these properties could have generated income to the Township from their sale and could have generated tax revenue. Pursuant to the Local Lands and Buildings Law (*N.J.S.A. 40A:12-1, et seq.*) ("LLBL") a municipality can only sell property which it owns if it is "not needed for public use" (*N.J.S.A. 40A:12-13*). This determination is strictly a policy decision of a municipality and applies to both current and future land management and planning. It is difficult to ascertain the specific reasons why it was suggested that 18 properties were "potentially marketable." However, it should be noted that many of the municipally owned properties are currently used for parks, sports and athletic fields, recreation uses, stormwater management basins, pump stations, a municipal library, drainage areas, concession stands and are otherwise still needed for public purposes.

In addition, it is difficult to speculate whether any of the properties in which the audit report identified would have sold, the amount that would have been bid for the properties and to what extent such properties would have been put to private use.

The Township's prerogative to not sell municipally owned property also concerns concepts of sound planning. It is well known that New Jersey is one of the most overdeveloped states in the country and the preservation of municipal properties in wooded areas and open space would prevent further development and sprawl. The sale of municipally owned properties in this case could lead to negative impacts upon the school system, more impact to the already congested road system and negatively impact the quality of life of existing residents, businesses, and visitors.

The Township has drafted a Master Plan Reexamination report and will be forwarding it to the Planning Board for adoption.

The Township agrees it should review its real property inventory and update its policy for land management. The Township will take the necessary steps to abate any unauthorized use of its properties as well.

## **PROCUREMENT OF INSURANCE CONTRACT**

### **Objective 4**

The Township agrees with the Comptroller's finding and as of 1/1/17, the Township had changed its prescription drug coverage to the State Health Benefit Plan thereby resolving this finding.

## **EMPLOYEE REIMBURSEMENTS**

### **Objective 5**

The Township agrees with the Comptroller's finding that supporting documentation should be enhanced and the Township will implement new policies and procedures to ensure that sufficient supporting documentation accompanies every purchase order.

## **MUNICIPAL VEHICLES**

### **Objective 6a**

The Township agrees with the Comptroller's finding. When first made aware of this by the Comptroller, the Township moved the person from the OEM coordinator role to a deputy role. The new OEM Coordinator is the Deputy Superintendent of Public Works and therefore currently has a Township provided vehicle thus also eliminating the need for one additional vehicle dedicated solely for OEM duties.

### **Objective 6b**

The Township agrees with the Comptroller's finding and will implement new policies and procedures to properly verify and re-verify Commercial Driver License (CDL) endorsements.

## **ACCOUNTING INFORMATION SYSTEM CONTROLS**

### **Objective 7**

The Township agrees with the Comptroller's finding and has already corrected many of the items outlined in the finding. The accounting software utilized by the Township limits the number of corrective actions that can be taken, however where possible and practical, corrections have been made