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Authorities Budget Office

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October 1, 2010

Mr. Robert Snyder
Chairman
Greene County IDA
270 Mansion Street
Coxsackie, New York 12051

Dear Chairman Snyder:

The Authorities Budget Office has concluded its inquiry into salary and bonus payments made to the Executive Director of the Greene County Industrial Development Agency (GCIDA). This inquiry was conducted pursuant to the powers granted to this office by Section 6(2)(g) of Public Authorities Law.

The GCIDA reported that it has adopted and uses executive director bonus criteria in accordance with New York State Comptroller Opinion No. 2000-9. The focus of our review was to assess whether the IDA's performance evaluation program and the bonus payments made to the Greene County IDA Executive Director are consistent with the guidance provided in that Opinion. This review does not address whether the GCIDA or its Executive Director were successful in promoting economic development, expanding jobs, increasing investments and growing the tax base within Greene County, other than the extent to which those achievements satisfy bonus criteria delineated in the Executive Director's performance evaluation plan. Moreover, the Authorities Budget Office takes no position, at this time, on whether bonuses for public sector employees are appropriate, or what constitutes a reasonable bonus for extraordinary work actually performed.

The GCIDA reported salary and bonuses paid to its Executive Director since 2004 as follows:

Year	Salary	Bonus Paid	Total Compensation
2004	\$95,000	\$0	\$95,000
2005	\$95,000	\$20,000	\$115,000
2006	\$95,000	\$22,500	\$117,500
2007	\$125,000	\$25,000	\$150,000
2008	\$127,500	\$40,000	\$167,500
2009	\$130,285	\$175,000	\$305,285

General Municipal Law Section 858(7) provides that an industrial development agency may appoint officers, agents and employees; prescribe their qualifications and fix and pay their compensation. The State Comptroller's Advisory Opinion (#2000-9) states that additional compensation fixed as a reward for services already rendered and fully compensated, such as a bonus or a retroactive pay increase, generally constitutes a gratuity and an improper gift of public moneys. However, it is not a gift if compensation is presently earned but withheld until the completion of a period of service, as an inducement for continued competent and faithful service. The opinion stipulates that the governing board of an industrial development agency, in fixing the Executive Director's total compensation, may establish a performance evaluation

program under which specific performance criteria are set forth and disclosed to the Executive Director prior to the performance of services, with corresponding dollar amounts of additional compensation established for meeting the criteria. The board may then determine at the end of each year whether the Executive Director has met the specified performance criteria and is eligible for all or a portion of the additional compensation.

We met with GCIDA board members to determine the process used to set the Executive Director's compensation and award bonus payments. Board members explained that they had approved a job description for the position of Executive Director. This job description identified ten major functions and responsibilities that the board expected the Executive Director to perform as part of his or her official duties. At the time the current Executive Director was hired, an employment contract was negotiated that was based on this job description. The board intended this employment contract to be general in nature, and goal-based rather than task-oriented.

The board's compensation committee develops the specific criteria that comprise the performance evaluation and evaluates the Executive Director's performance against these criteria. Board members that have served on the compensation committee told us that, in determining the amount of a bonus payment, they consider the potential value received by the County. As part of the annual performance evaluation process, the Executive Director prepares a document that summarizes his activities and accomplishments for the past year, and provides this to the compensation committee, usually in January. The compensation committee reviews this document, and evaluates each activity and accomplishment to determine whether the action performed is consistent with the normal job duties of the Executive Director, or whether it is extra work that could qualify for a bonus payment. The compensation committee makes a recommendation to the entire board whether additional compensation is warranted, based on the items identified and the performance criteria established the prior year. The full Board reviews the committee's recommendation within two to three months of the document being provided by the Executive Director. Board members were able to identify several performance objectives that the Executive Director had accomplished over the years which provided the basis for bonus payments, including the total number of hours worked and work accomplished outside expected work hours, arranging and monitoring archaeological work that was necessary at one of the industrial parks, obtaining necessary construction and building permits to allow projects to be completed timely, arranging for presentations by local contractors to perspective applicants, and establishing and overseeing a land trust to ensure that environmental issues would be appropriately addressed.

We requested that the board provide us with all policies and documents relevant to our inquiry. We reviewed the board minutes and written documents provided to us by the GCIDA supporting the Executive Director's salary and bonus payments from 2004 through 2010. The Executive Director was initially hired by the board in May 2002 at an annual salary of \$75,000. As part of this appointment, it was agreed that the Executive Director could be terminated upon 90 days notice. In December 2003, the board agreed to a three year employment contract with the Executive Director. The Executive Director's employment contract for 2004 through 2006 stipulated that he was responsible for representing the GCIDA in all aspects of its governmental activities, including the completion of the development, construction and leasing/sale of the land constituting the Greene Business and Technology Park. The Executive Director was also responsible for interfacing with potential project applicants and the professionals and staff of the GCIDA. Other functions of the Executive Director, as stipulated in the employment contract, were to report to the Greene County Legislature and other governmental bodies that must approve the projects undertaken by the GCIDA, and to report to the Board of the GCIDA on a regular basis. This employment contract stipulated that the Executive Director's annual salary would be \$95,000.

The employment contract for 2007 had the same responsibilities as the initial employment contract, but added the completion of the development, construction and leasing/sale of the land constituting the Kalkberg Commerce Park, and set the annual salary of the Executive Director at \$125,000. The employment contract for 2008 continued these basic responsibilities and stipulated an annual salary of \$127,500.

The performance bonus criteria were first established by the board for 2004, and identified six major functions: Office Management, Partnership Development, Marketing/Public Relations, Outside/Grant Funding, Project Management, and Business Park Sales/Deal. Each of these major functions had one to four criteria established for determining whether a bonus payment was applicable, and also had a maximum dollar award established. For example, if none of the criteria were met, the Executive Director would not receive a bonus, and if all criteria were met, the Executive Director could earn up to \$135,000 as a bonus. These same bonus criteria were used for 2005, although the order of the major functions was revised to reflect priorities. The bonus criteria established for these two years also specified that the performance evaluation process would occur in the month of November, with the payment of any additional performance compensation to be made in the month of December. There was no bonus criteria provided to us for 2006, since the GCIDA counsel informed us that the criteria established for 2005 was applicable to 2006.

Bonus criteria was again set by the board for 2007, but consisted of only three of the six functions established in 2004 and 2005 in addition to a new function. There was only a single criterion established for three of the functions, and two criteria established for the fourth function. There was no timeframe established in the bonus criteria for conducting the evaluation process or for providing payment. However, the Board increased the potential bonus amount for two of the functions, which resulted in a maximum bonus that could be earned of \$350,000. These same functions and criteria were established by the Board for 2008, 2009 and 2010. However, for the 2010 bonus criteria, a fifth function was established with a single criterion, which also increased the maximum amount of bonus which could be earned to \$375,000.

The State Comptroller's opinion states that a performance evaluation program must have clear, well-defined and measurable performance criteria. We do not believe that the performance evaluation program implemented by the GCIDA sufficiently meets this standard. The functions and criteria identified in the performance evaluation program lack clarity and specificity and do not sufficiently differentiate between normal job duties and extraordinary duties eligible for bonus payments. For example, the Executive Director's employment contract indicates that his normal duties include completing the development, construction and sale or lease of land in the technology and business parks. Yet, the performance evaluation criteria indicate that bonus payments can be earned by completing land deals that create jobs in the business parks. It is unclear how these bonus eligible activities differ from the Executive Director's normal job responsibilities. The Executive Director's employment contract also states that he is responsible for interfacing with staff of the GCIDA, yet he is eligible for a bonus if he performs undefined GCIDA staff management responsibilities. The Executive Director's employment contract also states that he is responsible for performing all government relations, including interacting with bodies that approve projects undertaken by the GCIDA. Yet it is not clear how this is different than providing project management and business park permitting, which is identified as a criterion for a bonus payment.

GCIDA board members acknowledge that the performance criteria is not sufficiently specific and, in fact, they frequently struggle with trying to assess whether a particular accomplishment of the Executive Director was part of his expected performance or whether it met the

performance evaluation criteria. It is this ambiguity and lack of clarity that stricter adherence to the intent of the State Comptroller's Opinion would prevent.

In addition, it appears that the GCIDA board has not fully complied with its own performance evaluation program. Specifically, for 2004 and 2006, bonus payments of \$20,000 and \$100,000 were provided to the Executive Director, although there was no specific documentation provided to indicate what performance criteria had been met to earn a bonus and what specific duties were performed that merited these bonus amounts. For example, the justification for the \$20,000 bonus for 2004 simply states that the Executive Director has handled a diverse array of challenges, and that Greene County has become a credible player in the economic development area. The documentation in support of the \$100,000 bonus for 2006 indicates only that the amount is payable in four equal installments as the payments are received under the Preferred Properties sale agreement. These bonus payments do not appear to be based on the achievement of measurable and defined performance criteria, as required by the State Comptroller's Opinion.

Further, for 2008 the Board provided a bonus payment of \$150,000 to the Executive Director. Part of the justification for this amount was the acquisition of the Travco Industrial Park in Athens. However, the acquisition of the Travco Industrial Park was cited as justification for providing a \$10,000 bonus for 2007. Based on records available to us, it appears that the board approved a bonus payment in 2008 that duplicated a bonus payment made to the Executive Director in 2007. The GCIDA counsel responded to us that the bonus payment for 2008 was earned as a result of completing all the permitting of the Travco Industrial Park with the Town of Athens and the completion of the rail spur agreement with CSX. Even if these payments were not duplicative, the documents provided to us in support of the 2008 bonus indicate only that it was earned for the acquisition of the Travco Industrial Park and the relocation of the Peckham Industries asphalt facilities to Travco Industrial Park. There is no mention that the bonus was contingent on the completion of permitting of the Travco Industrial Park or the rail spur agreement. These actions were not included at the time in the 2008 bonus payment documentation.

We also question the recent salary increases paid to the Executive Director. As indicated, the Executive Director was initially hired in 2002 at an annual salary of \$75,000. The annual salary was increased in accordance with provisions of the employment contracts to \$95,000 for 2004 through 2006, to \$125,000 for 2007, and to \$127,500 for 2008. Board members told us that the terms of the 2008 agreement were in effect for 2009 and remain in effect without amendment for 2010. Nevertheless, the GCIDA reports that the Executive Director received a salary of \$130,285 for 2009. The GCIDA counsel indicated that the Board authorized a three percent raise for all staff, including the Executive Director, but that this was not accurately reflected in the meeting minutes. Regardless of whether those staff increases were properly recorded in the minutes, the ABO questions how the Executive Director's raise could be approved in the first instance in the absence of a new or amended employment agreement that first set his salary above that approved in 2008.

During the course of our review of the GCIDA performance evaluation program, the board also acknowledged that the salary paid to the Executive Director, while above the average salary of other industrial development agency executive directors, was not excessive based on a study of salaries for all industrial development agencies in New York State. We compared the salary provided to the GCIDA Executive Director for 2008 and 2009 to the salaries reported to our office by all county industrial development agencies in the State. The salary provided to the GCIDA Executive Director falls within in the top five percent in both 2008 and 2009, and is comparable to the salaries provided to the executive directors in more populated, urban counties, such as Suffolk, Erie, Nassau and Westchester. However, when compared to the

salaries of the executive directors in counties that are similar to Greene County (rural, population between 43,000 and 55,000), the salary for the GCIDA Executive Director is significantly higher. The average salary provided to the executive directors of the industrial development agencies in these six counties was \$70,375 in 2009, while the GCIDA Executive Director's salary was \$130,285. The GCIDA counsel indicated that it is appropriate to compare this salary to the executive director salaries paid by all IDAs to determine whether the salary is reasonable, rather than restricting the comparison to only similar sized organizations.

Moreover, during a special meeting of the Greene County Legislature in September 2010, GCIDA officials emphasized that the functions of the GCIDA Executive Director exceed those of the executive directors of other industrial development agencies, since traditional industrial development agencies do not act as a land developer. These additional salaries warrant, therefore, a higher salary. These officials indicated that specific tasks, such as site plan approval, SEQR approval, road construction, and construction support for projects are all tasks performed by the GCIDA that are not performed by a traditional industrial development agency. However, according to a 2007 survey of all industrial development agencies in New York State conducted by the New York State Economic Development Council, over 55 percent of all industrial development agencies in the State perform such functions as industrial park development and management, infrastructure (roads, water, and sewer) development and financing, business marketing, strategic planning, and technical assistance for projects. Further, 18 percent of the industrial development agencies perform export assistance, and 29 percent perform workforce development services, functions which are not performed by the GCIDA. Based on the survey results, it is questionable whether the GCIDA Executive Director has significantly different responsibilities than those of other executive directors.

Based on the information provided to us during our inquiry, the Authorities Budget Office has reached the following conclusions:

1. Of the \$282,500 in bonus payments awarded to the Executive Director, \$130,000 cannot be justified in the context of the performance evaluation program. The \$20,000 bonus payment made in 2004, and the \$100,000 bonus payment awarded in 2006 (payable in equal installments over 4 years) appear to have been approved by the board without evidence that the Executive Director performed measurable and clearly stated extraordinary services warranting such payments. In addition, it appears that the Executive Director received duplicative bonus payments in 2007 and 2008 since the justification for both bonus payments was completing the acquisition of the Travco Industrial Park. After completing the acquisition and approving a \$10,000 bonus for the Executive Director for 2007, the GCIDA cannot justify making a similar payment in 2008 for the same accomplishment. While the Authorities Budget Office implies no wrongdoing on the part of the Executive Director, we believe the GCIDA board has a fiduciary duty to recover this \$130,000.
2. Salary increases for the Executive Director in 2009 and 2010 appear to have been awarded without executing new employment agreements authorizing these salary levels. Since there is no record that the board amended the 2008 employment agreement, the Authorities Budget Office concludes that such increases should not have occurred.
3. The GCIDA board periodically adjusted upward the maximum bonus amount that could be earned by the Executive Director for performing the same activities each year. The Authorities Budget Office was not provided with any documentation justifying, for example, how the Executive Director could earn up to \$135,000 in bonuses for successfully meeting expectations for six functions and criteria in 2005, but be eligible for a bonus of up to \$350,000 for performing only three of those same functions in 2007.

The board could not adequately explain the rationale for making such an adjustment or how the total economic value realized by the county, should these criteria be met, factored into these adjusted bonus amounts. Given the lack of a clearly defined methodology for setting annual bonus amount thresholds, it appears that the board's decision was arbitrary and inconsistent with the intent of the State Comptroller's opinion for a structured, well-documented program.

4. The GCIDA board was aware of the requirements stipulated in the opinion of the State Comptroller concerning establishing a bonus performance program. The board appears to have made some effort to conform its bonus program to these criteria. The GCIDA performance bonus program, however, fails to make clear the distinction between the basic job responsibilities of the Executive Director and the extraordinary duties that must be performed successfully to warrant additional compensation, even given the salary being paid to the Executive Director. Even if the board members collectively had some accepted understanding of this distinction and could arrive at a consensus, the criteria used are too often poorly defined, vague and subjective. As a result, the performance bonus program falls short of meeting the intent of the State Comptroller's Opinion. This conclusion does not imply that the balance of the bonus payments made to the Executive Director over the years cannot be justified. Rather, it is a statement that a neutral, objective observer may well conclude that the work performed by the Executive Director that earned him a bonus just as easily falls within the range of his normal activities. As a result, it is the position of the Authorities Budget Office that both the job description for the position of Executive Director and the bonus criteria be re-crafted to define more clearly the measurable differences between these duties.

Since initiating our review, we have learned that the Greene County Legislature has expressed working with the GCIDA board to revise the performance evaluation program to more closely align with the intent of State Comptroller Opinion 2000-9. The Authorities Budget Office is available to assist the GCIDA board and the members of the Greene County Legislature develop an appropriate performance bonus program that can serve as a model for other industrial development agencies. Please do not hesitate to contact us for assistance.

Sincerely,



David Kidera
Director

cc: Sy DeLucia, Board Member
Daniel Frank, Board Member
Hugh Quigley, Board Member
Martin Smith, Board Member
Willis Vermilyea, Board Member
Paul Goldman, IDA Counsel