

**NEW WILMINGTON FIREMEN'S ASSOCIATION
LAWRENCE COUNTY
COMPLIANCE AUDIT REPORT
FOR THE PERIOD
JANUARY 1, 2009 TO DECEMBER 31, 2010**

Released March 2013



NEW WILMINGTON FIREMEN'S ASSOCIATION

LAWRENCE COUNTY

COMPLIANCE AUDIT REPORT

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BACKGROUND

Pursuant to Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania, Section 403 of The Fiscal Code, Act of April 9, 1929, (P.L. 343, No. 176), and the Volunteer Firefighters' Relief Association Act, as consolidated by the Act of November 23, 2010, (P.L. 1181, No. 118), at 35 Pa.C.S. § 7411 *et seq.*, the Department of the Auditor General's duty is to audit the accounts and records of every volunteer firefighters' relief association to determine that funds received under the Foreign Fire Insurance Tax Distribution Law, Act of December 18, 1984, (P.L. 1005, No. 205), as amended, 53 P.S. § 895.701 *et seq.* (commonly referred to as Act 205), are properly expended.

The New Wilmington Firemen's Association, herein referred to as New Wilmington Volunteer Firefighters' Relief Association, is a charitable organization that was formed primarily to afford financial protection to volunteer firefighters and to encourage individuals to participate in volunteer fire service.

Act 118 governs the overall operation of the volunteer firefighters' relief association. The relief association's bylaws define the specific operational procedures by which the volunteer firefighters' relief association conducts business. To fulfill its primary purpose, Act 118 authorizes specific types of expenditures and prescribes appropriate volunteer firefighters' relief association investment options. Within the parameters established by Act 118, it is the responsibility of the volunteer firefighters' relief association to choose investments in a proper and prudent manner.

Volunteer firefighters' relief associations receive public tax monies, and the association officers therefore have a responsibility to the public to conduct the association's financial affairs in a businesslike manner and to maintain sufficient financial records to support the propriety of all association transactions. Volunteer firefighters' relief association officers are also responsible for ensuring that the association operates in accordance with applicable state laws, contracts, bylaws and administrative procedures.

Act 205 sets forth the computation of the Foreign Fire Insurance Tax Distribution paid to each applicable municipality throughout the Commonwealth of Pennsylvania. The amount of the distribution is based upon the population of each municipality and the market value of real estate within the municipality. Upon receipt of this distribution, the municipality must allocate the funds to the volunteer firefighters' relief association of the fire service organization or fire service organizations, which is or are recognized as providing the service to the municipality.

BACKGROUND (Continued)

The New Wilmington Volunteer Firefighters' Relief Association was allocated state aid from the following municipalities:

<u>Municipality</u>	<u>County</u>	<u>2009</u>	<u>2010</u>
New Wilmington Borough	Lawrence	\$11,248	\$12,661
Wilmington Township	Lawrence	\$ 8,248	\$ 9,284
East Lackawannock Township	Mercer	\$ 1,978	\$ 2,226
Lackawannock Township	Mercer	\$ 4,257	\$ 4,792
Wilmington Township	Mercer	\$ 7,037	\$ 7,920

The volunteer firefighters' relief association and the affiliated fire service organization are separate, legal entities. The New Wilmington Volunteer Firefighters' Relief Association is affiliated with the following fire service organization:

New Wilmington Volunteer Fire Department



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
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**EUGENE A. DePASQUALE
AUDITOR GENERAL**

Mr. David S. Cohen, President
NEW WILMINGTON VOLUNTEER FIREFIGHTERS'
RELIEF ASSOCIATION
Lawrence County

We have conducted a compliance audit of the New Wilmington Volunteer Firefighters' Relief Association pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania, Section 403 of The Fiscal Code, Act of April 9, 1929, (P.L. 343, No. 176), and mandated by the Volunteer Firefighters' Relief Association Act, as consolidated by the Act of November 23, 2010 (P.L. 1181, No. 118), at 35 Pa.C.S. § 7411 *et seq.*, for the period January 1, 2009 to December 31, 2010.

We conducted this compliance audit in accordance with *Government Auditing Standards* applicable to performance audits, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit results and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our audit results and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if the volunteer firefighters' relief association took appropriate corrective action to address the findings contained in our prior audit report; and
2. To determine if the volunteer firefighters' relief association received and expended state aid and accumulated relief funds in compliance with applicable state laws, contracts, bylaws and administrative procedures.

Our audit was limited to the areas related to the objectives identified above.

Volunteer firefighters' relief association officers are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the New Wilmington Volunteer Firefighters' Relief Association's administration of state aid and accumulated relief funds

complies with applicable state laws, contracts, bylaws and administrative procedures including the safeguarding of assets. In conducting our audit, we obtained an understanding of the volunteer firefighters' relief association's internal controls as they relate to the association's compliance with those requirements and that we considered to be significant within the context of the audit objectives, and assessed whether those significant controls were properly designed and implemented. Our audit procedures also included tests of documentary evidence supporting the New Wilmington Volunteer Firefighters' Relief Association's recorded financial transactions, tests of the physical existence of inventories, interviews of selected officials and direct confirmation of the New Wilmington Volunteer Firefighters' Relief Association's cash, investments, and certain other assets and liabilities as of December 31, 2010, with the custodians of the funds, debtors, creditors, and financial institutions to the extent necessary to satisfy the audit objectives. Additionally, we performed procedures to provide a reasonable assurance of detecting instances of violations of legal and regulatory requirements or violations of provisions of contracts that are significant within the context of the audit objectives.

The results of our audit, for the period January 1, 2009 to December 31, 2010, found the New Wilmington Volunteer Firefighters' Relief Association took appropriate corrective action to address one of the two findings contained in our prior audit report. However, the New Wilmington Volunteer Firefighters' Relief Association failed to take appropriate corrective action to address the remaining finding contained in our prior audit report, as listed below and discussed in the Status of Prior Findings section of this report. In addition, the results of our audit found the New Wilmington Volunteer Firefighters' Relief Association, in all significant respects, received and expended state aid and accumulated relief funds in compliance with applicable state laws, contracts, bylaws and administrative procedures, except as noted in the finding listed below and discussed in detail in the Finding and Recommendation section of this report. The results of our tests also indicated the New Wilmington Volunteer Firefighters' Relief Association expended funds as presented in the Accompanying Expenditure Information and, as of December 31, 2010, had a cash balance of \$126,948 and an investment balance with a fair value of \$255,007.

Finding – Noncompliance With Prior Audit Recommendation –
Inadequate Relief Association Bylaws

We also noted another matter that has been included in the following observation and detailed in the Observation section of this report.

Observation – Diversification of Investments

The contents of this report were discussed with the management of the New Wilmington Volunteer Firefighters' Relief Association and, where appropriate, their response has been included in the report.

August 9, 2011

EUGENE A. DEPASQUALE
Auditor General

NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
STATUS OF PRIOR FINDINGS

COMPLIANCE WITH PRIOR AUDIT FINDING AND RECOMMENDATION

The New Wilmington Volunteer Firefighters' Relief Association has complied with the following prior audit finding and recommendation:

- Untimely Deposit of State Aid

By adopting internal control procedures to ensure the timely deposit of all income received.

NONCOMPLIANCE WITH PRIOR AUDIT FINDING AND RECOMMENDATION

The New Wilmington Volunteer Firefighters' Relief Association has not complied with one of the two prior audit findings. This finding is noted below and discussed in detail in the Finding and Recommendation section of this report:

- Noncompliance With Prior Audit Recommendation –
Inadequate Relief Association Bylaws

We are concerned with the volunteer firefighters' relief association's failure to correct a previously reported audit finding. The association management should strive to implement the recommendation and corrective action noted in this audit report.

NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
FINDING AND RECOMMENDATION

Finding – Noncompliance With Prior Audit Recommendation –
Inadequate Relief Association Bylaws

Condition: As cited in our three prior audit reports, the description of the relief association's organizational structure, as described in the relief association's existing constitution and bylaws, does not clearly distinguish the relief association as an entity separate and distinct from the affiliated fire department. While the relief association did amend its bylaws during the prior audit period, the bylaws still do not clearly distinguish the relief association as a separate distinct entity from the affiliated fire department. Furthermore, the bylaws do not contain all of the provisions required by Act 118 at 35 Pa.C.S. § 7415(c). Specifically, the bylaws do not address:

- The voting rights of the various classes of members;
- The procedures to be followed in calling meetings, special meetings, and the quorum requirements;
- The procedures to be followed in nominating officers, trustees, directors, and members of the executive committee, as applicable;
- The procedures for the approval and payment of expenditures and for the investment of funds and the sales of investments; and
- Do not state the name, purpose, and form of organization. The existing bylaws are for the New Wilmington Volunteer Firemen's Association, which is a combination of the relief association and affiliated fire department.

Criteria: The relief association and affiliated fire department are two separate legal entities. Act 118 at 35 Pa.C.S. § 7415(a) states, in part:

A volunteer firefighters' relief association may be a body corporate, governed by a charter and bylaws or an unincorporated association of individuals governed by bylaws and constitution.

Therefore, the relief association must have its bylaws separate from the bylaws of the affiliated fire department.

Furthermore, Act 118 at 35 Pa.C.S. § 7415(c)(1, 2, 5, and 6) states, that the relief association's bylaws shall:

- (1) Specify the requirements for securing membership, voting rights of different classes of members, if there be different classes, and conditions under which membership may be terminated.

NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
FINDING AND RECOMMENDATION

Finding – (Continued)

- (2) State the notice requirements and procedure to be followed in calling meetings, as well as quorum requirements for regular and special meetings of the membership and for regular and special meetings of the body which governs the operations of the association between membership meetings, and shall designate that body, whether it be a board of directors, trustees or any similar body such as an executive committee. Unless otherwise provided for in the bylaws, powers and duties of officers, directors and trustees shall be those which normally pertain to such positions in nonprofit corporations.

- (5) State the procedure to be followed in nominating and in electing officers, trustees, directors, and members of the executive committee, according to the provisions which have been made for establishment of those positions.

- (6) Establish procedures for the approval and payment of expenditures, investment of funds and sale of investments.

Cause: While notified of these deficiencies during our three prior audits, relief association officials, again, failed to establish separate, relief association only bylaws that meet the provisions required by Act 118 as noted in the criteria section of this finding.

Effect: Commingling the relief association and its affiliated fire department's operating procedures within the same bylaws causes confusion and does not present the two organizations as separate legal entities, independent of one another. As a result of the bylaws being commingled and the mandatory provisions not being included in the bylaws, the relief association may have conducted its affairs without proper authorization. In addition, the inadequate bylaws increases the likelihood that the relief association's assets are not adequately protected and could become commingled with those of the affiliated fire department.

Recommendation: We, again, recommend that relief association officials generate and adopt bylaws separate from the bylaws of the affiliated fire department. In addition, the bylaws should meet the requirements set forth in Act 118 and properly authorize the operating procedures of the relief association. For further guidance, please refer to the Auditor General's publication, MANAGEMENT GUIDELINES FOR VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATIONS.

Management's Response: Relief association management agreed with the finding as presented at the audit exit conference and indicated they will take action to comply with the recommendation.

NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
OBSERVATION

Observation – Diversification of Investments

Within the parameters established by the Volunteer Firefighters' Relief Association Act¹, it is the responsibility of the volunteer firefighters' relief association to invest its funds in a proper and prudent manner.

As these investments typically provide an income stream to the relief association for annual operations, it is generally sensible not to invest all VFRA money in one asset or asset class that places the principal at risk. In fact, state law requires VFRA's to "reasonably diversify investments, unless the [VFRA] reasonably determines that it is in the interest of the beneficiaries not to diversify..."².

By diversifying investments, the VFRA can help preserve capital, increase liquidity and decrease volatility. Diversification means spreading one's money among different investments; asset allocation diversifies total investments among different investment classes, such as stocks, bonds, government securities, and cash equivalents.

As of December 31, 2010, the VFRA had \$172,845 (fair value) or 45% of the VFRA's cash and investments in mutual funds.

The VFRA management should periodically review its specific cash needs and investment goals and ensure that its investments are allocated and diversified to prudently meet those needs and goals.

¹ 53 P.S. § 8506(c)(1997). This provision incorporates the "prudent investor rule" of the Probate, Estates, and Fiduciaries Code, 20 Pa. C.S.A. §7201 et seq.

² 20 Pa. C.S.A. § 7204(a) (Supp. 2005).

NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
ACCOMPANYING EXPENDITURE INFORMATION
FOR THE PERIOD JANUARY 1, 2009 TO DECEMBER 31, 2010

Act 118 at 35 Pa.C.S. § 7412 states: a volunteer firefighters' relief association is an organization formed primarily for the purpose of affording financial protection to volunteer firefighters against the consequences of misfortune suffered as a result of their participation in the fire service. The organization may contain within its membership the members of one or more fire companies and may serve secondary purposes, as set forth in this subchapter, but only if adequate provisions have been first made to serve the primary purpose.

Act 118 at 35 Pa.C.S. § 7416 authorizes the investment of relief association funds and outlines the types of benefits and services that can be provided with volunteer firefighters' relief association funds.

Furthermore, all expenditures must be properly authorized as prescribed in the volunteer firefighters' relief association bylaws and approved at an association meeting.

USES OF FUNDS:

Benefit Services:	
Insurance premiums	\$ 40,525
Total Benefit Services	<u>\$ 40,525</u>
Administrative Services:	
Miscellaneous administrative expenses	\$ 46
Total Administrative Services	<u>\$ 46</u>



NEW WILMINGTON VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania

New Wilmington Volunteer Firefighters' Relief Association Governing Body:

Mr. David S. Cohen, President

Mr. James R. Cameron, Vice President

Mr. Jeff R. Jones, Secretary

Mr. Peter Grittie, III, Treasurer

The following municipalities allocated foreign fire insurance tax monies to this relief association and received a copy of this report.

Ms. Sharon Edmiston, Secretary
New Wilmington Borough

Ms. Susan Wimer, Secretary
Wilmington Township – Lawrence County

Ms. Linda Hittie, Secretary
East Lackawannock Township

Ms. Jody Scopack, Secretary
Lackawannock Township

Ms. Cindy Black, Secretary
Wilmington Township – Mercer County

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.