



**MUNICIPALITY OF KINGSTON POLICE  
PENSION PLAN**

**LUZERNE COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2009, TO DECEMBER 31, 2011**

**RELEASED MARCH 2013**

**COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL**

**DEPARTMENT OF THE AUDITOR GENERAL**





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## BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system State aid and of every municipal pension plan and fund in which general municipal pension system State aid is deposited.

Pension plan aid is provided from a 2 percent foreign casualty insurance premium tax, a portion of the foreign fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the Municipality of Kingston Police Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

- Act 147 - Special Ad Hoc Municipal Police and Firefighter Postretirement Adjustment Act, Act of December 14, 1988 (P.L. 1192, No. 147), as amended, 53 P.S. § 896.101 et seq.
- Act 177 - General Local Government Code, Act of December 19, 1996 (P.L. 1158, No. 177), as amended, 53 Pa.C.S. § 101 et seq.
- Act 600 - Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 761 et seq.

The Municipality of Kingston Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of an ordinance dated April 4, 1983, as amended. The plan is also affected by the provisions of collective bargaining agreements between the municipality and its police officers.





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**EUGENE A. DePASQUALE**  
**AUDITOR GENERAL**

The Honorable Mayor and Municipal Council  
Municipality of Kingston  
Luzerne County  
Kingston, PA 18704

We have conducted a compliance audit of the Municipality of Kingston Police Pension Plan for the period January 1, 2009, to December 31, 2011. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior audit report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. Our methodology addressed determinations about the following:

- Whether state aid was properly determined and deposited in accordance with Act 205 requirements.
- Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations.
- Whether employee contributions are required and, if so, are determined, deducted and deposited into the pension plan and are in accordance with the plan provisions and applicable laws and regulations.

- Whether benefit payments, if any, represent payments to all (and only) those entitled to receive them and are properly determined in accordance with applicable laws and regulations.
- Whether obligations for plan benefits are accurately determined in accordance with plan provisions and based on complete and accurate participant data; and whether actuarial valuation reports are prepared and submitted to the Public Employee Retirement Commission (PERC) in accordance with state law and selected information provided on these reports is accurate, complete and in accordance with plan provisions to ensure compliance for participation in the state aid program.
- Whether the terms of the unallocated insurance contract, including ownership and any restrictions, are in compliance with plan provisions, investment policies and state regulations.
- Whether the special ad hoc postretirement adjustment granted to eligible pensioners is in accordance with applicable laws and regulations and whether the ad hoc reimbursement received by the municipality was treated in accordance with applicable laws and regulations.
- Whether benefit payments have only been made to living recipients, based on the Social Security numbers found in the pension records for retirees and beneficiaries.

The Municipality of Kingston contracted with an independent certified public accounting firm for annual audits of its basic financial statements which are available at the municipality's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Municipal officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Municipality of Kingston Police Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the municipality's internal controls as they relate to the municipality's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

The results of our tests indicated that, in all significant respects, the Municipality of Kingston Police Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30

Finding No. 2 – Noncompliance With Prior Audit Recommendation – Unauthorized Pension Benefits

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of the Municipality of Kingston and, where appropriate, their responses have been included in the report.

January 10, 2013



EUGENE A. DEPASQUALE  
Auditor General



MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
STATUS OF PRIOR FINDINGS

Noncompliance With Prior Audit Recommendations

The Municipality of Kingston has not complied with the prior audit recommendations concerning the following as further discussed in the Findings and Recommendations section of this report:

- Failure To Adopt Benefit Provisions Mandated By Act 30
- Unauthorized Pension Benefits

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30

Condition: As disclosed in the prior audit report, on April 17, 2002, Act 600 was amended by Act 30, which made significant changes to the statutorily prescribed benefit structure of police pension plans subject to Act 600. Municipal officials have not amended the police pension plan’s benefit structure to adopt all of the changes mandated by Act 30. The specific inconsistencies are as follows:

Benefit Provision	Governing Document	Act 600
Survivor’s benefit	100% of that same pension after the member’s death to the member’s surviving spouse for the surviving spouse’s further lifetime, or until remarriage.	A lifetime survivor’s benefit must be provided to the surviving spouse (or if no spouse survives or if he or she subsequently dies, the child or children under 18 years of age or if attending college, under or attaining the age of 23) of no less than 50% of the pension the member was receiving or would have been entitled to receive had he been retired at the time of death. (“Attending college” shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of 7 credit hours per semester.)
Pre-vesting death benefit	Upon the death of an active member, his beneficiary shall be entitled to the member’s accumulated contribution account.	The surviving spouse of a member of the police force who dies before his pension has vested or if no spouse survives or if he or she survives and subsequently dies, the child or children under the age of eighteen years, or, if attending college, under or attaining the age of twenty-three years, of the member of the police force shall be entitled to receive repayment of all money which the member invested in the pension fund plus interest or other increases in value of the member’s investment in the pension fund, unless the member has designated another beneficiary for this purpose.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Criteria: The police pension plan’s benefit structure should be in compliance with Act 600, as amended by Act 30.

Cause: Plan officials failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

Effect: Maintaining a benefit structure which is not in compliance with Act 600 could result in plan members or their beneficiaries receiving incorrect benefit amounts or being denied benefits to which they are statutorily entitled.

Recommendation: We again recommend that municipal officials, after consulting with their solicitor, take whatever action is necessary to bring the police pension plan’s benefit structure into compliance with Act 600, as amended by Act 30, at their earliest opportunity to do so.

Management’s Response: Municipal officials agreed with the finding without exception. Municipal officials introduced Ordinance No. 2012-11, which will bring the police pension plan’s benefit structure into compliance with Act 600, as amended by Act 30, regarding survivor and pre-vesting death benefits, at the December 3, 2012, council meeting and adopted the ordinance at the January 7, 2013, council meeting. The ordinance will be formally enacted and ordained at the January 21, 2013, council meeting.

Auditor’s Conclusion: Based on the management response, it appears municipal officials intend to comply with the finding recommendation. Compliance will be evaluated during our next audit of the plan.

Finding No. 2 – Noncompliance With Prior Audit Recommendation – Unauthorized Pension Benefits

Condition: As disclosed in the prior audit report, the pension plan’s governing document contains pension benefits that are not authorized by Act 600. Section 29-33A of the municipality’s codified ordinances states:

Upon normal or mandatory retirement date. Upon retirement at his normal or mandatory retirement date, an active member shall become a retired member and shall receive a monthly normal form of retirement income equal to one-twelfth of fifty percent (1/12 of 50%) of such member’s **average compensation**.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Section 29-21B of the codified ordinances, as amended, states, in part:

**Average compensation** – For officers hired before January 1, 1996, average compensation is defined as Sixty-five percent (65%) of the officer’s average earnings for the last thirty-six (36) months of employment, with cost of living allowance, the maximum pension benefit to be received not to exceed seventy-five percent (75%) of the officer’s average earnings for the last thirty-six (36) months of employment.

For officers hired after January 1, 1996, average compensation is defined as Fifty percent (50%) of the officer’s average earnings for the last thirty-six (36) months of employment, with cost of living allowance, the maximum pension benefit to be received not to exceed seventy-five percent (75%) of the officer’s average earnings for the last thirty-six (36) months of employment.

Based on the above-cited provisions, it appears that the plan’s governing document, if strictly applied, inadvertently prescribes a pension benefit of 50 percent of 65 percent (or 32.5 percent) of the monthly average earnings for officers hired before January 1, 1996, and 50 percent of 50 percent (or 25 percent) of the monthly average earnings for officers hired after January 1, 1996. Such benefits would be contrary to Act 600 and do not appear to represent the municipality’s intent, which is evidenced by the fact that pension calculations for police officers hired prior to January 1, 1996, are based on 65 percent of the member’s average earnings over the last 36 months of employment.

Criteria: On January 24, 2001, the Commonwealth Court of Pennsylvania issued its opinion in *Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee*. Therein, the court held that Section 2962(c)(5) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2962(c)(5), “clearly precludes home rule municipalities from providing pension benefits different from those prescribed in general law including Act 600.” The court’s holding was in accord with the position taken by this Department since at least January 1995.

Section 5(c) of Act 600 states, in part:

Monthly pension or retirement benefits other than length of service increments shall be computed at one-half the monthly average salary of such member during not more than the last sixty nor less than the last thirty-six months of employment.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Cause: Plan officials failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

Effect: The plan's governing document continues to contain unauthorized benefit provisions which could result in inconsistent or improper benefit calculations and incorrect benefit payments from the pension plan.

Recommendation: The department acknowledges that its position has changed over the years and that, until *Monroeville*, there was no definitive decision as to whether home rule municipalities were obliged to comply with applicable pension law. The department seeks, therefore, to implement the decision in as equitable a fashion as possible, while paying necessary deference to the court's ruling. Accordingly, the department will not penalize the municipality for granting benefits in excess of Act 600 to police officers who began full-time employment before January 1, 1996. However, plan officials should amend the plan's governing document to clarify the municipality's intent to provide pension benefits to police officers hired prior to January 1, 1996, that are based on 65 percent of a member's average earnings over the last 36 months of employment.

Furthermore, the department expects the municipality to restrict pension benefits to those authorized by Act 600 for all police officers who began full-time employment on or after January 1, 1996. Therefore, we again recommend that municipal officials amend the plan's governing document to clearly reflect the municipality's intentions to provide pension benefits in accordance with Act 600 provisions that are based on 50 percent of a member's average earnings over the last 36 months of employment for police officers hired after January 1, 1996.

Management's Response: Municipal officials agreed with the finding without exception. Municipal officials introduced Ordinance No. 2012-11, which will bring the police pension plan's benefit structure into compliance with Act 600 regarding normal retirement benefits for police officers hired prior to January 1, 1996, and after January 1, 1996, at the December 3, 2012, council meeting and adopted the ordinance at the January 7, 2013, council meeting. The ordinance will be formally enacted and ordained at the January 21, 2013, council meeting.

Auditor's Conclusion: Based on the management response, it appears municipal officials intend to comply with the finding recommendation. Compliance will be evaluated during our next audit of the plan.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2007, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-07	\$ 6,827,907	\$ 7,558,623	\$ 730,716	90.3%	\$ 1,006,312	72.6%
01-01-09	6,315,857	7,875,364	1,559,507	80.2%	1,095,626	142.3%
01-01-11	6,580,296	7,797,578	1,217,282	84.4%	1,205,675	101.0%

Note: The market values of the plan's assets at 01-01-09 and 01-01-11 have been adjusted to reflect the smoothing of gains and/or losses subject to a corridor between 70 to 130 percent of the market value of assets. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. However, when assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2006	\$ 154,508	100.0%
2007	154,288	100.0%
2008	161,574	109.2%
2009	183,468	100.0%
2010	170,430	107.2%
2011	245,173	112.2%

MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

The information presented in the required supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2011
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	20 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a corridor between 70-130% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	7.8%
Projected salary increases	5.0%
Cost-of-living adjustments	1.0% per year postretirement



MUNICIPALITY OF KINGSTON POLICE PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett  
Governor  
Commonwealth of Pennsylvania

Municipality of Kingston Police Pension Plan  
Luzerne County  
500 Wyoming Avenue  
Kingston, PA 18704

The Honorable James J. Haggerty	Mayor
Ms. Sandra Kase	Council President
Mr. Paul Keating	Municipal Administrator
Ms. Sondra Riviello	Finance Secretary

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, Room 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](http://www.auditorgen.state.pa.us).