

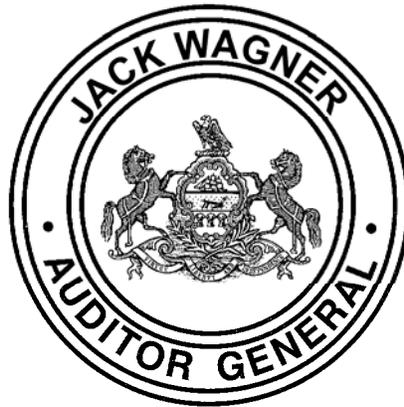
SWOYERSVILLE BOROUGH POLICE PENSION PLAN

LUZERNE COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2006, TO DECEMBER 31, 2008



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BACKGROUND

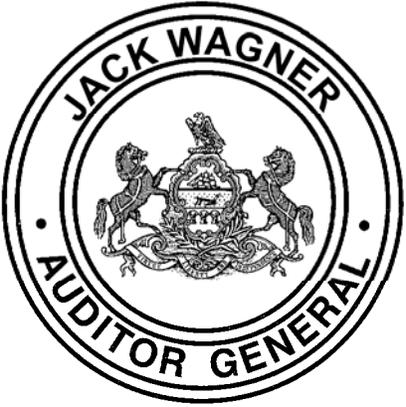
On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state 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 Swoyersville Borough 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 600 - Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 761 et seq.

The Swoyersville Borough Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of an ordinance dated January 7, 1991, as amended, adopted pursuant to Act 600. The plan is also affected by the provisions of collective bargaining agreements between the borough and its police officers.



The Honorable Mayor and Borough Council
Swoyersville Borough
Luzerne County
Swoyersville, PA 18704

We have conducted a compliance audit of the Swoyersville Borough Police Pension Plan for the period January 1, 2006, to December 31, 2008. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and 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 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. Swoyersville Borough contracted with an independent certified public accounting firm for annual audits of its basic financial statements which are available at the borough's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Borough officials are responsible for establishing and maintaining an internal control structure to provide reasonable assurance that the Swoyersville Borough Police Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. To assist us in planning and performing our audit, we obtained an understanding of the borough's internal control structure as it relates to the borough's compliance with those requirements. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objectives.

The results of our tests indicated that, in all significant respects, the Swoyersville Borough 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 – Pension Benefits Not Authorized By Act 600

Finding No. 2 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30

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

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

October 14, 2009

JACK WAGNER
Auditor General

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
STATUS OF PRIOR FINDINGS

Noncompliance With Prior Audit Recommendations

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

- Plan's Governing Document Contains An Unauthorized Nonservice-Related Disability Benefit Provision
- Unauthorized Provision For An Actuarial Equivalent Benefit
- Pension Benefit Not Authorized By Act 600
- Failure To Adopt Benefit Provisions Mandated By Act 30

Note: The first three prior audit findings have been incorporated into Finding No. 1 in the Findings and Recommendations section of this report.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Pension Benefits Not Authorized By Act 600

Condition: As disclosed in the prior audit report, the pension plan’s governing document, and the Act 205 actuarial valuation reports dated bi-annually from January 1, 1997, through January 1, 2007, filed with the Public Employee Retirement Commission, inappropriately contain a provision for the payment of a nonservice-related disability benefit. This provision is not authorized by Act 600.

The provision contained in Ordinance No. 4 of 2003 at Section 4.5 states, in part:

...Monthly permanent disability pension payments for non-service connected disabilities shall be in an amount equal to seventy-five (75) percent of the Participants average monthly compensation, based upon the Participant’s last thirty-six (36) months of compensation.

The provision for a non-service related disability benefit contained in the Act 205 actuarial valuation reports states it will be based on 50 percent of average monthly pay based on the last 60 months of compensation.

In addition, as disclosed in the prior audit report, the pension plan’s governing document, at Section 4.3, provides for an actuarial equivalent benefit, which is not authorized by Act 600, as follows:

In lieu of the retirement benefits contained herein, a Participant may elect in writing an actuarial equivalent as may be provided for by regulation; provided that no such equivalent benefit may work the effect of providing a lump sum amount of money, or provide for a pension for a period less than life, or provide for a pension less than the amount herein established, unless such amount is reduced to pay the cost of an additional benefit such as a 120-month certain benefit.

Furthermore, as disclosed in the prior audit report, the pension plan’s governing document contains a definition of compensation that is not authorized by Act 600. Sections 2.5(a) and 2.5(b) of the governing document, state:

Compensation shall include the base pay, longevity pay, night differential, overtime, unused vacation, unused sick time and any other such increments.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Criteria: Regarding the payment of disability pension benefits, Section 5(e)(1) of Act 600 states:

In the case of the payment of pensions for permanent injuries incurred in service, the amount and commencement of the payments shall be fixed by regulations of the governing body of the borough, town, township or regional police department and shall be calculated at a rate no less than fifty per centum of the member's salary at the time the disability was incurred, provided that any member who receives benefits for the same injuries under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et. seq.) shall have his disability benefits offset or reduced by the amount of such benefits. (Emphasis added)

Furthermore, the Supreme Court of Pennsylvania in *Chirico v. Board of Supervisors for Newtown Township*, 518 Pa. 572, 544A.2d 1313 (1988) held that Act 600 does not provide for the payment of pension benefits for non-service related injuries.

In addition, 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. . . .

Section 1(a)(4) of Act 600 provides that the governing body shall prescribe, a survivor's benefit "calculated at no less than fifty per centum of the pension the member was receiving or would have been receiving had he been retired at the time of his death."

Therefore, Act 600 does not provide for actuarial equivalent benefits to be paid to retirees or surviving spouses.

Regarding the definition of compensation, although Act 600 does not define "salary," the department has concluded, based on a line of court opinions, that the term does not encompass lump-sum payments for leave that was not earned during the pension computation period.

Cause: Plan officials were aware that Act 600 does not authorize nonservice-related disability benefits and actuarial equivalent benefits, and amended the plan's governing ordinance to delete these provisions on November 3, 1997. However, on April 5, 1999, pursuant to a decision and order from the Pennsylvania Labor Relations Board (PLRB), the borough reestablished these unauthorized provisions.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

In addition, plan officials have failed to adopt adequate internal control procedures to ensure compliance with the prior audit recommendations.

Effect: Providing unauthorized pension benefits could increase the plan's pension costs and reduce the amount of funds available for investment purposes or for the payment of authorized benefits or administrative expenses. Although the municipality did not receive excess state aid allocations attributable to the provision of unauthorized pension benefits during the audit period, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future and also increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards.

In addition, the payment of an actuarial equivalent benefit could result in a retiree or beneficiary receiving a greater or lesser benefit than authorized by Act 600.

Recommendation: The department recognizes that benefits, which have already been granted to employees at the time of the PLRB decision, cannot be unilaterally diminished. However, the municipality did not eliminate the nonservice-related disability benefit provision upon expiration of any prior or existing collective bargaining agreements. Therefore, we again recommend that municipal officials attempt to eliminate the unauthorized nonservice-related disability benefit provision from the plan at their earliest opportunity to do so.

In addition, we again recommend that the actuarial equivalent benefit provision be eliminated. Retirees and beneficiaries currently receiving this benefit, if any, may continue to do so. In addition, officers currently in the plan may elect this benefit at retirement. However, officers subsequently hired should not be entitled to elect an actuarial equivalent benefit.

Furthermore, we again recommend that the borough amend the definition of compensation contained in the plan's governing document at its earliest opportunity to do so.

To the extent that the borough is not in compliance with Act 600 and/or has contractually obligated itself to pay benefits to existing retirees in excess of those authorized by Act 600, the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, the excess benefits will be deemed ineligible for funding with state pension aid. In such case, the plan's actuary may be required to determine the impact, if any, of the excess benefits on the plan's future state aid allocations and submit this information to the department.

Management's Response: Municipal officials agreed with the finding without exception.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – 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:

<u>Benefit Provision</u>	<u>Governing Document</u>	<u>Act 600 (as amended)</u>
Survivor’s benefit	A survivor’s benefit during spouse’s lifetime or so long as the spouse does not remarry, (or if no spouse survives or if he or she subsequently dies, the child or children under 18 years of age) is entitled to receive a pension equal to 50% of the pension the member was receiving at the time of death.	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	None provided	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 18 years, or, if attending college, under or attaining the age of 23 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.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

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

Cause: Plan officials have failed to adopt 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, at their earliest opportunity to do so.

Management's Response: Municipal officials agreed with the finding without exception.

SWOYERSVILLE BOROUGH 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, except for distressed pension plans, for which annual reporting was required through January 1, 2007. The historical information, beginning as of January 1, 2003, 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)]
01-01-03	\$ 1,393,222	\$ 579,610	\$ (813,612)	240.4%	\$ 151,727	(536.2%)
01-01-05	1,609,916	647,451	(962,465)	248.7%	185,004	(520.2%)
01-01-07	1,717,999	739,081	(978,918)	232.5%	217,705	(449.7%)

SWOYERSVILLE BOROUGH 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.

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER
AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2003	None	N/A
2004	None	N/A
2005	None	N/A
2006	None	N/A
2007	None	N/A
2008	None	N/A

SWOYERSVILLE BOROUGH 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, 2007
Actuarial cost method	Entry age normal
Amortization method	N/A
Remaining amortization period	N/A
Asset valuation method	Fair value
Actuarial assumptions:	
Investment rate of return	7.0%
Projected salary increases	4.0%

SWOYERSVILLE BOROUGH POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania

Swoyersville Borough Police Pension Plan
Luzerne County
675 Main Street
Swoyersville, PA 18704

The Honorable Vincent Dennis	Mayor
Mr. Ronald Alunni	Council President
Mr. Gene Breznay	Secretary/Treasurer

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.