



**ELKLAND BOROUGH POLICE  
PENSION PLAN**

**TIOGA COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2010 TO DECEMBER 31, 2012**

**COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL**

**DEPARTMENT OF THE AUDITOR GENERAL**



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**EUGENE A. DePASQUALE  
AUDITOR GENERAL**

The Honorable Mayor and Borough Council  
Elkland Borough  
Tioga County  
Elkland, PA 16920

We have conducted a compliance audit of the Elkland Borough Police Pension Plan for the period January 1, 2010 to December 31, 2012. 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 finding 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. State aid allocations that were deposited into the pension plan for the years ended December 31, 2007 to December 31, 2012, are presented on the Summary of Deposited State Aid and Employer Contributions.
- 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 provisions of the union pension plan agreement are in accordance with the plan's governing document and the collective bargaining agreement and that payments made to the multi-employer union pension plan are made in accordance with the collective bargaining agreement.

The borough's police officers participate in the New York State Teamsters Conference Pension and Retirement Fund Pension Plan, a Taft-Hartley Act collectively bargained, jointly trustee, multi-employer pension plan, which is governed primarily by the Federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides for substantial federal government oversight of the operating and reporting practices of employee benefit plans subject to its provisions. Accordingly, the scope of our audit was restricted to the activities of the Elkland Borough Police Pension Plan and did not extend to the activities of the multi-employer pension plan.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Elkland Borough 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 borough's internal controls as they relate to the borough'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.

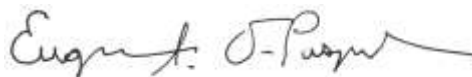
The results of our tests indicated that, in all significant respects, the Elkland Borough Police Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further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

Finding No. 1 – Noncompliance With Prior Audit Recommendation -  
Improper Distributions Made From Pension Plan

Finding No. 2 – Receipt Of State Aid In Excess Of Entitlement

The contents of this report were discussed with officials of Elkland Borough and, where appropriate, their responses have been included in the report. We would like to thank borough officials for the cooperation extended to us during the conduct of the audit.

January 8, 2014



EUGENE A. DEPASQUALE  
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.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) 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 Elkland 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.

As further described in the Letter from the Auditor General included in this report, the borough's police officers participate in the New York State Teamsters Conference Pension and Retirement Fund Pension Plan. The Elkland Borough Police Pension Plan is locally controlled by the provisions of Ordinance No. 81, as amended. The plan is also affected by the provisions of collective bargaining agreements between the borough and its police officers. The plan was established May 9, 1950. Active members are not required to contribute to the plan. The municipality was required to contribute to contribute \$3.41 per hour per member for 2010, \$3.57 per hour per member for 2011, and \$3.73 per hour per member for 2012. As of December 31, 2012, the plan had 2 active members, no terminated members eligible for vested benefits in the future and no retirees receiving pension benefits.

ELKLAND BOROUGH POLICE PENSION PLAN  
STATUS OF PRIOR FINDING

Noncompliance With Prior Audit Recommendation

Elkland Borough has not complied with the prior audit recommendation concerning the following as further discussed in the revised finding contained in the Findings and Recommendations section of this report:

- Improper Distribution Provision Contained In Plan's Governing Document

ELKLAND BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 - Noncompliance With Prior Audit Recommendation - Improper Distributions Made From Pension Plan**

Condition: As disclosed in the prior audit report, the municipality made improper benefit distributions to a plan member prior to his eligibility to receive them. During 2008 and 2009, on behalf of an active member of the police pension plan, who on March 20, 2008, (the date of the first withdrawal) was age 59 years and 6 months with 28 years of service, municipal officials made a series of withdrawals from the police officer's pension annuity contract, and distributed the proceeds to the police officer totaling \$163,000.

During the current audit period, on behalf of a second active member of the police pension plan, who is also a borough council member, who was age 55 years and 7 months with 32 years of service, on November 7, 2011, municipal officials made two withdrawals from the police officer's pension annuity contract, and distributed the proceeds to the police officer, totaling \$189,601. As of December 31, 2012, a total of \$352,601 was withdrawn from the two plan members' annuity contracts which were maintained prior to the borough's enrollment into the union pension plan.

Criteria: Section 24 (d) of Ordinance No. 81 states:

Retirement age shall be 25 years of service (sic), or age 60, or age 65. In order to receive full pension benefits, an employee must be 60 years of age. Employees may choose to work after age 65. Such employment shall be by joint agreement by the Borough and the employee. The borough will not pay into a pension after age 65.

In addition, Section 102 of Act 205 contains the following definitions:

“Pension plan or system.” The various aspects of the relationship between a municipality and its employees with respect to the retirement coverage provided by a municipality to the employees.

“Defined contribution pension plan.” A type of pension benefit plan which provides for a fixed contribution rate or amount and which provides for periodic benefit payments calculable at retirement dependent on the accumulated contributions, investment income, experience gains and losses credited to the member and the expected mortality of the member.

Therefore, Act 205 funding (state aid) is intended to provide retirement benefit payments and not to be used for distributions to active members of a pension plan prior to their retirement benefit eligibility.



ELKLAND BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 - (Continued)**

Cause: Plan officials failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation. Furthermore, during the current audit period, the municipality passed a resolution dated August 1, 2011, which authorized borough officials to take appropriate steps to transfer ownership and/or responsibility of the original plan custodial accounts to the current police officers to the maximum extent permitted by law.

Effect: The police officers received pension benefit distributions prior to their eligibility to receive them.

Recommendation: We again recommend that municipal officials establish adequate internal control procedures to ensure that pension benefit distributions are only made to employees who terminate their employment with the borough and have met the plan's eligibility requirements for a pension benefit distribution.

Management's Response: The borough proceeded this way in accordance with representations made by a lending institution that was going to reinvest the funds in a retirement plan. However, borough council became aware that the reinvestment and/or transfer of the funds may not have been in accordance with pension plan regulations. The borough will take all the necessary steps to implement the necessary internal control procedures so this does not reoccur in the future.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the plan.

**Finding No. 2 - Receipt Of State Aid In Excess Of Entitlement**

Condition: The borough received state aid in excess of the police and non-uniformed pension plans' defined contribution pension costs in the years 2010 and 2011, as illustrated below:

	<u>2010</u>	<u>2011</u>
State aid allocation	\$ 29,114	\$ 30,661
Less: Actual municipal pension costs		
Police pension plan	(14,186)	(14,851)
Non-uniformed pension plan	<u>(14,483)</u>	<u>(10,816)</u>
Excess state aid	<u>\$ 445</u>	<u>\$ 4,994</u>

ELKLAND BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 - (Continued)**

Criteria: Section 402(f)(2) of Act 205 states:

No municipality shall be entitled to receive an allocation of general municipal pension system State aid in an amount which exceeds the aggregate actual financial requirements of any municipal pension plans for police officers, paid firefighters or employees other than police officers or paid firefighters maintained by the municipality, less the amount of any aggregate annual member or employee contributions during the next succeeding plan year, as reported in the most recent complete actuarial report filed with the commission.

Cause: Plan officials were unaware of the need to annually reconcile the amount of state aid allocated to the pension plans with the plan's actual defined contribution pension costs.

Effect: It is this department's opinion that because the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality, it is inappropriate to use state aid received in one year to offset pension costs in other years. Consequently, the overpayments of state aid received in the years 2010 and 2011 must be returned to the Commonwealth for redistribution.

Recommendation: We recommend that the municipality return the \$5,439 of excess state aid received in the years 2010 and 2011 to the Commonwealth. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 320 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with evidence of payment.

In addition, we recommend that in the future, plan officials reconcile the borough's annual state aid allocation with its plans' annual defined contribution pension costs and reimburse any excess state aid received to the Commonwealth.

Management's Response: Municipal officials agreed with the finding without exception. On December 17, 2013, the borough reimbursed \$5,439 to the Commonwealth for the excess state aid received.

Auditor's Conclusion: Based on the management response, it appears municipal officials have partially complied with the finding recommendation. The interest due on the state aid overpayments received in 2010 and 2011, compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, should be reimbursed to the Commonwealth. Full compliance will be evaluated during our next audit of the plan.

ELKLAND BOROUGH POLICE PENSION PLAN  
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2007	\$ 6,396	None
2008	13,520	None
2009	13,780	None
2010	14,186	None
2011	14,851	None
2012	15,517	None

ELKLAND BOROUGH POLICE PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett  
Governor  
Commonwealth of Pennsylvania

Elkland Borough Police Pension Plan  
Tioga County  
105 Parkland Street  
Elkland, PA 16920

The Honorable Scott Tanner	Mayor
Mr. Steve Brauchle	Council President
Ms. Jenny Alleman	Secretary/Treasurer

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