LIMITED PROCEDURES ENGAGEMENT

Heidelberg Township Police Pension Plan

Lebanon County, Pennsylvania For the Period January 1, 2013 to December 31, 2016

April 2018



Commonwealth of Pennsylvania Department of the Auditor General

Eugene A. DePasquale • Auditor General





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EUGENE A. DEPASQUALE AUDITOR GENERAL

Board of Township Supervisors Heidelberg Township Lebanon County Schaefferstown, PA 17088

We conducted a Limited Procedures Engagement (LPE) of the Heidelberg Township Police Pension Plan for the period January 1, 2013 to December 31, 2016 to determine its compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. We also evaluated compliance with some requirements subsequent to that period when possible. The LPE was conducted pursuant to authority derived from Section 402(j) of the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.) but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. 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. We believe that the evidence obtained provides a reasonable basis to support our LPE results.

Our LPE was limited to determining the following:

- · Whether municipal officials took appropriate corrective action to address the finding contained in our prior audit report, by inquiring of plan officials and evaluating supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken.
- Whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the engagement period.
- · Whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation.

- Whether retirement benefits calculated for plan members who retired during the engagement period represent payments to all (and only) those entitled to receive them and were properly determined and disbursed in accordance with the plan's governing document, applicable laws and regulations by recalculating the amount of the monthly pension benefit due to retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to recipients.
- Whether the January 1, 2011, January 1, 2013, and January 1, 2015 actuarial valuation reports were prepared and submitted to the former Public Employee Retirement Commission (PERC) by March 31, 2012, 2014, and 2016, respectively, in accordance with Act 205 and whether 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 by comparing selected information to supporting source documentation.

Based on the results of our procedures performed during our LPE, nothing came to our attention indicating that the Heidelberg Township Police Pension Plan was not being administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following finding further discussed later in this report:

Finding - Improper Dissolution Of Pension Plan And Distribution Of Plan Assets

Our determination to perform a LPE for this engagement period does not preclude the Department from conducting an audit in accordance with *Government Auditing Standards* of the pension plan in subsequent periods. The township should continue to maintain documentation related to this pension plan.

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 Heidelberg Township and, where appropriate, their responses have been included in this report. We would like to thank township officials for the cooperation extended to us during the conduct of this LPE.

February 13, 2018

EUGENE A. DEPASQUALE

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Auditor General

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HEIDELBERG TOWNSHIP POLICE PENSION PLAN STATUS OF PRIOR FINDING

Compliance With Prior Audit Recommendation

Heidelberg Township has complied with the prior audit recommendation concerning the following:

· Incorrect Data Supplied to Actuary For Actuarial Valuation Report Preparation

The January 1, 2015 actuarial valuation report accurately removed any reference to the Killed-in-Service provision.

<u>Finding – Improper Dissolution Of Pension Plan And Distribution Of Plan Assets</u>

<u>Condition</u>: On October 25, 2016, Heidelberg Township enacted Resolution No. 834, effectively terminating the police pension plan and approving the subsequent transfer of all of the remaining assets of the former police pension plan in the amount of \$927,426 to the township. The dissolution of the pension plan and subsequent distribution of plan assets resulted in the following deficiencies:

- Township officials failed to properly maintain a pension reserve fund or purchase an annuity to provide a monthly pension benefit for the surviving spouse of a police officer who died on February 14, 2015 and was entitled to receive a deferred monthly pension benefit according to the plan's governing document. According to records provided by the township, the former officer made an election to vest his retirement benefit on March 8, 2012 upon termination of employment with the township after accumulating 13 years of service. The monthly benefit was calculated in the amount of \$1,280 per month and due to commence on March 1, 2024. As such, the surviving spouse of the deceased police officer is due a deferred monthly pension benefit from the pension plan in the amount of \$640 beginning March 1, 2024.
- The township failed to properly identify any remaining outstanding obligations and/or liabilities of the police pension plan prior to dissolution of the plan and subsequent transfer of the remaining plan assets to the township's general fund. After accounting for any outstanding obligations and/or liabilities of the pension plan such as the deferred monthly vested pension benefit described above, the township failed to determine the portion of the remaining plan assets required to be returned to the Commonwealth in accordance with Act 120 and Act 205. Heidelberg Township has not employed a full time police officer since March 8, 2012 and as of the date of transfer, November 8, 2016, police pension plan assets totaled \$927,476. However, the township failed to return any unused funds issued pursuant to Act 120 and Act 205 to the Commonwealth, accordingly.
- The pension plan's governing document, Ordinance No. 116-2010, was not properly amended by Ordinance; instead, the former ordinance was effectively replaced in its entirety by Resolution No. 834, adopted October 25, 2016.

<u>Finding – (Continued)</u>

Criteria: Act 600 at Section 1(a)(4), states:

The surviving spouse of a member of the police force or a member who retires on pension who dies or if no spouse survives or if he or she survives and subsequently dies, then the child or children under the age of eighteen years or, if attending college, under or attaining the age of twenty-three years, of a member of the police force or a member who retires on pension who dies shall during her lifetime in the case of a surviving spouse or until reaching the age of eighteen years or if attending college, under or attaining the age of twenty-three years, in the case of a child or children, be entitled to receive a pension 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. [Emphasis added]

Furthermore, Section 5(h)(ii) of Act 600, states, in part:

...should a police officer, before completing superannuation retirement age and service requirements but after having completed twelve years of total service, for any reason cease to be employed as a full-time police officer by the municipality or regional police department in whose pension fund he has been a member, he shall be entitled to yest his retirement benefits...

In addition, Act 600 at Section 1(a)(5), states, in part:

The surviving spouse of a member of the police force who dies before his pension has vested. . .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.

Consequently, Act 600 pension benefits for a surviving spouse are derivative of the plan member's eligibility to receive such a benefit. The former Heidelberg Township police officer was eligible to receive a future pension benefit because he was vested in the plan at the time of his death. Therefore, his surviving spouse is entitled to receive no less than one-half of the prorated pension benefit he was to receive under the plan with this benefit payable upon the date he would have reached superannuation age.

<u>Finding – (Continued)</u>

Regarding the township's dissolution of the police pension plan and subsequent transfer of assets to the township's general fund, municipalities that have received state aid allocations pursuant to Act 120, and which do not employ at least one full-time paid police officer, must return unused funds to the Commonwealth pursuant to the provisions of Act 120, at 72 P.S. 2263.3, which states, in part:

All monies distributed under the terms hereof, that are not used for the purposes set forth herein within two years after receipt thereof by the treasurers of several cities, boroughs, towns and townships, shall be returned to the General Fund for distribution...

In addition, Act 205, at Section 402(g), directs that:

Any general municipal pension system State aid received by a municipality shall only be used to defray the cost of the pension plan or pension plans maintained by the municipality.

Furthermore, Section 402(j) authorizes the Auditor General to administer the General Municipal Pension State Aid Program. This administrative power necessarily extends to ensuring that state aid is both allocated and used in accordance with the act.

Finally, relative to amending an ordinance with a resolution, in <u>Wynne v. Lower Merion Township</u>, 181 Pa. Super., 524 (1956), the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

Cause: Plan officials and the township's solicitor were not convinced that either the plan's governing document or Act 600 requires a vested benefit for a surviving spouse of a member who dies and fails to reach his superannuation date or formally elects to vest under the plan. In addition, plan officials were unaware of the provisions of Act 120 and Act 205 governing the disposition of unused funds distributed under the act and believe that all the funds accumulated in the police pension plan belonged to the township and that all of the outstanding pension obligations were already satisfied. Moreover, officials cite Section 9.4(c) of the separately executed plan agreement adopted previously pursuant to Ordinance No. 116-2010 as the basis of their decision to liquidate funds as follows:

Finding – (Continued)

Remaining Fund Balance - Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan.

Additionally, municipal officials were not aware that a resolution cannot amend an ordinance.

Effect: As a result of the township's failure to maintain a pension fund or purchase an annuity to pay the deferred pension benefit due the surviving spouse of a former police officer who died and was eligible to receive a vested benefit and formally elected to receive such deferred benefit at his superannuation date, the township will now be required to fund this obligation from its general fund. Also, due to the township's failure to properly identify the remaining pension plan obligations and the township's liquidation of the remaining accumulated pension plan assets and subsequent transfer to the township's general fund, funds distributed under Act 120 and Act 205 were not used for their intended statutory purpose or returned to the Commonwealth for redistribution to defray other eligible municipalities' pension plan costs. Moreover, by failing to properly amend the plan's governing ordinance by another properly executed ordinance, there was no public notification of the township's intentions to formally dissolve the former police pension plan and distribute the remaining accumulated plan assets to the township's general fund, thereby denoting a general lack of overall transparency of the actions taken by municipal officials relative to the former police pension plan.

Recommendation: We recommend that the township determine the obligation necessary to fund the monthly vested pension benefit due the surviving spouse of the deceased police officer and pay the deferred monthly pension benefit beginning on what would have been the deceased officer's superannuation date, March 1, 2024, in accordance with the plan document in existence at the time the deferred vested benefit was elected by the deceased police officer. We also recommend that after accounting for any other outstanding obligations and/or liabilities due from the former plan, the township perform a historical accounting of state aid received since plan inception along with any general fund contributions paid into the plan, in order to determine the township's pro-rata share of the remaining fund assets between the Commonwealth and township at the time the liquidation of the former pension plan occurred and return the portion of any unused funds originally derived from state aid and not used to pay pension costs, to the Commonwealth. A check, along with any applicable calculations used in determining the amount reimbursed, should be made payable to the Commonwealth of Pennsylvania and submitted to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120.

Finding – (Continued)

<u>Management's Response</u>: Municipal officials disagreed with the finding and recommendation as stated and indicated the following:

In the January 26, 2018 exit conference memo, auditors of the Auditor General's Office asserted that the dissolution of the Heidelberg Township Police Pension Plan (the "Plan") was improper because:

- 1. The Township failed to make provision for a monthly pension benefit for the surviving spouse of a police officer who died February 14, 2015;
- 2. The Township did not identify any remaining outstanding obligations and/or liabilities prior to dissolution of the Plan; and
- 3. The Township's Resolution No. 834 was ineffective to amend the Ordinance governing the plan, No. 116-2010.

The Township disagrees with asserted deficiencies 1. and 2. and generally acquiesces to the Auditor's determination with respect to deficiency 3., for the following reasons:

1. Provision for surviving spouse benefit

The Township disagrees with the asserted deficiency because the officer who died February 14, 2015, never attained normal retirement age under the Plan.

In 2008, the Governor signed into law Act 92 of 2008, which amended the provisions of Act 600 pertaining to the provision of a survivor benefit for the surviving spouse and qualifying children. Specifically, the amendment added language that requires a member of the police force "dies subsequent to retirement" in order for a survivor benefit to be payable. Oct. 8, 2008, P.L. 1095, No. 92 § 1(a)(4). The provision applied to retirements prior to April 18, 2002 and retirements after April 16, 2002. Read with the existing text, a survivor benefit must be paid if the member retires on pension and dies after retirement.

The officer in question was neither receiving a pension nor was he eligible to commence a pension until his normal retirement date. *See* Plan section 5.2(a). At the time of his death on February 14, 2015, he had not attained his normal retirement date, nor had he attained his required beginning date. In support, please refer to the excerpt from the January 1, 2015 Participant Listing prepared by the Township's enrolled actuary attached hereto as Exhibit A. [Exhibits not presented in this report due to length.]

<u>Finding – (Continued)</u>

The plain language of Act 600, as amended by Act 92, can reasonably be read to require that an officer who separates from service prior to death must both attain the normal retirement date and be receiving a pension in order for a survivor benefit to be payable to his or her spouse or children. Payment prior to the normal retirement date would be a preretirement survivor benefit that Act 600 neither requires nor does the Plan provide. The officer in question was neither receiving a benefit nor eligible to commence a benefit at the time of his death. Therefore, no survivor benefit is required under either Act 600 or the terms of the Plan.

2. Identification of Outstanding Obligations and Liabilities

The township disagrees with the asserted deficiency because there were no outstanding obligations or liabilities at the time the Township determined to dissolve the police pension fund.

The Heidelberg Township Police Pension Plan valuation dated January 1, 2015 (attached hereto as Exhibit B) clearly shows that the only two liabilities of the Plan were with respect [to] one retired member and one vested former member. Subsequent to the valuation, the vested former member died prior to becoming eligible for a survivor benefit as set forth above. The Township also purchased an annuity sufficient to pay the retirement benefits owed to the single retired member. No new officers entered the plan after the valuation date. Accordingly, there were no outstanding liabilities or obligations to members at the time the Township determined to dissolve the police pension fund.

The Township also never received any state aid under Act 205 of 1984 or Act 120 of 1943 for which it would be liable to refund the state its expenditures. The Township maintained for its records a ledger of contributions, whether employee contribution, municipal contribution or state aid under Act 205, from 1985 through 2005 that indicates that no state aid was received under Act 205 (attached hereto as Exhibit C). An Auditor General's report from January 1, 1988 through December 31, 1991 corroborates the ledger (attached hereto as Exhibit D). The report notes on page 9 that no state aid was received due to the Plan's overfunded status. Section 402(f)(2) of Act 205 provides that no municipality may receive state aid in excess of its actual financial requirements with respect to the police fund. As the Plan has been overfunded as far back as the enactment of Act 205, the Township neither received nor could not receive state aid under Act 205.

Finding – (Continued)

The Township has no evidence of aid received under Act 120 of 1943, and therefore asserts none was received. Additionally, as the Township maintained a pension fund until its dissolution in 2016, it would not have been eligible to even apply for aid under the terms of the 72 P.S. § 2263.2. While the Township believes it has never received any aid, and makes no admission to the receipt of such aid, no aid would have been required to be returned to the state under the terms of Act 120, as currently in effect, or as effective prior to enactment of Act 205. Act 120 only requires repayment if the state aid is not used for the purpose of funding the police pension plan within two years of its receipt. The time for repayment of any aid a municipality may have received prior to enactment of Act 205 has long since passed. See Section 403 of Act 205.

For the foregoing reasons, the Township believes it has properly accounted for all outstanding obligations and liabilities of the Plan prior to its dissolution.

3. Dissolution by Resolution

After reviewing the law regarding amendment of an ordinance, the Township acquiesces to the Auditor's determination that amendment by ordinance was necessary to terminate the Plan. The Township will maintain funds in its general fund at least equal to the funds received from the dissolution of the Plan until this audit is resolved and the Plan is terminated by ordinance. The Township will proceed with adoption of an ordinance in accordance with the Second Class Township Code, pending a final resolution of this audit and a determination of the disposition of the Plan assets.

<u>Auditor's Conclusion</u>: Based on the management response regarding assertion #1 above, we disagree with the township's position as follows:

The Pennsylvania legislature passed Act 30 of 2002 on April 17, 2002, which amended Act 600 in several respects. Among the changes was a provision specifying that the "surviving spouse of a member of the police force who dies <u>before</u> his pension has vested . . . shall be entitled to receive repayment of all money which the member invested in the pension fund plus interest. . . ." [Emphasis added]. The Department of the Auditor General has concluded therefore that the surviving spouse of a police officer who dies <u>after</u> his pension has vested is entitled to receive benefits determined in accordance with the sections of Act 600 cited above. These benefits are payable beginning on what would have been the deceased officer's superannuation retirement date.

Finding – (Continued)

Regarding the township's rationale regarding assertion #2 in the management response above relative to the identification of outstanding obligations and liabilities, based on our discussion relative to assertion #1, there remains an outstanding liability to the aforementioned vested survivor to pay the benefit in accordance with Act 600.

Additionally, as it relates to the remaining assets representing municipal funds and not state aid, our records indicate that the police pension plan was previously funded with state aid received from the Commonwealth. And as previously stated, any general municipal pension system state aid received by a municipality shall only be used to defray the cost of the pension plan or pension plans maintained by the municipality. Furthermore, Section 402(j) authorizes the Auditor General to administer the General Municipal Pension State Aid Program. This administrative power necessarily extends to ensuring that state aid is both allocated and used in accordance with the act.

Based on the criteria cited above, the finding and recommendation remain as stated.

The supplementary information contained on Pages 10 and 11 reflects the implementation of GASB Statement No. 67, *Financial Reporting for Pension Plans*. The objective of this statement is to improve financial reporting by state and local governmental pension plans.

SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS FOR THE YEAR ENDED DECEMBER 31, 2015

Total Pension Liability		
Interest	\$	5,600
Difference between expected and actual experience		(142,335)
Benefit payments, including refunds of member		
contributions		(5,552)
Net Change in Total Pension Liability		(142,287)
Total Pension Liability - Beginning		225,111
Total Pension Liability - Ending (a)	\$	82,824
Plan Fiduciary Net Position		
Net investment income	\$	(36,201)
Benefit payments, including refunds of member	4	(53,231)
contributions		(5,552)
Administrative expense		(4,725)
Net Change in Plan Fiduciary Net Position	-	(46,478)
Plan Fiduciary Net Position - Beginning		1,008,642
Plan Fiduciary Net Position - Ending (b)	\$	962,164
Net Pension Liability - Ending (a-b)	\$	(879,340)
Net I clision Elability - Eliding (a-b)	Ψ	(677,540)
Dian Eidusiany Nat Desition as a Demantage of the Total		
Plan Fiduciary Net Position as a Percentage of the Total Pension Liability		1,162.7%
Estimated Covered Employee Payroll	\$	-
Net Pension Liability as a Percentage of Covered Employee Payroll		N/A

Sensitivity of the Net Pension Liability to Changes in the Discount Rate

The following presents the net pension liability of the township as of December 31, 2015, calculated using the discount rate of 7.00%, as well as what the township's net pension liability would be if it were calculated using a discount rate that is 1 percentage-point lower or 1 percentage-point higher than the current rate:

		Current	
	1% Decrease	Discount Rate	1% Increase
	(6.00%)	(7.00%)	(8.00%)
Net Pension Liability	\$ (870,759)	\$ (879,340)	\$ (886,794)

SCHEDULE OF CONTRIBUTIONS

Year Ended December 31	Dete	uarially ermined ribution		ctual ributions	Def	tribution iciency xcess)	Covered- Employee Payroll*	Contributions as a Percentage of Covered- Employee Payroll
2006	¢		¢		Φ.			
2006	\$	-	\$	-	\$	-		
2007		-		-		-		
2008		-		-		-		
2009		-		-		_		
2010		-		_		-		
2011		_		_		-		
2012		_		_		-		
2013		-		-		-		
2014		-		-		-		
2015		-		-		-	\$ -	-

^{*} Due to GASB Statement No. 67, *Financial Reporting for Pension Plans*, being implemented only recently, the amount of Covered-Employee Payroll was not provided for years prior to 2015. The last full-time employee was in 2012.

Note: The plan was terminated and plan assets were transferred to the township's general fund on dissolved on November 8, 2016.

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, 2011, is as follows:

	(1)	(2)	(3)	(4)
			Unfunded	
		Actuarial	Actuarial (Assets in	
		Accrued	Excess of)	
	Actuarial	Liability	Actuarial	
Actuarial	Value of	(AAL) -	Accrued	Funded
Valuation	Assets	Entry Age	Liability	Ratio
Date	(a)	(b)	(b) - (a)	(a)/(b)
01-01-11	\$ 933,317	\$ 263,061	\$ (670,256)	354.8%
01-01-13	968,817	235,556	(733,261)	411.3%
01-01-15	1,008,642	82,776	(925,866)	1,218.5%

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.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN SUPPLEMENTARY INFORMATION NOTES TO SUPPLEMENTARY SCHEDULES (UNAUDITED)

The information presented in the 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, 2015

Actuarial cost method Entry age normal

Amortization method N/A

Remaining amortization period N/A

Asset valuation method Market value

Actuarial assumptions:

Investment rate of return 7.0%

Projected salary increases 6.0%

HEIDELBERG TOWNSHIP POLICE PENSION PLAN REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf

Governor Commonwealth of Pennsylvania

Mr. Paul Fetter

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