



To: David Grimaldi, Chief Administrative Officer
Jim McDonald, Acting Deputy Chief Administrative Officer

From: County Auditor's Office

Subject: Audit of County's Contractual Relationship with the KCSPCA – Comments and Recommendations Requiring Action Internally

Date: May 8, 2013

As a result of the County Auditor's Office's audit of the contractual relationship between New Castle County (NCCo) and the Kent County Society for the Prevention of Cruelty to Animals (KCSPCA), we have a few issues which we are bringing to your attention. These issues require action internally on the part of NCCo management. (Please note that these issues have been discussed with the Acting Deputy CAO, the Acting Chief of Administrative Services, and the County Solicitor.)

The audit report on NCCo's contractual relationship with the KCSPCA, which requires action on the part of the KCSPCA, has been issued separately.

Please respond in writing to the comments and recommendations in this memorandum. Please provide this response to Bob Wasserbach, County Auditor, by June 7, 2013.

Please let me know if you have any questions and/or comments.

Thank you.

Cc: Thomas Gordon, County Executive
Andria Smith, Acting Chief of Administrative Services
Bernard Pepukayi, County Attorney
Daryl Parson, County Solicitor
Marlaine White, Assistant County Attorney II
Joseph Bryant, Public Safety Director
Elmer Setting, Chief of Police
Matthew Jamison, Police Major
Mark Tobin, Senior Police Corporal
Michael Coupe, Chief Financial Officer
Robert Wasserbach, County Auditor
Betsy Gardner, Clerk of Council
County Council Members
Audit Committee Members

AUDIT OF COUNTY'S CONTRACTUAL RELATIONSHIP WITH THE KCSPCA
COMMENTS AND RECOMMENDATIONS REQUIRING ACTION INTERNALLY

1.0 GENERAL COMMENTS

1.1 Review of the KCSPCA Financials

Audit performed a high level review of the KCSPCA financial statements and management representation letters as of September 30, 2011. We noted the following:

- A loss of approximately \$454,000 was reported for the year ending September 30, 2011, compared to a loss of \$30,000 in 2010. Also, there was a note to the financial statements indicating that there was a concentration of risk in the KCSPCA having had only three major clients; the note stated "If significant reduction in this level of support were to occur, it would have an effect on the Organization's programs and activities". Note that the KCSPCA lost the Kent County animal control contract, effective July 1, 2012.

Audit is concerned that the KCSPCA may not have the funding and resources to fulfill the NCCo contracted terms and to ensure compliance with CAPA. The Executive Director already disclosed, in late October 2012, that the KCSPCA does not comply with the CAPA vaccination and medical examination timing requirements due to lack of funds. There is also the greater risk that the KCSPCA will be inclined to euthanize dogs earlier than a shelter's usual standard without dedicating the resources first to find alternatives to the euthanasia.

- The KCSPCA Executive Director would not provide Audit with the previous two years' management letters. The management letters, from the external auditors, would summarize any internal control weaknesses at the KCSPCA.
- The management representation letter (which was apparently signed by the KCSPCA Board President) for the September 30, 2011 audit includes the following representation: "We have complied with all aspects of contractual agreements ... that would have an effect on the financial statements in the event of noncompliance." As indicated in Comment # 1.2 in the County Auditor Office's separate Audit Report of NCCo's Contractual Relationship with the KCSPCA (requiring action on the part of the KCSPCA), it is possible that the KCSPCA is currently not in compliance with the NCCo-KCSPCA contract. Since such noncompliance could result in NCCo electing to terminate the contract, we believe such noncompliance could result in a material effect (i.e., the significant loss of revenue) to the financial statements.

Audit Recommendation

We recommend that NCCo management perform a more detailed assessment of the KCSPCA's ability to fulfill its contractual and legal (CAPA) requirements, in light of its financial condition. NCCo has an obligation to ensure that its vendors are in compliance with local, state and federal laws, as outlined in the contract.

1.2 Animal Control Officers and Their Legal Authority

Audit determined that the KCSPCA animal control officers were sworn in as NCCo animal control constables and dog wardens in August 2012, more than two years into the NCCo-KCSPCA contract.

KCSPCA engages what they term as "Animal Control Officers" (ACOs) to perform dog control; this is the terminology used in KCSPCA's response to the County's RFP for dog control. However, there are inconsistencies between the State Code and the NCCo-KCSPCA contract regarding the terminology used for these individuals responsible for dog control and, as such, this caused us to question the County Attorney on the legal authority of KCSPCA's ACOs.

- Delaware Code, Title 10, Chapter 29, Section 2901 ("Code Enforcement and Animal Control Constables, Appointment") states that the CEO of any County "may appoint and employ ... animal control constables" to

enforce animal control codes. This Chapter in Section 2902 also outlines the constables' power to issue summonses "to any person the constable has reasonable grounds to believe has committed an offense against any ordinance pertaining to ... animal control ..."

- Delaware Code, Title 9, Chapter 9, Subchapter 1, Section 917 ("Dogs, General Provisions, County Dog Law Management") states "... the county shall authorize the hiring of, or contract for, sufficient animal control constables or dog wardens to accomplish the purposes of this chapter ... The term 'dog warden' shall mean a person employed by the county or an animal control agency to enforce the dog control ordinances of the State ... and the county." Please note that we couldn't find any language in the Delaware Code indicating that "dog wardens" are authorized to issue summonses.
- Delaware Code, Title 9, Chapter 9, Subchapter 1, Section 901 ("Dogs, General Provisions, Definitions") refers to them as "dog control agents" ("an individual employed by a county, or employed by an independent contractor of the county, for the purpose of enforcing dog control laws, rules, regulations, and ordinances.")
- The contract in paragraph 11 refers to these individuals as "dog wardens" and the RFP refers to them as "dog enforcement agents."

Also, Delaware Administrative Code, Title 24, Chapter 2400 ("Regulated Professions and Occupations, Department of Safety and Homeland Security, Board of Examiners of Constables") indicates that there are requirements which must be met in order for one to be commissioned as a constable.

The County Attorney referred us to the Delaware Constitution of 1897, Article XIV, Section 1. We checked the Constitutional reference cited by the County Attorney and it states that public officers must take the oath of office before entering upon the duties of their respective offices. Please note that KCSPCA management informed us that the ACOs were still sworn in under the State of Delaware as part of a rabies control contract between KCSPCA and the State.

Audit Recommendations

We recommend that the County Law Department:

- Determine if there are any legal ramifications to the County not appointing the KCSPCA ACOs as animal control constables and dog wardens until August 2012.
- Determine if Delaware Administrative Code, Title 24, Chapter 2400 ("Regulated Professions and Occupations, Department of Safety and Homeland Security, Board of Examiners of Constables") applies to animal control constables and, if so, ascertain whether the KCSPCA ACO's have met these requirements.

2.0 CONTRACT, CONTRACT MANAGEMENT AND REPORTING

The contract is comprised of three documents: the contract itself, dated December 30, 2009; the related Request for Proposal (RFP); and the corresponding response to the RFP. In reviewing the contract and in evaluating its requirements and compliance with those same requirements, findings were noted relating to the contract itself, management of the vendor, KCSPCA reporting to NCCo and KCSPCA reporting as required by CAPA.

2.1 Contract Review

Audit observed that the contract does not contain standard clauses to protect both parties, such as: Right to Terminate, Notice to Terminate, and Performance Measurement Standards. The County's standard contract for professional services does include language on termination; however, the standard language was not included in this contract

(apparently because the County used, as a base, the contract which was used by the State of Delaware when the State had responsibility for dog control).

Audit Recommendation:

We recommend that NCCo management, in future professional services contracts, incorporate standard Notice to Terminate and Right to Terminate clauses to ensure legal and financial protection for NCCo, and consider incorporating Performance Measurement Standards.

2.2 Contract (Vendor) Management

One of the RFP requirements revolved around monthly animal control reporting and stated that at the time of contract award "... New Castle County will assign a contact person for the agency."

A few observations were noted by Audit suggesting that the KCSPCA relationship has not been managed adequately, as follows:

- Since the beginning of the contract, KCSPCA has been sending a monthly report that summarizes only the animal control side of the operation. However, we noted the monthly reporting did not include the shelter data. A well-managed relationship would have detected that the monthly reporting, as per the contract and RFP, should include shelter data as well. Numerous shelter elements that were required to be reported per the contract, such as euthanasia related elements, were not being reported to NCCo.
- Audit noticed that the KCSPCA hours of operation were changed effective June 1, 2012 with evidently no notice provided NCCo for its approval. One of these changes was to change the latest time the shelter is open during the week to 6:00 p.m. This is an issue especially for NCCo residents given that the facility is in Camden.
- In July 2012, KCSPCA changed some of its fees and neglected to apprise NCCo. Paragraph 6 of the contract states that KCSPCA "... shall retain ... all redemption and other fees or charges received by it with respect to any dog impounded ... All such fees established shall be done so with the concurrence of the County."
- NCCo neglected to formally swear in the KCSPCA's NCCo-dedicated ACOs from the start of the relationship. They were finally sworn in in late August 2012, almost three years into the service contract relationship. (The ACOs remained sworn in under the KCSPCA's contract with DNREC for Rabies Control.)
- No one we spoke with from NCCo had a good grasp of the CAPA requirements.
- We saw no evidence that NCCo reviewed to ensure that the insurance coverage as required in the contract was in fact being maintained by the KCSPCA.

It appears that no one in NCCo has overall responsibility for monitoring the KCSPCA's compliance with its contract with NCCo.

Audit Recommendation

We recommend that the County Executive Office assign a County employee the responsibility for ensuring the KCSPCA is complying with the terms of the NCCo-KCSPCA contract. Ideally, this individual would work in the department which provides the funding for the contract. This employee should:

- Read and understand the terms of the contract (including the RFP and RFP response).
- Read and understand relevant federal, state, and local laws applicable to the contract.
- Develop a plan for monitoring compliance.
- Report periodically to the Executive Office on contract compliance and vendor performance.

Further, initiating any new service relationship should be managed and controlled more thoroughly at the outset to ensure that all requirements are met.