



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
June 30, 2008

**Two Port of Oswego Authority Members Held Seats
in Violation of Residency Requirements**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General's Office determined that two members of the Port of Oswego Authority Board of Directors held their seats in violation of statutory residency requirements. One of the members, Ralph Jennings, resigned his seat during the investigation. The Inspector General's Office referred its findings concerning the other member, Richard Tesoriero, to the appropriate appointing authorities. On May 20, 2008, the state Senate confirmed Governor David A. Paterson's nomination of Terrence Hammill to replace Tesoriero.

ALLEGATIONS

The Inspector General received an allegation from the State Commission of Investigation that Richard Tesoriero and Ralph Jennings, members of the Port of Oswego Authority Board of Directors, were in violation of residency requirements set forth in New York State Public Authorities Law.

SUMMARY OF INVESTIGATION

The Port of Oswego Authority regulates the development and operation of port facilities in the Oswego Port District. The Authority is governed by an uncompensated nine-member board of directors. Public Authorities Law § 1353 defines the requirements for serving on the Port of Oswego Authority board. It provides, in relevant part, the following: "The board shall consist of nine members, seven of whom shall be residents of the city of Oswego and one of whom shall be a resident of the town of Scriba, with at least one thereof being a member of or recommended by the county planning board of the county of Oswego. . . ."

The Inspector General's Office examined Voter Registration Information Reports, which established that Tesoriero resides in the town of Oswego and that Jennings resides in the town of Minetto. In interviews with the Inspector General's Office, both Tesoriero

and Jennings further conceded that they were not members of, or recommended by, the Oswego County Planning Board. Therefore, the evidence shows that at the time of the investigation, neither Tesoriero nor Jennings was eligible to serve on the Authority. The Inspector General confirmed that the other Authority board members met eligibility requirements.

Jennings informed the Inspector General that he was not aware of the residency requirement until he was notified in a May 16, 2007 letter from what he identified only as the “Office of Intergovernmental Affairs.” Although his term on the Authority board ran until September 2008, Jennings during this investigation resigned from the board effective September 5, 2007.

Tesoriero stated that he resided in the city of Oswego when he was initially appointed to the Authority board. He claimed to the Inspector General’s Office that in 1995, when he moved from the city of Oswego to his current address in the town of Oswego, he sought an opinion from either the New York State Ethics Commission or the Governor’s Appointments Office regarding the residency requirement. Tesoriero stated that when he was asked by an official of the Ethics Commission if he could prove he had a residence in the city of Oswego, he replied that while he owned property there, he was registered to vote in the town of Oswego. The Inspector General’s Office could not directly verify Tesoriero’s alleged contacts because Tesoriero did not identify anyone by name and there has been a change of administrations since 1995. However, an official who was employed at the Ethics Commission at the time (and is currently employed at the Commission on Public Integrity, the successor to the Ethics Commission) said that the Commission would not have provided an opinion about residency requirement to Tesoriero because it is the responsibility of the employing agency (the Authority in this case) to make that determination.

Tesoriero’s ownership of rental property and a business in the city of Oswego does not appear to satisfy the Authority’s residency requirement. While there are no court decisions interpreting the “shall be residents” phraseology of Public Authorities Law § 1353, the New York Court of Appeals has construed the legally similar residency requirements contained in Public Officers Law §§ 3(1) and 30(1) (d), such that one’s “residence” is synonymous with “domicile.” *Hosely v. Curry*, 85 N.Y.2d 447, 451 (1995) (citations omitted). Traditionally, “[r]esidence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile.” *Redanz v. City of Buffalo*, 4 A.D.3d 868 (4th Dep’t 2004)(citing *In re Newcomb’s Estate*, 192 N.Y. 238, 250; *Antone v. General Motors Corp.*, 64 N.Y.2d 20, 28).

Moreover, New York’s highest court has pointed out that a board of elections’ determination, statutorily deemed presumptive evidence of one’s residence for voting purposes, is “entitled to weight” in the context of a residency requirement for civil office. *Id.* at 452. As previously stated, Tesoriero is registered to vote in the town — not the city — of Oswego, and he merely owns rental property and a business in the city. Given these facts, it appears that Tesoriero does not fulfill the residency requirement for him to continue to serve on the Authority board, and he should therefore vacate the seat. (Public Officers Law § 30(1) (d) requires that “[e]very office shall be vacant upon . . . [the

incumbent's] ceasing to be an inhabitant . . . of the political subdivision . . . of which he is required to be a resident when chosen.”)

FINDINGS AND RECOMMENDATIONS

The Inspector General's Office established that Richard Tesoriero and Ralph Jennings, members of the Port of Oswego Authority board, were in violation of Public Authorities Law § 1353. Neither was a resident of the city of Oswego or the town of Scriba, nor were they recommended by the county planning board of Oswego. Jennings has resigned from the board. Tesoriero stated that while his appointment to the Authority board expired on August 31, 2007, he intends to remain on the board until a successor is appointed. (Public Authorities Law § 1353 provides that board members whose terms expire “shall continue in office as such until the members first to be appointed by the governor as hereinafter in this section provided shall have qualified,” and that “members of said authority shall be appointed by the governor, by and with the advice and consent of the senate.”)

The Inspector General's Office referred its findings to the Governor's Director of State Operations, the Governor's Appointments Secretary, and the Chairman of the Port of Oswego Authority Board of Directors for appropriate action.

The Appointments Office advised the Inspector General that on May 20, 2008 the state Senate confirmed Governor David A. Paterson's nomination of Terrence Hammill to replace Tesoriero as a member of the Port of Oswego Authority Board of Directors.