State of New Jersey

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
INVESTIGATIONS DIVISION
P.O. BOX 024
TRENTON, NJ 08625-0024
(609) 984-2888

KEVIN D. WALSH
Acting State Comptroller

SCOTT J. MACDOUGALL
Director

December 12, 2023

<u>Via U.S. Mail and Electronic Mail</u>

Sergio Granados, Chairman
Union County Board of County Commissioners
10 Elizabethtown Plaza
Elizabeth, New Jersey 07207

Re: The Approval Process for Compensation Paid to Three High-Level Union County Officials Violated the Plain Language of New Jersey's Optional County Charter Law

Dear Chairman Granados:

The Office of the State Comptroller (OSC) conducted an investigation into the processes by which Union County (the County or Union) set the compensation of its department heads and the County Manager. OSC's investigation found that the County's approach to compensating its highest-paid staff is inconsistent with state law. The County compensated the Director of Public Works, the Director of Finance, and the County Manager for a combined $417,772 without enacting ordinances that authorized that compensation as required by statute.

To conduct this investigation, OSC obtained and examined numerous documents, including current and historic County policies and procedures, resolutions, ordinances, financial records, employment records, and internal County memoranda. OSC also interviewed several County officers and employees.

In accordance with its mission of guarding against fraud, waste, and abuse; protecting public funds; establishing best practices for financial controls; and ensuring transparency and accountability involving taxpayer funds, OSC issues this letter to report its findings and provide recommendations to assist the County in complying fully with state law. State law applicable to Union County provides that the compensation of those with the most power, those who often are compensated the most and may have access to the greatest perks, is subject both to the greatest transparency and a check by the residents on whose behalf they serve. As discussed below, the County's overly technical defense of its compensation practices for high-ranking officials fails to account for the checks and balances imposed to protect and engage taxpayers, and it creates unnecessary risks that public funds will be wasted when taxpayers' rights are disregarded.

Investigative Findings

OSC's investigation examined Union County's compensation of two department heads and the County Manager to determine whether the County complied with New Jersey's Optional County Charter Law, N.J.S.A. 40:41A-1 to 40:41A-149 (the OCCL).

A. New Jersey's Optional County Charter Law Requires County Boards of Commissioners to Set All Compensation for Enumerated High-Level Officials Through a Transparent Legislative Process

In 1972, the Legislature adopted the OCCL, which enabled counties to select from various forms of government and established uniform standards and procedures applicable to county government. Since its implementation, the OCCL has required counties to set compensation for its highest-ranking officials through an open legislative process. Specifically, county boards of commissioners must establish compensation for themselves, the county executive, supervisor, manager or board president, the administrative officer, and department heads by passing an ordinance.[1] Because the OCCL does not define the term "compensation," it must be given its "generally accepted meaning."[2] The statute does not differentiate between forms of compensation, such as base salary or stipend. Rather, it requires all compensation for the enumerated positions, including county department heads and the county manager, to be fixed by ordinance.

An ordinance is defined by the OCCL as any act or regulation of a county board of commissioners that is reduced to writing and subject to specific publication and public hearing requirements before it can be considered eligible for passage.[3] The public hearing and publication process involves an extensive series of steps centered on providing the public adequate notice and an opportunity to scrutinize the proposed legislation.[4] Ultimately, even after the earlier legislative

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[1] N.J.S.A. 40:41A-100(d) states, "[t]he compensation of the county executive, supervisor, manager or board president, and of freeholders and the administrative officer and department heads shall be fixed by the board by ordinance promptly after its organization."

[2] N.J.S.A. 1:1-1. <u>See also</u> <u>Courier-Post Newspaper v. County of Camden</u>, 413 N.J. Super. 372, 390 (App. Div. 2010) (internal citations omitted) (stating that "[i]n the absence of any explicit indication of special meaning, words of a statute are to be given their ordinary and well understood meaning").

[3] N.J.S.A. 40:41A-101(a).

[4] First, the proposed ordinance must be introduced and read at a public meeting of the board of county commissioners. Then, at least one week prior to a date set for further consideration of the ordinance, a copy must be sent to each municipality within the county and published in at least one of the two newspapers designated by the county commissioners for publication of legal notices. The publication must include a notice of the proposed ordinance's introduction and must alert the public to the time and place at which the proposed ordinance will be considered. The publication must also include a statement describing the purpose of the ordinance together with instructions advising members of the public about how they can receive a free copy of the ordinance. At the time and place stated in the publication, the county must permit all interested persons the opportunity to voice concerns about the proposed ordinance. Lastly,

steps have been completed, an ordinance may not take effect until 20 days after its final passage.[5] The OCCL ensures that, during those 20 days, county voters have an opportunity to suspend an ordinance's implementation by filing a petition with a sufficient number of signatures to trigger a referendum on the ordinance.[6] This mandatory legislative process fits neatly with the separation of legislative and administrative powers embodied by the general provisions of the OCCL[7] and achieves an important public policy goal—transparency in the compensation of high-ranking county government officials.

B. Union County Paid Certain Compensation to its Director of Public Works, Director of Finance, and County Manager That Was Not Set by Ordinance

Although Union County passed ordinances as required by the OCCL for the base salaries of its department heads and County Manager, it did not follow this statutory requirement for additional compensation paid in the form of "stipends" to two of its department heads—the Director of Engineering, Public Works, and Facilities (Public Works) and the Director of Finance. Union County also did not follow this statutory requirement when it provided compensation in the form of tuition reimbursements to the Director of Finance and the County Manager.

The County Director of Public Works Was Compensated through Stipends that Were Not Set by Ordinance

Union County records revealed that, from 2019 to 2022, the County paid its Director of Public Works compensation above and beyond his base salary that was not set by ordinance. In December 2018, Union County's Board of Commissioners (Board) passed a resolution authorizing a shared services agreement between the County and a municipality located in the County. The agreement provided that the County's Director of Public Works would assist the municipality's department of public works in exchange for an annual fee not to exceed $30,030 to be paid by the municipality to the County. The agreement stated that the County would retain no more than $3,003 of the annual fee as an administrative fee while the remaining $27,027 would be "utilized by the County for services rendered to the [municipality]." Union County and the municipality entered into the agreement in 2019 and extended it each year from 2020 to 2022.

The Board resolutions, the related shared services agreement, and the annual extensions did not specify that the funds paid by the municipality to the County above and beyond the administrative fee would be used to compensate the Director of Public Works for his duties under the contract. But that is how the funds were used. Each year from 2019 through 2022, the County allocated $27,027 for the Director of Public Works as compensation for the services he provided on the

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a county's board of commissioners may not pass the ordinance until at least ten days after the date of the first reading of the proposed ordinance. See N.J.S.A. 40:41A-101(b).

[5] N.J.S.A. 40:41A-101(c).

[6] N.J.S.A. 40:41A-105.

[7] See N.J.S.A. 40:41A-86 to 40:41A-149.

County's behalf to the municipality under the contract. As of August 2022, the Director of Public Works earned $97,973 in compensation in addition to his annual salary for the work performed per the contract during that three-year period.[8] This compensation was not approved by the Board in advance through enactment of an ordinance and thus failed to meet the public notice, hearing, and voting requirements required by statute. In effect, the County denied taxpayers the opportunity to meaningfully participate in the required legislative process and, potentially, reject this particular form of compensation.

The County Director of Finance Was Compensated Through Stipends and Tuition Reimbursement That Were Not Set by Ordinance

The County's Director of Finance also received compensation that was not set by ordinance.[9] In October 2019, the Board passed a resolution authorizing an agreement under which the County would supply personnel to provide "financial management services" to the Union County Improvement Authority (UCIA), an entity that plans, develops, and manages public improvements. The agreement indicated that the County would designate "[s]taff within the Department of Finance" to provide those services and the staff would "be compensated" by the County "in an amount not to exceed $60,000 annually."

The agreement did not identify the individual who would provide those services, but documents reviewed by OSC revealed that the County Manager assigned the Director of Finance, among others, to provide those services in November 2019. The County paid the Director of Finance at a rate of $30,000 every six months for these services. The County did not authorize this compensation by ordinance. Instead, the compensation was directed by the County Manager. The assignment and compensation were renewed six months later, in May 2020. The County continued to pay this additional compensation until August 2020, when it terminated the stipend and replaced it with two additional stipends, described below in detail.

In August 2020, the Board passed a resolution authorizing another agreement with UCIA for the purpose of developing a new County government complex. The August 2020 resolution did not contain any language indicating that County employees would be compensated pursuant to the agreement. Rather, the agreement stated only that the "County shall identify and assign County personnel to the Authority in order to assist with the financing, construction and completion of the County Government Complex Redevelopment Project." The agreement authorized the County to set aside funds to pay for expenses associated with the agreement but made no reference to the payment of compensation to individuals.

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[8] The Director of Public Works received an annual salary of $150,151 in 2019; $153,154 in 2020; $156,217 in 2021; $159,341 in 2022; and $162,528 in 2023.

[9] The Director of Finance also held the titles of County Treasurer and Chief Financial Officer during the period reviewed. OSC's investigation found that these three titles are effectively consolidated under the "Director of Finance" title and base salary.

Four days after executing the agreement, the County Manager authorized two new stipends to be paid to the Director of Finance. The first stipend was for "financial management" services and totaled $60,000 annually. The second stipend was for "project management" services and also totaled $60,000 annually. The County renewed both stipends in January 2022. As of August 2022, they remained in place. As of that date, the County paid the Director of Finance a total of $265,309 in stipends.[10] The Director of Finance received this compensation in addition to an annual base salary that reached $175,985 effective January 1, 2023.

Notably, neither the October 2019 nor August 2020 agreement between the County and UCIA authorized or directed payments specifically to the Director of Finance. Instead, the County Manager authorized the payments through payroll memoranda submitted to the County's payroll department. The memoranda referenced the October 2019 and August 2020 UCIA agreements, respectively.

The Director of Finance also received partial tuition reimbursement from the County to pursue a doctorate-level degree in education while performing duties for the County and UCIA. As of January 2022, these reimbursements totaled $37,990.

In total, the Director of Finance received $303,299 in compensation between October 2019 and August 2022 that was not fixed by an ordinance subject to the public notice, hearing, and voting requirements set forth in the OCCL. The Director of Finance's annual salary was also raised four times between 2019 and 2022, growing from $153,551 to $175,985 effective January 1, 2023. While all of these payments are forms of compensation paid to a director of county government, and thus subject to the OCCL's statutory requirements, the Board set only the Director of Finance's base salary by ordinance.

While transparency with the public is always important, the OCCL's requirements for setting the compensation of high-ranking public officials are particularly noteworthy in this context. The compensation described above makes the Director of Finance one of the County's highest-paid public employees. The Director of Finance holds a County department head title that also encompasses the County titles of Treasurer and Chief Financial Officer. During the same period of time, the Director of Finance performed managerial duties for UCIA and was attending three to four classes per semester in pursuit of a doctoral degree. OSC does not suggest that the Director of Finance is incapable of undertaking that many responsibilities in a satisfactory manner—

[10] On October 7, 2020, UCIA's Board of Commissioners passed a resolution designating the "Union County Project Manager" as UCIA's Chief Operating Officer. OSC's investigation indicates this individual was the County Director of Finance. On November 14, 2022, UCIA's Board of Commissioners passed another resolution formally promoting the County's Director of Finance, by name, to the position of UCIA Executive Director. The first resolution says nothing about compensation, but the second resolution states that the County will "remunerate [the Director of Finance], a County employee, via a stipend." UCIA never paid the Director of Finance for the duties she performed. Rather, the County itself made all payments to the Director of Finance. The titles given to the Director of Finance by UCIA effectively formalized her ad hoc responsibilities for the County in relation to the UCIA's agreements with the County into the UCIA's operating structure. The titles did not replace or supersede those responsibilities and did not change the fact that the Director of Finance was being paid for those responsibilities by the County.

consolidation of job responsibilities may well be a responsible cost savings measure. Rather, OSC finds that the public should have the opportunity to scrutinize the high level of compensation and the blending of so many job responsibilities through the ordinance process outlined in the OCCL. To foster public trust and accountability for such a pivotal role in their community, Union County residents must have access to information sufficient to enable them to assess the desirability of allocating resources and responsibilities in this manner.

OSC does not take any position on the merits of county tuition reimbursement programs. Tuition reimbursement programs may be lawful and appropriate. OSC finds only that various forms of compensation to high-level officials—including tuition reimbursement—require prior approval by ordinance under any reasonable reading of the OCCL. Awarding this compensation without an ordinance allows a significant amount of compensation beyond base salary to be set while depriving the public of the opportunity to participate in the decision-making process. Union County residents should have the opportunity to scrutinize the Director of Finance's compensation through the legislative process required by the OCCL regardless of whether Union County describes that compensation as a stipend, reimbursement, or something else. The goal of transparency and accountability to taxpayers is too easily undermined by such a large loophole.

The County Manager Was Compensated through Tuition Reimbursement that Was Not Set by Ordinance

The County Manager also received additional compensation that was not set by way of ordinance. Between the fall of 2020 and the fall of 2021, Union County provided the County Manager with approximately $16,500 in tuition reimbursements through the County's tuition reimbursement program. The County Manager's base salary has historically been set by ordinance, but the compensation in the form of tuition reimbursement has not. Payment of this reimbursement violated the OCCL's requirement that all compensation for the County Manager be set by ordinance.[11]

C. No Matter How the Compensation was Characterized, Union County's Conduct Was Inconsistent with the Plain Language of State Law

During OSC's investigation, the County Manager told OSC that the County did not enact ordinances regarding the stipends identified in this report because he believed that only base salaries must be set by ordinance. The County Manager indicated that he relied upon the County's legal counsel in reaching this conclusion. OSC reviewed a County memorandum that described

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[11] OSC also found the County Manager's application for tuition reimbursement was deficient. The applications require employees seeking reimbursement to certify that their failure to comply with the rules of the reimbursement program will "lead to non-reimbursement or repayment of reimbursement." It also requires employees to detail how the degree sought would enhance the employee's work for the County. The County Manager failed to certify his application and left blank the portion of the application requiring a detailed explanation. Of the 22 applications reviewed by OSC, only the County Manager's contained both of these deficiencies. Nevertheless, the County Manager's application was approved by a single member of the Board of County Commissioners.

the County's practice of providing additional compensation to County employees for performing work other than their primary job duties. This memorandum does not mention the statutory requirement that compensation paid to department heads and other high-ranking officials be set by ordinance.

The County Manager's position is inconsistent with the OCCL. The statute requires county boards of commissioners to establish the compensation of high-ranking county officials—including department heads and county managers—by ordinance and does not differentiate between forms of compensation, such as base salary, bonuses, fringe benefits, tuition reimbursement,[12] raises, or stipends. The OCCL leaves the term "compensation" undefined, meaning it must be interpreted according to its generally accepted meaning. Compensation is generally accepted to mean remuneration for work.[13] The term includes any payment or other benefit received for services provided, whether in the form of a stipend, base salary, benefit, or of any other character. This plain definition of the term fits with one of the primary purposes of the OCCL—to promote transparency and accountability in county government operations and the management of taxpayer money. The County's failure to fix all compensation paid to its high-ranking officials by way of ordinance deprived the public of its opportunity to have a voice in the process.

Union County's Response to this Letter

Prior to publication, OSC provided Union County with a draft of this letter to afford the County an opportunity to review and respond to OSC's factual findings. In its response, Union did not dispute any of the facts set forth in this letter. Rather, the County disputed OSC's interpretation of Section 100(d) of the OCCL. OSC addresses the County's primary arguments below, none of which impacts OSC's findings.

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[12] Tuition reimbursement is a monetary benefit paid to an employee as remuneration for their services, whether or not the underlying education and training also offers a workplace benefit to the government employer. Notably, the Internal Revenue Service considers "educational assistance benefits" from an employer provided under a qualifying program as a form of compensation. Tax Benefits for Education, I.R.S. Pub. No. 970, Cat. No. 25221V (Jan. 20, 2023), https://www.irs.gov/pub/irs-pdf/p970.pdf. While educational assistance below a certain dollar amount may be excluded, educational assistance benefits must ordinarily be reported as taxable compensation on an individual's tax return. Ibid. This differs from a "working condition fringe benefit," which is a benefit that, had the employee paid for it, would be allowable as a business expense deduction. Ibid.

[13] Legal dictionaries from the time the OCCL was enacted and current legal dictionaries support an expansive interpretation of the term "compensation." See, e.g., Ballentine's Law Dictionary (3d ed. 1969) (internal citations omitted) (defining compensation as "a remuneration for services, whether in the form of a fixed salary, fees, commissions, or perquisites of whatever character"); Black's Law Dictionary (11th ed. 2019) (internal citations and quotations omitted) ("Compensation consists of wages and benefits in return for services. It is payment for work. … [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement."). Modern general language dictionaries also support a more expansive interpretation. See, e.g., Merriam-Webster's Dictionary (2023), https://www.merriam-webster.com/dictionary/compensation (defining "Compensation" as "payment, remuneration"). While Union County stated in its response to a draft of this letter that dictionaries are "irrelevant," it is clearly "appropriate to look to dictionary definitions for determining the meaning of words." Wells Reit II-80 Park Plaza, LLC v. Dir., Div. of Tax'n, 414 N.J. Super. 453, 463–64 (App. Div. 2010) (citation omitted).

First, Union County disputed that the term "compensation" should be given its ordinary and well-understood meaning when determining compliance with the OCCL. The County contends that OSC should, instead, look to the Public Employees' Retirement System Act (PERS), for the applicable definition of the term. Pointing to PERS, Union County asserts that the terms "compensation" and "salary" are interchangeable and, as such, its conduct was consistent with the OCCL.

The County's position, however, is inconsistent with a basic principle of statutory interpretation. It is well-established that "[w]here a specific definition is absent, '[w]e must presume that the Legislature intended the words it chose and the plain and ordinary meaning ascribed to those words.'" State v. Twiggs, 233 N.J. 513, 532 (2018) (quoting Paff v. Galloway Township, 229 N.J. 340, 353 (2017)).[14] In the OCCL, the Legislature left the term "compensation" undefined. That the Legislature declined to define "compensation" in the OCCL means the word must be interpreted according to its ordinary meaning. Moreover, the Legislature's use of the term "salary" in certain provisions of the OCCL—N.J.S.A. 40:41A-34, 40:41A-48, and 40:41A-75, for example—but not in others, further supports the position that the Legislature appreciated the distinction between the two terms and could have used the word salary in the provision in question if it so intended. Instead, the Legislature chose to expressly use the broader term "compensation."

Second, Union County claimed that awarding stipends and tuition reimbursement by ordinance would burden the State's pension system by transforming those additional forms of compensation into an employee's pensionable salary under PERS calculations. This is incorrect because it relies on a misreading and jumbling together of the OCCL and New Jersey's public employee pension laws. As mentioned above, the definition of "compensation" under the pension statute, N.J.S.A. 43:15A-6(r)(l), is completely inapplicable to the OCCL. Likewise, the definition of compensation for purposes of the OCCL, and the passing of ordinances for forms of compensation beyond base salary, do not transform those forms of compensation into pensionable base salary. As Union County itself points out, "PERS regulations . . . limit creditable compensation for pension calculation purposes to 'base salary [which] shall not include extra compensation.'" This confirms that New Jersey's pension laws clearly distinguish between base salary, which is used to determine a public employee's pension, and extra compensation, which is not.[15] As Union County points out, N.J.A.C. 17:2–4.1 enumerates fourteen "[f]orms of compensation that have been identified as extra compensation" and are therefore not pensionable, including: (1) "Overtime;" (2) "Pay for extra work, duty or service beyond the normal workday, work year . . . or normal duty assignment;" (3) "Bonuses;" (4) "Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other

[14] See also N.J.S.A. 1:1-1; State v. Lenihan, 427 N.J. Super. 499, 510 (App. Div. 2012) (internal marks omitted) (finding the Legislature provides definitions when it intends application of a "special definition" of a term, and leaves a term to its "ordinary and well-understood meaning" when it does not define a particular term); State v. Bernardi, 456 N.J. Super. 176, 192–93 (App. Div. 2018) (applying the ordinary meaning of the term "contract" and explaining that if the Legislature intended to limit the meaning of the term in a particular statute, it could have done so as it did in other laws).

[15] Notably, the factors listed by Union County from the Employers' Pensions and Benefits Administration Manual show that compensation other than base salary would not be pensionable and provide a guideline for counties to ensure extra compensation does not become pensionable.

purpose"; and (5) "Compensation for performing temporary duties beyond the regular workday or shift[,]" among others. It is notable that the regulation identifies these forms of payment for what they are—compensation—while also clarifying they are not to be counted as "pensionable" because they are not base salary. This supports OSC's position because it demonstrates not only that setting all compensation by ordinance will not somehow transform non-pensionable compensation into pensionable compensation, but that compensation clearly includes remuneration beyond "base salary."

Third, Union County argued that the OCCL "limits the board of commissioners' role to setting base salaries for specific departmental head *positions*," not the compensation paid to individuals occupying those positions. But that is not what the law states. N.J.S.A. 40:41A-100(d) states, "[t]he compensation of the county executive, supervisor, manager or board president, and of [commissioners] and the administrative officer and department heads shall be fixed by the board by ordinance[.]" The OCCL speaks of the "manager" and "department heads," who are, of course, individuals performing the duties assigned to those roles. The County's interpretation would enable counties to award additional compensation to individuals occupying those positions by administrative action, bypassing the public process for setting all compensation by ordinance. Taking the County's reasoning to its logical conclusion would mean that it could theoretically pay a high-level official $100,000 per year in base salary, and another $250,000 in stipends, but only set the base salary by ordinance, rendering the majority of the official's compensation less transparent to the public. There may well be many good reasons, including efficiency with taxpayer funds, for high-level county officials to wear multiple hats, but they are always, first and foremost, high-level officials that are rightly subject to greater public scrutiny in the performance of their official duties than lower-level employees.

Similarly, Union County asserted that it was not required to set by ordinance the additional compensation identified above because of the separation of powers provisions of the OCCL, including N.J.S.A. 40:41A-86. Such additional compensation, according to the County, can only be established by a county manager. The County is mistaken. While the county manager has the authority to set the compensation of lower-level county employees, the plain language of Section 100(d) shows that the Legislature specifically carved out an exception for compensation paid to high-level employees, such as a county manager and department heads.[16] This fits well with the separation of powers between county legislators and executives that is contemplated by the OCCL because it subjects high-level executive officials to a legislative check by county commissioners.

Fourth, Union argued that it acted transparently in providing the stipends identified above because those stipends arose from shared services agreements passed by way of a resolution.[17] However,

[16] See also Shapiro v. Essex County Bd. of Chosen Freeholders, 91 N.J. 430, 432 (1982) (explaining that while the county executive has the authority to establish compensation of lower level employees, consistent with their "day-to-day" administrative functions, the Legislature specifically carved out an exception to that general rule for higher level officials because such officials have greater powers and responsibilities and are therefore subject to more oversight).

[17] Similarly, Union County claims that, because its "Administrative Code, Article XVI, Employee Handbook (last amended by Ordinance 802-2018, December 13, 2018), includes reference to the tuition reimbursement program being open to all employees[,]" this means that the benefit has been "adopted by

neither the resolutions establishing the shared services agreements, nor the shared services agreements themselves, named, or in any way identified, the employees who would be receiving additional compensation or the amount of compensation they would receive. Additionally, resolutions and ordinances are separate and distinct instruments, and the Legislature as expressed through the OCCL intended that the compensation of certain high-level county officials be set by the passage of an authorizing ordinance, not a resolution. The distinction is meaningful because an ordinance imposes specific public notice and public participation requirements, ensuring that taxpayers are aware of and have an opportunity to participate in decisions impacting the compensation of their highest-level officials. Under the OCCL, in addition to the multiple additional layers of public notice provided during the legislative process of passing an ordinance outlined above, voters may protest any ordinance passed by a county board of commissioners. N.J.S.A. 40:41A-105. The same is not true of a resolution.

Fifth, although it has not identified specific counties that are also violating the OCCL, Union County asserts that its practices are longstanding and consistent with the practices of other counties that have adopted the OCCL. The fact that Union County's practice is longstanding or that the plain language of the OCCL is commonly violated, if true, does not make it appropriate. Union County also claims that "compensation" under the OCCL "historically has been widely interpreted throughout the state to mean base or annual salaries only" and that "every other charter county in New Jersey agrees with Union County's interpretation[.]" In its response to this letter, the County offered no evidence to support this conclusory statement, except for "the most recent ordinances setting compensation for" various high-level officials in other counties. But the County has not shown that any other county provided their high-level officials with other compensation without enacting an ordinance, merely that the other counties set their high level officials' base salaries by ordinance. And even if they are correct that every county has engaged in conduct similar to Union County's, the result is the same—that conduct is inconsistent with the OCCL.

The purpose of this letter is to provide notice to Union County—and all counties in New Jersey subject to the OCCL—that, moving forward, they should interpret the OCCL according to its plain language, and in a manner that is maximally transparent to the public.

Conclusion and Recommendations

Transparency as to the compensation of public officials—particularly, highly compensated public employees—helps ensure that taxpayer funds are not misused. As such, OSC recommends that counties subject to the OCCL, including Union County, strictly adhere to the requirements of that law by setting through ordinance all compensation paid to high-ranking officials, whether the compensation is characterized as a stipend, bonus, benefit, fee, tuition reimbursement, or base salary. This includes all sources of monetary compensation as well as reimbursements and the provision of employee benefits, including, but not limited to, leave time, healthcare coverage, non-work related vehicle access, and similar forms of compensation. Though there may be multiple

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ordinance" for its high-level officials. But generally stating that a program is "open to all employees" in a handbook is not the same as setting compensation for an individual high-ranking employee by ordinance.

paths to compliance, the requirements of the OCCL may be met most easily by the County attaching each high-ranking official's employment agreement, including any additional agreements affecting compensation, to the ordinance itself.

In addition, OSC directs Union County to create a corrective action plan detailing how it will satisfy the OCCL's requirements for compensation previously disbursed to the Director of Public Works, Director of Finance, and County Manager, addressing the instances where the necessary ordinances were not enacted. Any remuneration paid to a high-ranking official in return for services rendered must be set by ordinance. OSC also recommends that the County update its internal policies, procedures, and memoranda regarding compensation to make clear that all forms of compensation to its commissioners, county executive, supervisor, manager or board president, administrative officer, and department heads must be approved by ordinance in advance. This would ensure the public has an opportunity to meaningfully participate in the process of setting compensation for top Union County officials.

Finally, in view of Union County's suggestion that county officials in New Jersey regularly supplement base pay with stipends without complying with the OCCL, which was not demonstrated with evidence, OSC reminds Union County officials and residents of New Jersey that OSC welcomes complaints, including anonymous complaints, on its Government Waste and Mismanagement Hotline at 1-855-OSC-TIPS (672-8477) or by email at comptrollertips@osc.nj.gov.

Thank you for your attention to this matter.

Respectfully,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: /s/ Scott MacDougall
Scott MacDougall, Director
Investigations Division