

MT. LEBANON SCHOOL DISTRICT
ALLEGHENY COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

JUNE 2010

MT. LEBANON SCHOOL DISTRICT
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The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Mr. Edward Kubit, Board President
Mt. Lebanon School District
7 Horsman Drive
Pittsburgh, Pennsylvania 15228

Dear Governor Rendell and Mr. Kubit:

We have conducted a performance audit of the Mt. Lebanon School District for the years ended June 30, 2006 and 2005, and in certain areas extending beyond June 30, 2006. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit was limited to the following objectives:

- Objective No. 1 - To determine if the Mt. Lebanon School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit; and
- Objective No. 2 - To determine if the Mt. Lebanon School District took appropriate corrective action to address the finding, observation and recommendations contained in our prior audit report.

To plan and perform our audit of the Mt. Lebanon School District, we considered the district's internal controls pertinent to our audit objectives. Based on our consideration of these internal controls we determined audit procedures for the purpose of reporting on our audit objectives, but not to provide assurance on the effectiveness of the district's internal controls. However, any significant internal control deficiencies found during our audit were included in our report.

Independent Auditor's Report (Continued)

The results of our tests indicated that, in all significant respects, the Mt. Lebanon School District was in compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit, except as noted in the following finding. We also identified internal control weaknesses as discussed in the observations. The finding and observations are discussed further in the Conclusions section of this report:

Objective No. 1

Finding – Board Member Failed to File Statement of Financial Interests
Timely in Violation of the Ethics Act

Observation – Memorandum of Understanding Not Updated Timely

Objective No. 2

Observation – Internal Control Weaknesses in Administrative Policies
Regarding Bus Drivers' Qualifications

We believe that our recommendations, if implemented by the district, will improve the internal control weaknesses identified and help ensure compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

Independent Auditor's Report (Continued)

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information and, accordingly, express no form of assurance on it.

Sincerely,

June 30, 2010

/s/
JACK WAGNER
Auditor General

cc: **MT. LEBANON SCHOOL DISTRICT** Board Members



MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT
BACKGROUND

Background

The Mt. Lebanon School District is located in Allegheny County and encompasses an area of approximately 6 square miles. The school district has a population of 33,017, according to the 2000 federal census. The administrative offices are located at 7 Horsman Drive, Pittsburgh, Pennsylvania.

According to school district administrative officials, during the 2005-06 school year, the district provided basic educational services to 5,436 pupils through the employment of 30 administrators, 426 teachers, and 194 full-time and part-time support personnel. Special education was provided by the district and the Allegheny Intermediate Unit #3. Occupational training and adult education in various vocational and technical fields were provided by the district and the Parkway West Career and Technology Center.

Generally, state subsidies and reimbursements are paid in the year subsequent to the year in which the school district incurs the cost that qualifies it for the applicable subsidy or reimbursement. While the Pennsylvania Department of Education (DE) makes partial payments to the school district throughout the year, final payments are normally made in June. Refer to the Supplementary Information on pages 17 through 19 of this report for a listing of the state revenue the district received during the 2005-06 and 2004-05 school years and for descriptions of the state revenue received by category.

In July of each year, the Commonwealth's Labor, Education and Community Services, Comptroller's Office confirms the payments that were made by DE throughout the prior fiscal year. School district annual financial reports and the related certified audits of the payments are not available before October 31st of the following fiscal year.

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT
OBJECTIVES, SCOPE AND METHODOLOGY

OBJECTIVES AND SCOPE

Our audit objectives were:

- Objective No. 1 - To determine if the Mt. Lebanon School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit; and
- Objective No. 2 - To determine if the Mt. Lebanon School District took appropriate corrective action to address the finding, observation and recommendations contained in our prior audit report.

The scope of our audit covered the years ended June 30, 2006 and 2005, and in certain areas extending beyond June 30, 2006.

METHODOLOGY

Our audit was conducted under authority of 72 P.S. § 403, and does not supplant the local annual audit as required by the Public School Code of 1949, as amended (Public School Code).

The proper administration of a school district requires school board members to establish and maintain internal controls to provide reasonable assurance that specific school district objectives will be achieved. School board members are responsible for the adoption and use of policies and procedures that promote the economical and efficient conduct of assigned duties and responsibilities. In completing our audit, we obtained an understanding of the school district's internal controls as they relate to the district's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit. We evaluated and tested documents, files, reports, agreements, and systems, and performed analytical procedures to the extent necessary to satisfy our audit objectives. Additionally, we interviewed selected administrators and operations personnel.

As noted in the Background section of this report, the Department of Education generally pays state subsidies and reimbursements in the fiscal year subsequent to the fiscal year in which the district incurs the qualifying cost. Because we use the payment confirmations, annual financial reports and certified audit data as supporting documentation of actual payments received in the performance of our audit, we cannot begin the field work of a school district's operations for a given year until after this information becomes available.

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

CONCLUSIONS – OBJECTIVE NO. 1

The first objective of our audit was to determine if the Mt. Lebanon School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

The results of our tests indicate that with respect to the items tested, the Mt. Lebanon School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit, except as noted in the finding listed below.

Additionally, we identified internal control weaknesses as noted in the observations included in Objective Nos. 1 and 2 of this report. The finding, observation and recommendations were reviewed with representatives of the Mt. Lebanon School District and their comments have been included in this report.

Finding – Board Member Failed to File Statement of Financial Interests Timely in Violation of the Ethics Act

Our review of district records found that one school director failed to file a Statement of Financial Interests for both the 2005 and 2006 calendar years.

Public office is a public trust sustained by assuring the people of the impartiality and honesty of public officials and public employees. Accordingly, the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1101 *et seq.*, requires all candidates for public office, public officials and certain public employees to complete a Statement of Financial Interests for the preceding calendar year annually, no later than May 1st of each year they hold their positions and of the year after leaving such positions.

The Ethics Act specifically requires public officials and certain public employees to disclose matters on the Statement of Financial Interests that currently or potentially create conflicts of interest with their public duties. When a public official does not properly file a required disclosure, the public cannot examine the disclosure in order to determine whether conflicts of interest exist. This in turn erodes the public's trust. In addition, the board members' failure to file the Statement of Financial Interests constituted a violation of the Ethics Act.

Section 1104(d) of the Ethics Act, 65 Pa.C.S. § 1104(d), which pertains to the failure to file the required Statement of Financial Interests, provides, in pertinent part, as follows:

No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests . . .

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Finding (Continued)

Section 1109(b), 65 Pa.C.S. § 1109(b) provides, in pertinent part, that any person who is required to file a Statement of Financial Interests but fails to do so may be found guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than one year.

Section 1109(f), 65 Pa.C.S. § 1109(f) provides, in pertinent part, that any person who is required to file a Statement of Financial Interests but fails to do so in a timely manner or who files a deficient Statement of Financial Interests may be subject to a civil penalty, at a rate of not more than \$25 for each day such statement remains delinquent or deficient, with a maximum penalty under this chapter of \$250.

In August of 2007, after we notified the district that the statements were not filed, the district contacted the director, and he submitted statements for 2006 and 2005. As noted previously, according to the provisions of the Ethics Act, these statements were filed late.

A copy of this finding will be forwarded to the State Ethics Commission for additional review and investigation, as it deems necessary.

Recommendations

The board should:

- seek the advice of its solicitor in regard to the board's responsibility when a board member fails to file a Statement of Financial Interests; and
- develop procedures to ensure that all individuals required to file Statements of Financial Interests do so in compliance with the Ethics Act.

Response of Management

Management provided a written response agreeing with the finding, and stating:

The district is aware of the legal requirements for all board members and administrators to file Statement of Financial Interest forms on an annual basis. The district solicits completed forms from all administrators and board members beginning in January of each year, and in this instance sent additional reminder notices for both years.

We will continue to work with administrators and Board members to file required forms on a timely basis.

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Observation – Memorandum of Understanding Not Updated Timely

Our review of the district's records found that the district had on file a properly signed Memorandum of Understanding (MOU) between itself and the Mt. Lebanon Police Department; however, the MOU has not been updated since July 16, 1996.

Section 1303-A(c) of the Public School Code provides:

All school entities shall develop a memorandum of understanding with local law enforcement that sets forth procedures to be followed when an incident involving an act of violence or possession of a weapon by any person occurs on school property. Law enforcement protocols shall be developed in cooperation with local law enforcement and the Pennsylvania State Police.¹

Additionally, the Basic Education Circular issued by the Department of Education (DE) entitled Safe Schools and Possession of Weapons, contains a sample MOU to be used by school entities. Section VI, General Provisions item (B) of this sample states:

This Memorandum may be amended, expanded or modified at any time upon the written consent of the parties, but in any event must be reviewed and re-executed within two years of the date of its original execution and every two years thereafter. (Emphasis added)

The district's failure to update MOUs with its local law enforcement agency could result in a lack of cooperation, direction, and guidance between district employees and law enforcement agencies if an incident occurs on school property, at any school sponsored activity, or any public conveyance providing transportation to or from a school or school sponsored activity. This internal control weakness could have an impact on law enforcement notification and response, and ultimately the resolution of a problem situation.

Recommendation

The school board and district administrators, in consultation with the district's solicitor, should review and update the current MOU between itself and its local law enforcement agency.

¹ 24 P.S. § 13-1303-A(c).

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Observation (Continued)

Response of Management

Management provided a written response disagreeing with the observation, stating:

As acknowledged by the auditor in our discussions, there is no legal requirement that the MOU have a two year term. Accordingly, the district objects to any implication by this finding that any wrong doing was discovered as a part of the audit. As legally required, the district worked with the Mt Lebanon Police Department to structure an MOU. It does not have a sunset provision since we wanted a document which would meet legal requirements without expiration. The MOU, approved by the board, meets legal requirements. While we understand that the recommendation to approve this document every two years is intended to bring safety to everyone's attention, we believe our formal annual safety meetings with Police and Fire departments, where we review and update the extensive safety and security procedures that we jointly developed with those departments, is a much more effective way to keep these processes current and to keep communication open than would be accomplished by biannual approval of the MOU by the School Board.

Auditor's Conclusion

There is no implication of wrong doing intended in our observation. However, for the reasons noted in our observation, we believe that it is advisable to periodically update and re-execute MOUs to document the procedural updates referred to in management's response. We regard the two-year renewal period suggested in DE's sample MOU as a reasonable one.

MT. LEBANON SCHOOL DISTRICT
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CONCLUSIONS - OBJECTIVE NO. 2

The second objective of our audit was to determine if the Mt. Lebanon School District took appropriate corrective action to address the finding, observation and recommendations contained in our prior audit report for the years ended June 30, 2004, 2003, 2002 and 2001, and in certain areas extending beyond June 30, 2004. The status of this finding and observation, along with a description of the school board's disposition of each recommendation, was determined by one or more of the following procedures:

- reviewing the board's written response, dated October 17, 2005, to the Department of Education, replying to the Department of the Auditor General's audit report for the years ended June 30, 2004, 2003, 2002 and 2001 and in certain areas extending beyond June 30, 2004;
- performing tests as a part of, or in conjunction with, the current audit; and
- questioning appropriate district personnel regarding the prior years' finding, observation and recommendations.

Finding – The District Did Not Provide Adequate Termination Provisions in the Superintendent's Employment Contract, Leading to a Costly and Confidential Buy-Out of the Contract; It is Questionable whether this Buy-Out was in the Best Interest of the Taxpayers of the District

Our prior audit found that on November 8, 2004, the board approved a Separation and Release Agreement (Agreement) with the former superintendent, which immediately terminated the superintendent's employment with the district after only sixteen months of service. The Agreement required the district to provide the following to the superintendent:

- the compensation and benefits required by the contract until July 1, 2005;
- the sum of \$420,000, paid in equal amounts of \$140,000 each, on July 1st of the years 2005, 2006 and 2007;
- health care benefits as described in the original contract until the Superintendent reaches the age of 65 or until the superintendent secures another position which provides health care benefits;
- vacation time accumulated from the 2003-04 and 2004-05 school years, prorated to the time of termination; and

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

Finding (Continued)

- reimbursement for the superintendent's legal fees up to a maximum of \$5,000.

The Agreement also contained the following provisions:

- the parties promised not to sue each other;
- the parties acknowledged that the "Superintendent has performed the duties and obligations pursuant to the Contract"; and
- the parties were prohibited from commenting on the reasons for the termination.

The failure of the district to include appropriate termination provisions in its original employment contract with the superintendent caused the district to have to negotiate an expensive and confidential buy-out of that contract.

We recommended that the district:

- ensure that future employment contracts contain adequate termination provisions sufficient to protect the interests of the taxpayers of the school district and the district itself;
- avoid granting an employment contract to a first-time superintendent or assistant superintendent of more than the three-year minimum required by law, which would mitigate losses to the district in the event of termination;
- provide as much information as possible to the taxpayers of the school district explaining the reasons for the termination of the superintendent and justifying the district's expenditure of a significant amount of public funds to buy-out the superintendent's contract; and
- ensure that future termination agreements do not contain confidentiality requirements that would prevent the district from informing taxpayers and others of the reasons for a termination.

The board and district provided a lengthy, detailed response, which was also included in our prior audit report as the response of management, disagreeing with the finding. The main points of the response were as follows:

- the district felt that it provided termination provisions in the former superintendent's contract;

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

Finding (Continued)

- the confidentiality provisions of the Agreement were insisted upon by the former superintendent and her counsel, as was the statement that the superintendent had performed her duties pursuant to the contract. Furthermore, the district stated it would prefer to explain the underlying factors to its resident and the auditors, but to do so would expose the district and its taxpayers to potentially significant liability; and
- the district understands the suggestion in the report concerning three-year terms for first-time superintendents, but also notes that the recommendation is not based on any failure to comply with law.

In our prior audit report, we provided the following conclusion in response to management's objections, which we here reiterate:

- had the district provided the auditors with an explanation of why the superintendent was terminated, as was requested several times, we would have been able to determine whether or not the termination was appropriate; and
- the merits of the school board's decision will never be known by the district's residents and taxpayers so long as the reasons for ending the superintendent's employment with the district are not fully disclosed.

Our current audit found that subsequent to the termination of the former superintendent the district's assistant superintendent accepted a three-year contract to serve as superintendent. The contract was to run through the end of the 2007-08 school year. However, the individual elected to retire at the end of the 2006-07 school year. There was no buy-out of this contract. The individual was paid for unused leave in accordance with his contract and district policy; no other salary or stipends were paid for the year remaining on the contract.

On May 30, 2007, the district entered into an agreement with its current superintendent. Our review of the contract found that the contract was for four years, commencing July 1, 2007, and terminating June 30, 2011, and the terms of the contract provide that:

- should the superintendent's employment be terminated "for cause" by the school district for the reasons specified in the Public School Code, or by the superintendent himself, all salary and benefits will cease immediately upon the date of such termination;

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Finding (Continued)

- should the superintendent's employment be terminated by the school district for reasons other than those specified in the Public School Code, the superintendent will continue to receive his base salary for either one year after the effective date of the termination, or until the end of the contract term, whichever is earlier; and
- the district's liability for payments after termination other than for cause shall be reduced by the amounts earned by the superintendent either directly or indirectly, as an employee, consultant, owner, partner or otherwise, during the term of such continued base salary.

We note that the district approved a contract that will limit the potential liability to the district should termination be necessary. While the district did not adhere to our recommendation that it grant the minimum three-year contract to a first-time superintendent, the district also did not agree to the maximum five-year contract permitted by state law.

Response of Management

Management did not have anything to add to its comments regarding this issue in the prior audit.

Observation – Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications

Our prior audit found that neither the school district nor its contracted transportation provider had any written policies or procedures in place to notify them if their current employees were charged with or convicted of a criminal offense which, although it would not legally prohibit the district from continuing to employ the individual, nonetheless should in our opinion be considered for the purpose of determining the individual's continued suitability to be in direct contact with children.

We recommended that the school board and district administrators consider, in consultation with the district's solicitor:

- developing a process to determine, on a case-by-case basis, whether prospective and current employees of the district or the district's contractors have been charged or convicted of crimes that, even though not disqualifying under state law, affect their suitability to have direct contact with children; and

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

Observation (Continued)

- implementing written policies and procedures to ensure the district is notified when drivers are charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children.

The board provided a lengthy, detailed response, which was also contained in our prior audit report as the response of management, disagreeing with the observation. The main points of the response stated that the district:

- objected to the implication in the title that there are weaknesses in district policies, since the draft report expressly stated that the district was in compliance with law;
- was willing to discuss ongoing clearances with its contractor, but absent of a change in the law to require ongoing clearances, the district did not know if the contractor or its employees would agree; and
- believed that if this observation was to become the rule for all school districts, then a statutory change should be sought rather than citing school districts for complying with laws as they currently exist.

Our current audit found that, after discussing the observation, the board chose not to implement any additional policies and procedures regarding bus driver clearances. Therefore, based on the results of our current audit, we concluded that the district did not take appropriate corrective action to address this observation, and we again make the same recommendations as in our prior report.

Response of Management

Management again disagreed with our observation, objecting to the implication that there are weaknesses in district policies since the report expressly states that the district is in compliance with the law. The response further states that there is currently no legal mechanism for the district to require additional clearances from existing staff.

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

Observation (Continued)

Auditor's Conclusion

We recognize that the district has satisfied the minimum legal requirements as set forth in the Public School Code and the Child Protective Services Law. However, we continue to recommend that the district implement our prior recommendations in order to be notified when current or prospective employees are charged with or convicted of a criminal offense which, although it would not legally prohibit the district from employing or continuing to employ the individual, should be considered for the purpose of determining the individual's suitability to be in direct contact with children.

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

SUPPLEMENTARY INFORMATION
[UNAUDITED]

Schedule of State Revenue Received

The district reported it received state revenue of \$11,000,869 and \$10,756,581, respectively, for the years ended June 30, 2006 and 2005, as detailed in the following schedule:

	<u>2006</u>	<u>2005</u>
STATE REVENUE		
Basic Education	\$ 5,135,390	\$ 5,034,709
Charter Schools	35,080	29,080
Tuition for Orphans and Children Placed in Private Homes	72,025	82,170
Homebound Instruction	444	560
Special Education	2,367,508	2,353,469
Transportation	76,932	75,772
Rental and Sinking Fund Payments	936,167	784,507
Health Services	125,000	130,000
Social Security and Medicare Taxes	1,367,798	1,365,492
Retirement	630,892	647,189
Pennsylvania Accountability Grant	<u>253,633</u>	<u>253,633</u>
<u>TOTAL STATE REVENUE</u>	<u>\$11,000,869</u>	<u>\$10,756,581</u>

MT. LEBANON SCHOOL DISTRICT
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SUPPLEMENTARY INFORMATION
[UNAUDITED]

Description of State Revenue Received (Source: Pennsylvania Accounting Manual)

Basic Education

Revenue received from Commonwealth appropriations as subsidy for basic education.

Charter Schools

Revenue received from the Commonwealth to fund the Charter Schools initiative. The state subsidy received includes revenue for startup funding, nonpublic transfers, and transitional grants.

Tuition for Orphans and Children Placed in Private Homes

Revenue received from the Commonwealth as tuition for children who are orphans and/or children who are placed in private homes by the court. Payments are made in accordance with Sections 1305 and 1306 of the Public School Code.

Homebound Instruction

Revenue received from the Commonwealth as subsidy for expenses incurred for instruction of homebound pupils. Payments are made in accordance with Section 2510.1 of the Public School Code.

Special Education

Revenue received from the Commonwealth as subsidy for expenditures incurred for instructing school-age special education students.

Transportation

Revenue received from the Commonwealth as subsidy for pupil transportation expenditures and/or board and lodging in lieu of transportation. Payments for pupil transportation are made in accordance with Section 2541 of the Public School Code. Payments for board and lodging in lieu of transportation are made in accordance with Section 2542 of the Public School Code. This revenue also includes subsidy for the transportation of nonpublic and charter school students.

Rental and Sinking Fund Payments

Revenue received from the Commonwealth as a full or partial subsidy payment for approved lease rentals, sinking fund obligations, or any approved district debt obligations for which the Department of Education has assigned a lease number.

MT. LEBANON SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT

SUPPLEMENTARY INFORMATION
[UNAUDITED]

Health Services

Revenue received from the Commonwealth as subsidy for health services. Payments are made in accordance with Section 2505.1 of the Public School Code and include revenue for medical, dental, nurse and health services.

Social Security and Medicare Taxes

Revenue received from the Commonwealth as subsidy designated as the Commonwealth's matching share of the employer's contribution of the Social Security and Medicare taxes for covered employees who are not federally funded.

Retirement

Revenue received from the Commonwealth as subsidy designated as the Commonwealth's matching share of the employer's contribution of retirement contributions for active members of the Public School Employees' Retirement System.

Other Program Subsidies/Grants

Revenue received from the Commonwealth not specified elsewhere.



BUREAU OF SCHOOL AUDITS
AUDIT REPORT DISTRIBUTION LIST

This report was initially distributed to the superintendent of the school district, the board members, our website address at www.auditorgen.state.pa.us, and the following:

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Thomas E. Gluck
Acting Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Robert M. McCord
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Ms. Barbara Nelson
Director, Bureau of Budget and Fiscal Management
Department of Education
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Harrisburg, PA 17105

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Director of Research Services
Pennsylvania School Boards Association
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BUREAU OF SCHOOL AUDITS

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Representative James Roebuck
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208 Irvis Office Building
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Representative Paul Clymer
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Mr. John J. Contino
Executive Director
State Ethics Commission
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Harrisburg, PA 17108

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, Pennsylvania 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.