

2011

Ensuring Public Trust at the Municipal Level: Inspectors General Enter the Mix

Patricia E. Salkin

Touro Law Center, psalkin@tourolaw.edu

Zachary Kansler

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>

 Part of the [Legal Ethics and Professional Responsibility Commons](#), and the [Other Law Commons](#)

Recommended Citation

75 Alb. L. Rev. 95 (2011-2012)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

ENSURING PUBLIC TRUST AT THE MUNICIPAL LEVEL: INSPECTORS GENERAL ENTER THE MIX

Patricia Salkin & Zachary Kansler***

I. INTRODUCTION

Inspectors General represent one more strategy in a significant national effort to gain greater oversight and accountability over governmental agencies and operations. Although federal, state, and local government officials are subject to applicable codes of ethical conduct and are under the jurisdiction of ethics enforcement agencies created pursuant to these laws, ethics oversight agencies are limited in the breadth and scope of covered activities. Ethics enforcement agencies may, following investigations and hearings, impose civil penalties on those found to have violated ethics laws; and ethics agencies may refer appropriate matters to attorneys general or district attorney offices for further inquiries into criminal wrongdoing. The public trust, however, also encompasses notions of protecting the public fisc, meaning avoiding fraud, waste, and abuse of precious government dollars.¹ The ability to audit governmental operations typically rests with the Government Accountability Office at the federal level² and various state level comptroller offices that may have dual jurisdiction to audit agencies and programs at both the state and local levels. However, the use of an auditor alone may be insufficient to fully guard the public's interest, as this authority is typically limited to financial and performance audits. In contrast, an office of inspector general combines the duty of an auditor to conduct financial and performance audits with the authority to further investigate fraud, waste, and misuse of

* Patricia E. Salkin is the Raymond and Ella Smith Distinguished Professor of Law, Associate Dean, and Director of the Government Law Center at Albany Law School.

** Zachary Kansler, J.D. Candidate, 2012, Albany Law School; Research Assistant to Dean Salkin.

¹ See 31 U.S.C. § 705(a)(3) (2011) (listing the purposes of the Federal Inspector General's office).

² *Id.* § 705(a).

government assets.³

The reported lack of ethical conduct at the municipal level in jurisdictions across the country is appalling.⁴ Although, as one prominent municipal ethicist points out, most municipal officials are basically good and honest people trying to do the right thing;⁵ the reality is that hardly a day goes by without media attention spotlighting allegations of abuse of the public trust by elected and appointed local government officials. Therefore, it is not surprising

³ Compare DENVER, COLO., REV. MUN. CODE § 20-275(a) (2011) ("The auditor shall conduct or cause to be conducted financial and performance audits of the City and County of Denver . . ."), with NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011) ("The purpose of this section is to establish a full-time program of oversight to prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in city programs and operations. This oversight includes audits, criminal and administrative investigations, inspections and evaluations, and monitoring."). In a 1978 Senate Report concerning the Inspector General Act of 1978, the Senate reported that an office of the inspector general:

[P]rovides a single focal point in each major agency for the effort to deal with fraud, abuse and waste in Federal expenditures and programs. Without that focal point, the linkage between auditing and investigating is likely to be ineffective. Frequently, several decentralized audit units may each have jurisdiction over some elements of a wide-ranging programmatic fraud and not be able to pursue them to their conclusion. . . . As Deputy Assistant Attorney General Keeney testified: The combining of audit and investigation functions under an Inspector General in the respective departments and agencies virtually ensures that the performance of the agencies will improve.

S. REP. NO. 95-1071, at 6 (1978), reprinted in 1978 U.S.C.C.A.N. 2676, 2681-82.

⁴ See, e.g., Letter from Dennis F. Dycus, Dir., Div. of Mun. Audit, to Donnie Poston, Dir. of Schs., Campbell Cnty. Sch. Sys. (May 26, 2011), available at <http://www.comptroller1.state.tn.us/repository/MA/Investigative/jacksboroelementaryschool.pdf> (disclosing that an audit conducted by the Tennessee Comptroller of the Treasury uncovered the school principal of the Jacksboro Elementary School engaged in self-dealing, nepotism, and theft during her time in office); Nancy Flake, *Ex-County Employee to Serve Five Years Max for Bribery*, (June 23, 2011), http://www.yourhoustonnews.com/courier/news/article_eb892fa0-6265-52ec-bbc3-8e6b3fclad43.html ("A woman who formerly served as second in command for Montgomery County Custodial Services will spend several years in prison for taking bribes from probationers in exchange for approving unperformed community service hours."); Michael B. Marois & James Nash, *California Small-Town Officials Collect Twice as Much as Brown's \$174,000*, BLOOMBERG (June 13, 2011), <http://www.bloomberg.com/news/2011-06-13/california-small-town-officials-collect-twice-as-much-as-brown-s-174-000.html> (discussing high salaries paid to city managers, as approved by city councils, to the chagrin of the populous); *Survey: Ethics Violations an Issue at all Levels*, USATODAY.COM (Jan. 29, 2008), http://www.usatoday.com/news/washington/2008-01-29-ethics-survey_N.htm ("At the local level, 63% of government employees observed at least one type of misconduct, ranging from abusive behavior by superiors to bribery."); David Williams, *Councilwoman Judy Green: 'I am Not Going to Resign,'* (June 11, 2011), <http://www.wave3.com/story/14888404/councilwoman-judy-green-i-am-not-going-to-resign> ("Relatives of Dr. Green who participated in the Green Clean Team received more pay than non-relatives for the same work," Jonathan Ricketts, Louisville Metro Ethics Committee chair said Friday.).

⁵ Mark Davies, Exec. Dir., N.Y.C. Conflicts of Interest Bd., Address at IV Global Forum on Fighting Corruption: A Practical Approach to Establishing and Maintaining a Values-Based Conflicts of Interest Compliance System (June 7-10, 2005), available at http://www.nyc.gov/html/conflicts/downloads/pdf2/international/a_practical_approach_to_establishing_and_maintaining_article.pdf.

that the public has sought and demanded additional methods of monitoring the conduct of public officials.⁶ Part II begins with a very brief historical overview of the emergence of the inspector general concept in Europe and its adoption in the United States at the federal and state levels. The article continues in Part III with a focused examination of the reasons behind the creation of inspectors general at the municipal level and the various models or forms that have emerged in the establishment, jurisdiction, and operation of these offices, as well as budgetary issues. Part IV examines the interplay between inspectors general, ethics commissions, and law enforcement agencies. Part V considers the cost-benefit analysis of the municipal inspector general, exploring whether the expense can be justified by the savings and other associated benefits. Part VI concludes with a recommendation that, in the current era of scarce fiscal resources, especially at the local level, municipalities should consider whether the establishment of an inspector general office can assist in not only furthering a commitment to ethical government, but in identifying cost-savings for the locality.

II. HISTORICAL PERSPECTIVE

The inspector general concept emerged during the reign of King Louis XIV in France.⁷ The inspector general position was established within the military, being charged with inspecting the army, examining records and books, and removing those who were no longer fit to serve.⁸ The French inspectors general would evaluate the army and report directly to the King once a month.⁹ This inspector general function spread throughout European armies, and eventually to the United States.¹⁰

The historical underpinnings of the American inspector general were fraught with issues of ineffectiveness and quick turnover.¹¹

⁶ In the past few years alone, numerous municipal inspectors general have been created. ALBUQUERQUE, N.M., CODE OF ORDINANCES §§ 2-17-1-12-17-12 (2010) (created 2010); COOK COUNTY, ILL., CODE OF ORDINANCES §§ 2-281-2-293 (2011) (created 2007); JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.201-20.207 (2011) (created 2009); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120 (2011) (created 2006); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES §§ 2-421-2-432 (2011) (created 2009).

⁷ DAVID A. CLARY & JOSEPH W. A. WHITEHORNE, *THE INSPECTORS GENERAL OF THE UNITED STATES ARMY: 1777-1903* 4 (1987).

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* at 4, 19 (appointing the first inspector general of U.S. cavalry in 1777 through a congressional resolution). George Washington envisioned the inspector general to have a limited role as drillmaster of the Army. *Id.* at 24.

¹¹ See *id.* at 19-21. The first American “inspector general” within the Army was

These first inspectors general had limited roles,¹² and were soon replaced in December 1777 by two inspectors general with jurisdiction over the Army as a whole, having the responsibility to review and instruct the troops, and to review and report on numerous topics including inventory, rations, and money spent.¹³ Under this broad job description, the first individual to actually take the post was the Prussian immigrant Friedrich W. A. von Steuben, more commonly known as Baron von Steuben.¹⁴

From this advancement in military accountability emerged the use of inspectors general on the civilian side of the American government.¹⁵ The modern inspector general model can be traced to the United States Department of Agriculture ("U.S.D.A.") scandal in the 1960's: the Billy Sol Estes controversy.¹⁶ This controversy involved Billy Sol Estes, an American financier and Ponzi scheme architect,¹⁷ who "created a financial empire by deceiving various Department of Agriculture divisions and investigative organizations with respect to such things as grain storage, nonexistent fertilizer tanks, and cotton allotments."¹⁸ A congressional investigation led by Representative L.H. Fountain led to the finding that the fraudulent activities could have been observed by staff had there been a coordinated and competent investigatory effort.¹⁹ As a result of this finding, the U.S.D.A. administratively created an inspector general who reported directly to the Secretary of the U.S.D.A.²⁰

Lieutenant-Colonel Mottin de la Balme. *Id.* at 19. Balme, a retired French officer who crossed the Atlantic to fight for the American cause, was appointed by congressional resolution in 1777 to the post of inspector general of the Army's cavalry. *See id.* However, he resigned with haste, as he soon felt slighted by his perceived lowness of rank given his prominent military career in France. *Id.* Soon thereafter, another French officer was given an appointment as an inspector general of "ordinance and military manufactories" within the Army, but he died before he could effectuate his post. *Id.* at 20-21.

¹² CLARY & WHITEHORN, *supra* note 7, at 21.

¹³ *Id.* at 25-26 (stating that the creation of inspectors general was approved by resolution of the Continental Congress).

¹⁴ *Id.* at 32, 39, 43.

¹⁵ *See* Ryan M. Check & Afsheen John Radsan, *One Lantern in the Darkest Night: The CIA's Inspector General*, 4 J. NAT'L SECURITY L. & POL'Y 247, 249-50 (2010).

¹⁶ *Id.*

¹⁷ *See Investigations: Decline & Fall*, TIME, May 25, 1962, at 24, 24-25, available at <http://www.time.com/time/magazine/article/0,9171,896222-1,00.html>.

¹⁸ William S. Fields & Thomas E. Robinson, *Legal and Functional Influences on the Objectivity of the Inspector General Audit Process*, 2 GEO. MASON INDEP. L. REV. 97, 101 (1993).

¹⁹ *See id.*; Check & Rasdan, *supra* note 15, at 249-50.

²⁰ PAUL C. LIGHT, MONITORING GOVERNMENT: INSPECTORS GENERAL AND THE SEARCH FOR ACCOUNTABILITY 31, 32 (1993). The first inspector general of the U.S.D.A. was Lester P. Condon, as appointed on July 19, 1962 by Secretary Orville L. Freeman. *Id.*; Henry B. Arthur, *Impact of Government Agricultural Programs upon Market Structures and Functions*,

More than a decade later, and shortly after the statutory creation of offices of the inspector general in two different departments,²¹ Congress passed the Inspector General Act of 1978.²² The necessity for the Act was due to a growing concern “that fraud, abuse and waste in the operations of Federal departments and agencies and in federally-funded programs [were] reaching epidemic proportions.”²³ Such waste included the erroneous spending of \$440 million through the food stamp program in one fiscal year, as well as the nonperformance of government contracts totaling over \$2 million.²⁴ Additionally, the Senate report accompanying the legislation indicated that the newly formed Inspector General of the Department of Health, Education, and Welfare (“HEW”) “estimated that between \$6.3 and \$7.4 billion of HEW funds were misspent annually as a result of fraud, abuse and waste,” totaling five percent of HEW’s budget.²⁵

Given these cases, as well as other instances of fraud, waste, and abuse, Congress believed statutory offices of inspector general should be required, as previous attempts to ensure proper performance of government auditing and investigation had clearly failed.²⁶ Precipitated by this need, the new law greatly expanded the use of inspectors general at the federal level, establishing statutory offices in the Departments of Agriculture, Commerce, Housing and Urban Development, Interior, the Department of Labor, Transportation, Community Services Administration, Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, Small Business Administration, and the Veterans’

in 2 FUTURES TRADING SEMINAR: INFLUENCE OF ENVIRONMENTAL FACTORS 3, 13 (1963); *U.S. Suspends Aide in Texas Rice Case*, N.Y. TIMES, July 20, 1962, at 8; see also *Inspector General Historical Data: Federal Departments*, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY 2, 10 (2007), <http://www.ignet.gov/igs/ighistory.pdf> (providing a list of inspectors general across federal administrative agencies since the inception of the position in each).

²¹ Act of Oct. 15, 1976, Pub. L. No. 94-505, 90 Stat. 2429, 2429, *repealed by* Inspector General Act Amendments of 1988, Pub. L. No. 100-504, Tit. 1, § 102(e)(2), 102 Stat. 2515 (Department of Health, Education, and Welfare); Act of Aug. 4, 1977, Pub. L. No. 95-91, 91 Stat. 565, 575, *repealed by* Pub. L. No. 100-504, Tit. I, § 102(e)(1)(A), 102 Stat. 2515 (Department of Energy). These two offices of inspector general, Department of Health, Education, and Welfare, and Department of Energy, were the first such offices statutorily created on the federal level. See FREDRICK M. KAISER, CONG. RESEARCH SERV., ORDER CODE 98-379, STATUTORY OFFICES OF THE INSPECTOR GENERAL: PAST AND PRESENT 4 (2003).

²² Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (1978).

²³ S. REP. NO. 95-1071, at 4 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2679.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 5, *reprinted in* 1978 U.S.C.C.A.N. at 2680.

Administration.²⁷ Subsequent amendments²⁸ created offices of the Inspector General in other agencies, such as the Federal Deposit Insurance Commission, Nuclear Regulatory Commission, and Homeland Security.²⁹

²⁷ Inspector General Act of 1978 § 2. Though not specially mentioned, it appears that the departments and agencies included under the Act were selected based upon satisfying the criteria of spending over \$100 billion annually and employing more than 600,000 employees. S. REP. NO. 95-1071, at 14, *reprinted in* 1978 U.S.C.C.A.N. at 2689. Four such departments and agencies—Justice, Treasury, State, and Defense—were excluded from this requirement. *Id.* The Senate agreed with the House of Representatives on the omissions of the Departments of Justice and Treasury, as both did not have “major programmatic responsibilities,” and also agreed with the omission of the Department of State as the auditing standards were, at the time, recently upgraded. *Id.* at 14–16, *reprinted in* 1978 U.S.C.C.A.N. at 2689–91. The Senate disagreed with the omission of the Department of Defense, as deficiencies experienced by the Department of Defense were similar to the deficiencies experienced in covered departments and agencies. *Id.* at 24, *reprinted in* 1978 U.S.C.C.A.N. at 2699.

²⁸ The primary substantive amendments to the Inspector General Act of 1978 occurred in 1988 and 2008. Inspector General Act Amendments of 1988, Pub. L. No. 100-504, 102 Stat. 2515; Inspector General Reform Act of 2008, Pub. L. No. 110-409, 122 Stat. 4302. The 1988 Act added the Departments of Energy, Health and Human Services, Justice and Treasury, the Federal Emergency Management Agency, Nuclear Regulatory Commission, Office of Personnel Management, and the Railroad Retirement Board to the list of federal entities required to have an inspector general. Inspector General Act Amendments of 1988 § 102(c). This act also implemented required standards to ensure the uniformity and reliability of inspector general reports. *Id.* § 106. The 2008 Act was created “to promote independence and accountability for Inspectors General in executive branch departments and agencies.” H.R. REP. NO. 110-354, at 8 (2008), *reprinted in* 2008 U.S.C.C.A.N. 1795, 1796. In fact, 2008 reforms prohibited cash bonuses, required separate legal counsel for the inspectors general, and created the Council of the Inspectors General on Integrity and Efficiency. Inspector General Reform Act of 2008 §§ 5–7. In addition to the two primary amendments of 1988 and 2008, various amendments added agencies and departments to the list requiring the implementation of an office of the inspector general. International Security and Development Cooperation Act of 1981, Pub. L. No. 97-113, 95 Stat. 1519 (Agency for International Development); Department of Defense Authorization Act, 1983, Pub. L. No. 97-252, 96 Stat. 718 (Department of Defense); Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405 (Department of State); Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853 (United States Information Agency); Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (creating an independent inspector general in the Department of the Treasury and creating a Treasury Inspector General for Tax Administration).

²⁹ 5 U.S.C. app. § 12 (2011). Amending statutes have widened inspector general implantation to the Departments of

Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, the Veterans’ Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank, or the

Under the Inspector General Act of 1978, as amended, the inspectors general of the various federal agencies and departments are “to conduct and supervise audits and investigations relating to the programs and operations.”³⁰ When conducting such activities, the various inspectors general are to promote the efficiency, effectiveness, and economy of government administration, while also detecting fraud and abuse of government programs.³¹ Additionally, the inspectors general must make recommendations to improve efficiency and reduce abuse,³² as well as make semiannual reports to the head of the agency or department involved, which are then forwarded to Congress.³³

Soon after the broad implementation of inspectors general at the federal level, Massachusetts started a trend in the state inspector general movement, creating the first state office of inspector general in 1980; this was in the wake of the troubling findings of the Ward Commission,³⁴ which specifically found massive fraud and waste in state and municipal government.³⁵ Other states soon followed, enacting statewide³⁶ or agency-based inspector general offices.³⁷ Today, almost half the states have either statewide inspectors

Commissions established under section 15301 of title 40, United States Code, as the case may be.

Id.

³⁰ *Id.* § 2.

³¹ Inspector General Act of 1978 § 2.

³² 5 U.S.C. app. § 4(a)(3).

³³ *Id.* § 5.

³⁴ MASS. GEN. LAWS ch.12A, § 1–15 (2011) (promulgated in 1980); 2001 MASS. INSPECTOR GEN. ANN. REP. 1; Dave Denison, *A Usable Past: In 1980, the Ward Commission Exposed a Culture of Corruption and Brought About Far-Reaching Reforms. Can its Lessons be Applied Today?*, BOSTON GLOBE, July 23, 2006, at E1.

³⁵ MASS. SPECIAL COMM’N CONCERNING STATE & CNTY BLDGS., FINAL REPORT TO THE GEN. COURT OF THE SPECIAL COMM’N CONCERNING STATE AND CNTY. BLDGS. *passim* (1980). This report provided that “[i]n the award of contracts for the construction of state and county buildings, corruption has been a way of life.” *Id.* at 21. In fact, architecture contracts were received by purchasing them, and not by merit. *Id.* at 22. Indeed, “[i]t was not a matter of few crooks, some bad apples which spoiled the lot. The pattern is too broad and pervasive for that easy excuse.” *Id.* Additionally, the Commission noted that whether by “genteel extortion or discreet bribery,” political influence assuaged by monetary contributions proved to be the formula required for doing business in Massachusetts. *See id.* at 24–26.

³⁶ *See* FLA. STAT. § 14.32 (2011); 5 ILL. COMP. STAT. 430/20-10 (2011); LA. REV. STAT. ANN. § 49:220.22 (2011); N.Y. EXEC. LAW §§ 51–55 (McKinney 2011); OHIO REV. CODE ANN. § 121.42 (West 2011).

³⁷ *See* FLA. STAT. § 20.055(2) (2011) (“The Office of Inspector General is hereby established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.”); N.Y. PUB. HEALTH LAW § 31(1) (McKinney 2011) (creating the Office of the Medicaid Inspector General within the Department of Health of the State of New York).

general or agency-specific inspectors general, or both.³⁸

In response to this growing community of inspectors general, in 1996, the Association of Inspectors General was formed

to foster and promote public accountability and integrity in the general areas of prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste and abuse, through policy research and analysis; standardization of practices, policies, conduct and ethics; encouragement of professional development by providing and sponsoring educational programs; and the establishment of professional qualifications, certifications, and licensing.³⁹

In addition to providing training and education, the Association promulgated model legislation for establishing offices of inspectors general.⁴⁰ It is also worth noting that the profession of the inspector general has become specialized to the point that colleges are now offering advanced degrees in the field.⁴¹

III. THE ADVENT OF THE MUNICIPAL INSPECTOR GENERAL

Although there is no record documenting which municipality created the first inspector general at the local level, New York City was among the earliest to institute a similar office, creating in 1873 the Office of Commissioner of Accounts, now known as the Department of Investigation.⁴² Other municipalities eventually followed suit and, while there is no published official accounting of municipal inspectors general offices, such offices exist across the country, in municipalities including Albuquerque, New Mexico; Chicago, Illinois; Cook County, Illinois; Jacksonville, Florida; Miami-Dade County, Florida; Montgomery County, Maryland; New Orleans, Louisiana; Palm Beach County, Florida; and Yonkers, New

³⁸ E-mail from Fred Palm, Exec. Dir., Ass'n of Inspectors Gen., to Zachary Kansler, J.D. Candidate 2012, Albany Law School (June 24, 2011) (on file with author).

³⁹ *About*, THE ASS'N OF INSPECTORS GEN., <http://inspectorsgeneral.org/> (follow "About") (last visited Oct. 20, 2011).

⁴⁰ *Model Legislation for the Establishment of Offices of Inspector General*, THE ASS'N OF INSPECTORS GEN. (Aug. 22, 2002), <http://inspectorsgeneral.org/> (follow "Model Legislation for IG Offices" hyperlink).

⁴¹ *See, e.g., Inspector General Track*, JOHN JAY COLLEGE, <http://jjcweb.jjay.cuny.edu/mpa/> (follow "Graduate and Professional Studies" hyperlink; then follow "Master's Programs" hyperlink; then follow "Public Administration" hyperlink; then follow "Inspection and Oversight" hyperlink; then follow "Inspector General Track" hyperlink) (last visited Oct. 20, 2011).

⁴² *About DOI*, DEPARTMENT OF INVESTIGATION, CITY OF NEW YORK, http://www.nyc.gov/html/doi/html/about/history_early.shtml (last visited Oct. 20, 2011).

York.⁴³ These offices are all located in or near urban centers and are either city- or county-based. As demonstrated in the following discussion, while these offices have much in common, there are many differences reflecting the political cultures of the host governments and perhaps the circumstances leading to the initial establishment of the offices.

A. Establishing a Credible Municipal Inspector General Office That Enjoys Public Support and Independence

By the time a chief elected official or a legislative body debates the establishment of an inspector general office, it is likely that the municipality has been fraught with scandals and both members of the public, as well as public officials may be skeptical of a new investigatory entity. Despite the fact that these offices are not equivalent to law enforcement agencies, perceptions may exist that the office is being created to go on a “witch hunt” against certain officials or that the person selected as the inspector general will be politically connected and influenced in some way toward aggressive or not-so aggressive behaviors. Therefore, careful consideration must be given in the first instance to the manner in which the office is established. In some cases, the requirements of the applicable local code may dictate whether such an office must be established by a legislative body.⁴⁴ In other instances, the mayor or chief elected official, has been able to create such a function using existing executive authority.⁴⁵ Other times, whether in a

⁴³ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-1 (2010); CHI., ILL., MUN. CODE § 2-56-010 (2011); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-281 (2011); JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.201 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(a) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120 (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-422 (2011); Phila., Pa., Exec. Order No. 10-84: Amend. No. 1 (1985), *available at* <http://www.phila.gov/oig/pdfs/good2.pdf>; YONKERS, N.Y., CITY CODE § C7-1 (2011).

⁴⁴ The Charter of New Orleans requires the Office of Inspector General be created by City Council ordinance. NEW ORLEANS, LA., HOME RULE CHARTER § 9-401 (2010), *available at* <http://www.nola.gov/HOME/City-Information/City-Charter/>. The Council obliged in 2006. NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120 (2011) (codifying Ordinance 22444, which was passed Oct. 19, 2006). The legislative body of Montgomery County, Maryland is another legislative body having the sole power to create such an office. *See* Memorandum from Marc P. Hansen, Chief, Div. of Gen. Counsel, to Douglas M. Duncan, Cnty Exec., & Bruce Romer, Chief Admin. Officer (June 27, 1997), *available at* <http://www.amlegal.com/pdffiles/MCMD/06-27-1997.pdf>. Acting upon this authority, Montgomery County first created their Office of the Inspector General in 1997. *Office of Inspector General*, MONTGOMERY COUNTY, MD., <http://www.montgomerycountymd.gov/> (follow “Departments” hyperlink; then follow “Inspector General” hyperlink) (last visited Oct. 20, 2011).

⁴⁵ In Jacksonville, Florida, the Inspector General was created in August 2007 by Mayor

cooperative nature or where procedurally mandated, the legislative and executive branches may act in concert to establish a new inspector general office.⁴⁶ Additionally, in one city, the office of an inspector general was created by a voting initiative of the people after a protracted battle between the prior executive and the city council.⁴⁷ Lastly, these offices have also been shown to evolve from existing oversight bodies.⁴⁸

B. The Office of the Municipal Inspector General

After overcoming the hurdle of reaching enough consensus to secure the establishment of an inspector general office, articulating the qualifications for the inspector general and setting forth the types of protections that will ensure independence from the pressures of the political process are essential elements of authorizing legislation or executive orders. This section addresses how some municipalities have articulated the qualifications for office and how, using the power of appointment, term of office, and removal provisions, local governments have attempted to balance the need for public accountability and official independence.

1. Defining a Purpose

The office of inspector general is typically created with two different but related purposes aimed at the common goal of

John Peyton by Executive Order No. 07-09. Exec. Order No. 07-05 (Jacksonville, Fla. 2007), <http://generalcounsel.coj.com/ExecutiveOrders/2007-09.pdf>. The executive order provided that the Office was within the Office of the Mayor and funded exclusively through the executive budget. *Id.* §§ 2, 7.

⁴⁶ Mercer County, New Jersey, for example, created its Office of Inspector General by ordinance in 2004 at the request of the County Executive. *Mercer County Office of the Inspector General*, MERCER COUNTY, N.J. <http://www.state.nj.us/counties/mercer/departments/inspector/index.html> (last visited October 20, 2011); *see also* BRIAN M. HUGHES ET AL., 2004 BUDGET MESSAGE PRESENTED BY MERCER COUNTY EXECUTIVE (2004), www.state.nj.us/counties/mercer/pdfs/2004_proposed_budget.pdf [hereinafter 2004 BUDGET MESSAGE] (including the newly created Office of the Inspector General into the proposed 2004 Mercer County budget). The ordinance then had to be approved by the Board of Chosen Freeholders. *See Mercer County Office of the Inspector General*, MERCER COUNTY, N.J. <http://www.state.nj.us/counties/mercer/departments/inspector/index.html> (last visited October 20, 2011).

⁴⁷ Phillip Zisman, *Inspectors General in Mid-Sized Cities—The Yonkers, New York, Experience*, MUN. LAW. (NYSBA/MLRC, White Plains, N.Y.), Fall 2004, at 20.

⁴⁸ In 1984, the Mayor of Philadelphia created the Office of Performance Assessment. Exec. Order 10-84 (Phila., Pa. 1984), <http://www.phila.gov/oig/pdfs/good1.pdf>. The title of the Office of Performance Assessment was shortly thereafter amended to being the Office of the Inspector General. Exec. Order 10-84, Amend. No. 1 (Phila., Pa. 1985), <http://www.phila.gov/oig/pdfs/good2.pdf>.

restoring faith in local government—to detect and reduce both waste and wrongdoing.⁴⁹ To reduce waste, inspectors general are given the mandate to promote the effectiveness and efficiency of the operations of government entities, as well as the programs they administer.⁵⁰ Addressing acts of wrongdoing by public officials and employees, offices of inspector general are tasked with preventing and detecting acts of fraud, abuse, corruption, misconduct, and unlawful political discrimination.⁵¹ In concert, these two main purposes guide the offices of inspector general in their attempts to restore faith in the governments they serve.

2. Inspector General Qualifications

As part of the political process in deciding to create an office of inspector general, questions surrounding the type of person who might be best suited for this role are likely discussed. Most municipalities codify requirements for appointment with the aim of setting standards to ensure prospective inspectors general are “qualified” for the position.⁵²

A comparison of municipal laws suggests that local governments require that applicants for the inspector general position have a minimum amount of experience in certain areas of practice relevant to the position, such as law enforcement.⁵³ Jacksonville, Florida, Miami-Dade County, Florida, and Palm Beach County, Florida, all require their inspector general to have ten years of experience,⁵⁴

⁴⁹ See, e.g., MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d) (2011).

⁵⁰ *Id.* § 2-1076(d)(4); see, e.g., ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-2 (B) (2011); CHI., ILL., MUN. CODE § 2-56-030(c) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(a)(1) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011); PALM BEACH COUNTY, FLA., CODE § 2-422 (2011).

⁵¹ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(A) (2011); CHI., ILL., MUN. CODE § 2-56-030(b) (2011); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-283 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(7) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(a)(2) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-422 (2011).

⁵² See, e.g., NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b) (2011). It should be noted that not all inspectors general must conform to a ridged qualification structure. Compare CHI., ILL., MUN. CODE § 2-56-020 (2011) (providing no provisions regarding qualifications for inspectors general), and Exec. Order 1-39(Rev.) (Hous., Tex. 2011), <http://www.houstontx.gov/execorders.html> (also providing no provisions regarding qualifications for inspectors general), with MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1) (2011) (providing a detailed list of minimum qualifications including a term of years, detailed field area experience, and educational requirements).

⁵³ JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(a) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(3)(c) (2011); PALM BEACH COUNTY, CODE OF ORDINANCES § 2-424(1)(a) (2011).

⁵⁴ JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011); MIAMI-DADE COUNTY, FLA.,

and New Orleans, Louisiana, requires five years of experience.⁵⁵ Some of the common areas of experience include federal, state, or local law enforcement,⁵⁶ service as a judge at the federal or state level,⁵⁷ work as a government attorney at the federal, state, or local level,⁵⁸ and experience in fields related to the duty of an inspector general, including: auditors, certified public accountants, inspectors general, investigators, and criminal justice administrators.⁵⁹ Beyond the time requirements in these specific fields of practice, many local laws also require the applicant to have experience in conducting complex investigations concerning areas within the purview of the office of inspector general.⁶⁰ These topics of investigation include fraud, waste, theft, deception, conspiracy, abuse, public corruption, illegal acts, auditing, government operations, and financial management.⁶¹

Required levels of education and training are also often articulated in the relevant law. As a baseline, many municipalities require a candidate for the position to have a four-year, or bachelor's degree from an accredited school of higher education.⁶² Furthermore, a number of municipalities require or recommend some level of education or training exceeding a four-year degree.⁶³ New Orleans, for example, requires highly qualified candidates for the position to have a degree of higher learning in the area of "law, accounting, public administration, or other relevant field[s]," where

CODE OF ORDINANCES § 2-1076(b)(1)(a) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(a) (2011).

⁵⁵ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(3)(c) (2011).

⁵⁶ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(a)(i) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(3)(c)(ii) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(a)(1) (2011).

⁵⁷ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(a)(ii) (2011); NEW ORLEANS, LA., CODE § 2-1120(3)(b)(3)(c)(iii) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(a)(2) (2011).

⁵⁸ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(a)(iii) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(a)(3) (2011).

⁵⁹ JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(a)(iv) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(3)(c)(iv)–(vi) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(a)(4)–(5) (2011).

⁶⁰ *See, e.g.*, PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(b) (2011) ("The inspector general shall be a person who . . . [h]as managed and completed complex investigations involving allegations of fraud, theft, deception or conspiracy.").

⁶¹ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(4)(a) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(b) (2011).

⁶² JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(1)(d) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(3)(a) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(d) (2011).

⁶³ *See, e.g.*, JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011).

the individual does not have experience in complex investigations concerning fraud, public corruption, waste, and other similar fields.⁶⁴ Additionally, some municipalities prefer applicants who are certified in certain areas of practice, including as an inspector general, inspector general investigator, inspector general auditor, public accountant, internal auditor, and fraud examiner.⁶⁵

3. Appointment Process

Ensuring independence is the cornerstone consideration for the appointment process. Ideally, inspectors general should be appointed through a process that leaves little doubt that the office will be run in an independent manner, acting according to the rule of law, and not protecting the appointer. Where the inspector general is appointed by a person over whom he or she has authority to investigate, the specter of possible cover-up exists. As described below, municipalities have opted for very different approaches in the appointment process.

As mentioned above, key to ensuring the opportunity for an independent office of inspector general is removal of the appointment authority from individuals who have a stake in the investigations and audits of the inspector general. However, practically, getting political actors to agree to independent appointment methods can be a challenge. New Orleans, Louisiana, offers one example of how an independent appointment process can be crafted.⁶⁶ Rather than vesting authority with the mayor or city council, New Orleans entrusts the appointment power with an ethics review board.⁶⁷ In another municipality, Albuquerque, New Mexico, the Accountability in Government Oversight Committee—a committee composed of five voting community members with the mayor and a council member sitting *ex officio*⁶⁸—is authorized to begin the appointment process.⁶⁹ The Committee receives applications and submits a ranked list of three candidates to the City Council, “based on the candidates’ integrity, capability for strong management and demonstrated ability in accounting,

⁶⁴ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(b)(4) (2011).

⁶⁵ ALBUQUERQUE, N.M. CODE OF ORDINANCES § 2-17-5(C) (2011); JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.204 (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(1)(f) (2011).

⁶⁶ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(3)(a)(1) (2011).

⁶⁷ *Id.*

⁶⁸ See ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-10-5(A) (2011).

⁶⁹ See *id.* § 2-17-5(A) (2011).

auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields.”⁷⁰

Municipalities may also appoint an inspector general through the use of a committee comprised of officials within the jurisdiction, but not within the legislative or executive branches, created solely for the appointment. For example, the Inspector General in Miami-Dade County, Florida, is appointed by an ad hoc Inspector General Selection Committee comprised of five members, including the State Attorney of the Eleventh Judicial Circuit for Miami-Dade County, the Public Defender of the Eleventh Judicial Circuit, the chairperson of the Commission on Ethics and Public Trust, the President of the Miami-Dade Police Chiefs Association, and the Special Agent who leads the Miami Field Office of the Florida Department of Law Enforcement.⁷¹ The Commission selects from a list of qualified candidates, which is to be provided by the Miami-Dade County Employee Relations Department.⁷²

Municipalities may seek to acquire this independence by other means, utilizing one of the branches of government under the investigative authority of the inspector general, but qualifying that branch’s appointment powers. In Montgomery County, Maryland, for example, the County Council must make their selection from a list of at least three qualified individuals furnished by an inspector general nominating panel, which is comprised of three to five county residents as selected by the Council through resolution.⁷³ Although this method does not afford the utmost independence, it does curtail the appearance of impropriety as there is abundant disclosure and the County Council is not given unbridled discretion, but rather must choose from pre-approved individuals.

Not all municipal inspectors general are chosen through the use of an independent or quasi-independent mechanism. Given that municipal inspectors general may be given the authority only to investigate executive-related activities, making it an enforcement mechanism reportable to the executive,⁷⁴ mayors may also take a prominent position in the appointment of inspectors general. Following this model, the Inspector General of Philadelphia is

⁷⁰ *Id.*

⁷¹ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(2) (2011).

⁷² *Id.*

⁷³ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(b) (2011).

⁷⁴ See Exec. Order 4-94 § 2(a) (Phila., Pa. 1994), http://www.phila.gov/oig/pdfs/Executive_Order_4-94.pdf.

appointed by the Mayor alone.⁷⁵ Additionally, inspectors general may be selected through a process whereby both the legislative and the executive branches have a say in approval.⁷⁶ For instance, in Chicago, Illinois, the Inspector General is first selected by the Mayor, and then must be approved by the City Council.⁷⁷

4. Terms of Office for Municipal Inspectors General

The permitted length of service for an independent inspector general can be another hot button issue, but, as with all legislative provisions, this issue can be addressed with the flexibility needed to meet community expectations and/or political compromise. A number of municipalities permit the inspector general to hold office for a period of four years.⁷⁸ Others provide for a term of five years⁷⁹ or six years.⁸⁰ In Albuquerque, New Mexico, there is no specific term; the Inspector General holds the appointment until removed by a majority vote of the Accountability in Government Oversight Committee.⁸¹

With respect to term limits, some local codes may permit for only one reappointment,⁸² whereas others may not place a limit on the number of reappointments.⁸³ Terms of office that are of short duration and permit reappointment may fall victim to public perception that the inspector general could be influenced by the political appointment process. This perception is also true of provisions addressing removal, discussed below.

5. Removal of Municipal Inspectors General

Protecting the independence of the inspector general while at the same time allowing for the possibility that a particular individual holding office as an inspector general may not be satisfactorily

⁷⁵ Phila., Pa., Exec. Order 10-84, §1 (1984), <http://www.phila.gov/oig/pdfs/good1.pdf>.

⁷⁶ See, e.g., YONKERS, N.Y., CITY CODE § C7-1 (2011).

⁷⁷ CHI., ILL., MUN. CODE § 2-56-020 (2011).

⁷⁸ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(3) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(c) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §2-1120(3)(c)(1) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(4) (2011).

⁷⁹ YONKERS, N.Y., CITY CODE § C7-1 (2011).

⁸⁰ COOK COUNTY, ILL., CODE OF ORDINANCES § 2-282(b)(3) (2011).

⁸¹ See ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-5(E) (2011).

⁸² See, e.g., MONTGOMERY COUNTY, MD., CODE OF ORDINANCES § 2-151(c) (2011).

⁸³ ALBUQUERQUE, N.M., CODE OF ORDINANCES §2-17-5(E) (2011); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-282(b)(4) (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(b)(3) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §2-1120(3)(d)(1) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-424(4) (2011).

performing requires a delicate balance in crafting removal provisions in local laws. Authorizing legislation typically provides that an inspector general can only be removed from office after a showing of cause.⁸⁴ When such language is used, it is helpful to provide examples of what constitutes “cause.” Palm Beach County, for example, requires a specified showing of cause for removal, which is limited to instances of “neglect of duty, abuse of power or authority, discrimination, or ethical misconduct.”⁸⁵

However, the inquiry does not end here. Once there has been a proper allegation of cause, procedural protections may be invoked. New Orleans provides that the inspector general may be removed from office for cause only after a public hearing, and if two-thirds of the ethics review board agrees to remove the inspector general.⁸⁶ The ethics review board must then report the reasons, such as abuse of power, ethical misconduct, conviction of a felony, a plea of guilty or nolo contendere, “or other acts tarnishing the integrity of the office.”⁸⁷

Similarly, Montgomery County, Maryland, provides that the inspector general can be removed via a resolution adopted by council members “for neglect of duty, malfeasance, conviction of a felony, or other good cause.”⁸⁸ However, if the inspector general should make a request, the council must hold a public hearing before the adoption of an expulsion resolution.⁸⁹

C. Powers Granted to Municipal Inspectors General

The powers of a municipal inspector general are related to the purpose behind the creation of the office—prevention and recovery of losses stemming from waste, fraud, and other wrongdoing.⁹⁰

⁸⁴ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(4) (2011). *Contra* MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(h) (2011) (requiring no showing of cause, but a vote of two-thirds of the Board of County Commissioners for removal).

⁸⁵ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-430 (2011).

⁸⁶ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(4) (2011).

⁸⁷ *Id.*

⁸⁸ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(e) (2011).

⁸⁹ *Id.*

⁹⁰ *See* NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011) (“The purpose . . . is to establish a full-time program of oversight to prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in city programs and operations.”); *see also* 2004 BUDGET MESSAGE, *supra* note 46 (“The goal of the Office of the Inspector General is to yield savings for county taxpayers and to foster a work environment when both employees and taxpayers know that the county is functioning under the highest ethical standards. The Inspector General will have broad authority to review county procedures to uncover any examples of corruption, fraud or improper management practices. This initiative responds to

Specifically, in the furtherance of the purpose of eliminating waste, municipalities such as Chicago have placed a strong emphasis on ensuring the proper performance of government employees and officials.⁹¹ As such, the Chicago inspector general is expected “[t]o promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government by reviewing programs, [and] identifying any inefficiencies.”⁹² In order to effectuate the purposes behind the institution, municipalities specifically define the inspector general’s authority and powers within the local ordinance, and again these provisions vary widely from jurisdiction to jurisdiction.⁹³

1. Ability to Inquire

The most important tool of an inspector general’s office is the ability to inquire into all aspects of the respective government. Inspectors general accomplish this mandate through the use of audits, inspections, and reviews.⁹⁴ Key to this ability to inquire is the breadth of the inspector general’s jurisdiction, defining what is open for inquiry. The breadth of inquiry can be determined by looking at three different levels of inquiring authority: entity status, type of engagement, and type of information.

An inspector general’s jurisdiction may include, for example, government-related individuals or bodies, such as various agencies within the locality or a company contracting with the locality. In this regard, Palm Beach County, Florida, permits its Inspector General to investigate all of the County’s government entities, including the county legislative and executive branches, all elected officials, contractors contracted with or receiving funds from the county, as well as all “county . . . departments, divisions, agencies and instrumentalities.”⁹⁵ Similarly, the Miami-Dade County,

the observed need for a review of county financial and purchasing procedures, as well as the need to give more direction to county employees regarding the use of county equipment and resources. County employees need guidelines about avoiding conflicts of interests, whether real or perceived. Employees also need to know what their rights and obligations are when they observe a possible conflict of interest or an incident in which the taxpayers’ interests are not being served.”).

⁹¹ CHI., ILL., MUN. CODE § 2-56-030(b) (2011).

⁹² *Id.* § 2-56-030(c).

⁹³ *See, e.g.*, MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(6) (2011) (stating that the inspector general has the authority to randomly inquire into “all County contracts,” including grant funds, insurance contracts, inter-local agreements, and revenue-generating contracts, among others).

⁹⁴ *See, e.g., id.*; PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(1) (2011).

⁹⁵ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(2) (2011).

Florida, Inspector General has jurisdiction over “departments, offices, boards, activities, programs and agencies of the County and the Public Health Trust.”⁹⁶ However, some municipalities may wish to limit this scope, such as the city of Chicago, which does not grant the Inspector General authority over the City Council or its employees, as there is a legislative Inspector General.⁹⁷ Despite limitations imposed by municipalities similar to Chicago, typically, an inspector general has broad authority to investigate those that are a part of, or have significant interactions with, the locality.⁹⁸

An inspector general’s inquiring authority is also defined by the types of engagements or conduct within their jurisdiction. In many cases, this may be a broad proposition.⁹⁹ For instance, the Palm Beach County, Florida, Inspector General has jurisdiction over “past, present and proposed county or municipal programs, accounts, records, contracts, change orders, and transactions.”¹⁰⁰ Additionally, the New Orleans, Louisiana, Inspector General has the authority to look at all procurements, activities, grants, “and other programmatic and financial arrangements undertaken by city government and any other function, activity, process, or operation conducted by city government.”¹⁰¹ However, there are instances when the ability to inquire into a type of engagement is limited, such as in Palm Beach County where the Inspector General does not have unrestricted access to records concerning collective bargaining negotiations,¹⁰² or in Albuquerque, where “[t]he

⁹⁶ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(5) (2011).

⁹⁷ See CHI., ILL., MUN. CODE § 2-56-050 (2011).

⁹⁸ *Id.* § 2-56-030(b) (2011) (“To investigate the performance of governmental officers, employees, functions and programs. . . .”); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-284(2) (2011) (providing jurisdiction over those involved with county government); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1067(d) (2011) (“The Office shall have the authority to make investigations of county affairs. . . .”); NEW ORLEANS, LA., CODE § 2-1120(10) (2011) (having broad authority over city government and contractors); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(2) (“The inspector general shall have the power to conduct audits of . . . the board, . . . county administrator, . . . all elected and appointed county and municipal officials and employees, county and municipal departments, divisions, agencies and instrumentalities, contractors, . . . and other persons and entities doing business with the county or a municipality and/or receiving county or municipal funds regarding any such contracts or transactions with the county or municipality.”).

⁹⁹ See, e.g., JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.203 (2011) (“The duties of the Office of the Inspector General shall be to . . . [e]valuate, investigate and review the activities, records, contracts, procurements, grants, agreements, and other programmatic and financial arrangements undertaken by the City, and any other function, activity, process or operation conducted by the City.”).

¹⁰⁰ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(1) (2011).

¹⁰¹ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(10)(a) (2011).

¹⁰² See PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(2) (2011).

Inspector General [may] not investigate complaints that are under the jurisdiction of the Police Oversight Commission or the Internal Affairs Division of the Albuquerque Police Department nor shall he access any Internal Affairs' files."¹⁰³

Once the inspector general has jurisdiction over the governmental entity or contractor, as well as jurisdiction over the type of engagement, the next important issue is exactly what information the inspector general has authority to access. To ensure independence and the ability to seek the truth, municipalities generally give the inspector general unfettered access to people and documents.¹⁰⁴ New Orleans municipal law provides a good example, stating that the "inspector general shall have access to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, audits, reviews, papers, books, documents, computer hard drives, e-mails, instant messages, recommendations, and any other material . . . the inspector general deems necessary to facilitate an investigation, audit, inspection, or performance review."¹⁰⁵ Montgomery County, Maryland, while providing broad access, offers a less descriptive list and provides, "[t]he Inspector General is legally entitled to, and each department or office in County government and each independent County agency must promptly give the Inspector General, any document or other information concerning" that which is in its jurisdiction.¹⁰⁶

2. Subpoena Power

The authority to inquire into an entity, the engagement, and the form of information may be meaningless unless it is supported by enforcement authority. Without such power, the inspector general could request information which a culpable individual would have the ability to withhold for fear that inappropriate conduct, once discovered, could be made public and be punished. Therefore, an important aspect of an inspector general's authority is the subpoena power. Many municipal inspectors general have the authority to demand production of information, including: Albuquerque, New Mexico; Chicago, Illinois; Miami-Dade County, Florida; New Orleans, Louisiana; Montgomery County, Maryland; and Palm

¹⁰³ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(G) (2011).

¹⁰⁴ See *id.* § 2-17-6(D); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(l)(1)(2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(12)(a) (2011).

¹⁰⁵ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(12)(a) (2011).

¹⁰⁶ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151 (l)(1) (2011).

Beach County, Florida.¹⁰⁷ Further supporting the demand for information, Montgomery County's law specifically provides for the punishment of people who refuse to submit or provide misleading or false information, making it a Class A violation under the County Code.¹⁰⁸

However, even where the inspector general has the authority to subpoena, if it is not defined in the applicable code, there may be an issue regarding whether the office of inspector general has the ability to seek enforcement in the courts¹⁰⁹ and whether the inspector general can bring suit against a party within the same government.¹¹⁰ Such was the situation in *Ferguson v. Georges*, where the Chicago Corporate Counsel refused to submit certain documents included in a subpoena claiming they were protected by the attorney-client privilege and the attorney work-product doctrine.¹¹¹ The Chicago Office of Inspector General retained private counsel and brought suit seeking enforcement of the subpoena.¹¹² Corporate Counsel argued that the Inspector General did not have authority to retain private counsel and lacked capacity to sue, the requested documents were protected from disclosure, and that the court lacked jurisdiction over the claim since it was a suit where the city was suing the city.¹¹³

First, addressing the jurisdiction issue, the court found it had jurisdiction over the claim.¹¹⁴ The court determined jurisdiction existed as this matter was a suit between two separate and distinct entities within the municipal government, and not a quarrel between two individuals in the same entity, which would have precluded jurisdiction.¹¹⁵ The court then touched upon whether the

¹⁰⁷ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(D) (2011); CHI., ILL., MUN. CODE § 2-56-030(h) (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(3) (2011); MONTGOMERY COUNTY, MD., CODE OF ORDINANCES § 2-151(l)(2) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1076(18)(a) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(3) (2011).

¹⁰⁸ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(m)(1) (2011). A Class A violation is punishable as a misdemeanor, permitting the imposition of a maximum six months in jail and up to a \$1000 fine, if it is a criminal violation. *Id.* § 1-19. If it is a civil violation, the initial offense will be fined \$500 and repeat offenses will be fined \$750. *Id.*

¹⁰⁹ See *Ferguson v. Georges*, 948 N.E.2d 775, 776 (Ill. App. Ct. 2011) (addressing whether the Chicago Inspector General could employ private counsel to bring suit to enforce subpoena).

¹¹⁰ See *id.* at 779 (addressing whether the Chicago Inspector General can sue the Chicago Corporate Counsel).

¹¹¹ *Id.* at 778.

¹¹² See *id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 779.

¹¹⁵ See *id.*

Inspector General had the authority to bring suit to enforce the subpoena.¹¹⁶ Although the Chicago Municipal Code lacked such enforcement language (the Code does authorize the issuance of subpoenas), the court found the Inspector General had the authority to enforce subpoenas in court.¹¹⁷ The court derived this conclusion from language in the Code,¹¹⁸ which states that “[f]or seven days after receipt of a timely objection to a subpoena, the inspector general shall take no action to enforce the subpoena or to initiate prosecution of the person to whom the subpoena is directed.”¹¹⁹ The court agreed with the Inspector General in “that the most natural reading of this clause indicates that after seven days, the Inspector General may take some sort of enforcement action.”¹²⁰

Once the court found it had jurisdiction over the claim and that the Inspector General had the authority to enforce the subpoena it issued, the court next had to determine whether the Inspector General had the authority to retain outside counsel. The court stated that during the usual course of business, Corporate Counsel would have been the appropriate body to represent the Inspector General in an enforcement action.¹²¹ The court stated that “[i]t would be unrealistic and nonproductive” to require the Inspector General to seek enforcement through Corporate Counsel representation given the conflict of interest; thus the Inspector General had to look elsewhere.¹²² As a result, under these circumstances, the Chicago Office of the Inspector General had the authority to hire outside counsel and enforce the subpoena in court against a different entity within the same municipality.¹²³

Legal battles, such as the Chicago case described above, are not always required given the specificity offered in many municipal codes concerning these issues. In Miami-Dade County, Florida, for example, the Inspector General has the authority to apply “to any circuit court [in Florida] which shall have jurisdiction to order the witness to appear before the Inspector General and to produce evidence if so ordered, or to give testimony touching on the matter in question.”¹²⁴ Similarly, if an individual refuses to comply with a

¹¹⁶ *Id.* at 779–83 *passim*.

¹¹⁷ *Id.* at 782–83.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 777 (quoting CHI., ILL., MUN. CODE § 2-56-040 (2011)).

¹²⁰ *Ferguson*, 948 N.E.2d at 782.

¹²¹ *See id.*

¹²² *See id.*

¹²³ *Id.*

¹²⁴ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(3) (2011).

subpoena in New Orleans, “the Orleans Parish Civil District Court may issue an order requiring the person or entity to appear before the court to show cause why an order should not be issued ordering such person to comply with the subpoena.”¹²⁵ Palm Beach County, Florida,¹²⁶ and Albuquerque, New Mexico,¹²⁷ have also adopted similar language.

The Montgomery County, Maryland, Code contains language specifically addressing legal counsel.¹²⁸ The Montgomery County Code provides that the County Attorney must administer legal services for the Inspector General and may contract for special legal counsel.¹²⁹ Given the issues in *Ferguson*, discussed above, this has the potential to cause conflict. However, Montgomery County, in language similar to the language adopted by the federal government,¹³⁰ addresses this issue, stating that the Inspector General can, independent of the County Attorney, employ and be represented by outside legal counsel, if independent counsel is necessary.¹³¹

3. Sharing Information with Law Enforcement and the Public

Once the inspector general has received the requested information and has begun or completed the investigation, it may be evident that a crime was committed.¹³² Given the possibility of this discovery, many inspectors general are directed by law to refer these potentially criminal matters to law enforcement,¹³³ or they

¹²⁵ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(18)(d) (2011).

¹²⁶ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(3) (2011) (“In the case of a refusal to obey a subpoena served to any person, the inspector general may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the inspector general and to produce evidence if so ordered, or to give testimony relevant to the matter in question.”).

¹²⁷ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(D) (2011) (“In the case of a refusal to obey a subpoena issued to any person, the Director may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the Inspector General and to produce evidence if so ordered, or to give testimony touching on the matter in question.”).

¹²⁸ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(g) (2011).

¹²⁹ See *id.* § 2-151(g)(2).

¹³⁰ 5 U.S.C. app. § 3(g) (2011) (“Each Inspector General shall . . . obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.”).

¹³¹ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(g)(3) (2011).

¹³² See, e.g., 2009 MIAMI-DADE OFF. OF THE INSPECTOR GEN. ANN. REP. 13, available at <http://www.miamidadeig.org/annualreports/2009Annual.pdf> [hereinafter MIAMI-DADE OIG ANN. REP.] (“Since the formation of the Miami-Dade OIG in 1998, there have been 192 arrests and 11 companies indicted as a result of OIG investigations for crimes and frauds in connection with County affairs.”).

¹³³ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(A) (2011); COOK COUNTY, ILL.,

may be given the ability to cooperatively work with local law enforcement and prosecutors.¹³⁴

Beyond their duties to law enforcement, once an investigation or audit has been completed inspectors general are required to disclose their findings to the local government and/or to the public. This can occur through the issuance of reports and recommendations to the relevant authorities concerning the findings of their audits, investigations, and reviews.¹³⁵ Additionally, inspectors general are usually required to publish an annual report, disclosing the actions taken by and the successes, or lack thereof, of the office.¹³⁶ Inspectors general may also have the power to offer prevention activities, such as rule and regulation review, training, and education.¹³⁷

D. Internal Structure of the Inspector General Office

The various offices of inspectors general differ greatly from municipality to municipality, reflecting community diversity and size, and addressing the particular needs of individual communities. In some localities, the office may be composed of different bureaus or divisions, addressing specific tasks such as investigation and auditing,¹³⁸ or addressing subject matter.¹³⁹

CODE OF ORDINANCES § 2-284(6) (2011); JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.203(e) (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(7) (2011); *cf.* CHI., ILL., MUN. CODE § 2-56-050 (2011) (“Nothing . . . shall preclude the inspector general from referring a complaint or information concerning a member of the city council or any employee or staff person of any member of the city council or any employee or any staff person of any city council committee to the appropriate federal, state or local law enforcement authorities.”).

¹³⁴ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(h)(2) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(10)(g) (2011).

¹³⁵ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-9 (2011); CHI., ILL., MUN. CODE § 2-56-060 (2011); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-288 (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(4) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(k) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(8)(a) (2011).

¹³⁶ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-10(A) (2011); CHI., ILL., MUN. CODE § 2-56-035(c) (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(g) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(k)(1) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(9) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-428 (2011); *see also* COOK COUNTY, ILL., CODE OF ORDINANCES § 2-287 (2011) (requiring a quarterly report).

¹³⁷ JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.203(f) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(10)(h) (2011); PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(12) (2011).

¹³⁸ *Our Office*, OFF. OF INSPECTOR GEN.: CITY OF CHICAGO, <http://chicagoinspectorgeneral.org/about-the-office/organization-chart>.

¹³⁹ *Overview*, OIG: NEW ORLEANS OFF. OF INSPECTOR GEN., <http://nolaog.org/main/>

The Palm Beach County Division of the Inspector General is comprised of an Audit Services Unit and a Public Integrity Unit.¹⁴⁰ The Audit Services Unit seeks to assess and identify risks within a government entity, help mitigate vulnerabilities, as well as inspect programs for economy and efficiency.¹⁴¹ To accomplish this task, this unit first conducts an audit and then issues a written report that details the results, as well as making suggestions for improvement.¹⁴² A second branch of the Palm Beach County Office, the Public Integrity Unit, conducts investigations of ethical misconduct, fraud, and waste.¹⁴³ Examples of fraud might include personal use of government vehicles, accepting kickbacks, or conducting personal business on government time.¹⁴⁴ Examples of waste typically include “careless expenditure” of government resources, such as purchasing unnecessary equipment and products.¹⁴⁵ This unit also maintains a fraud, waste, abuse, and ethics hotline, conducting investigations based on submissions.¹⁴⁶

Chicago’s Office of Inspector General has five sections, which vary by tasks.¹⁴⁷ The legal section is comprised of attorneys who are paired with investigators, policy analysts, and auditors to coordinate together in “complex investigations,” ensuring the outcome is “legally sound.”¹⁴⁸ The audit section conducts independent audits and evaluates city business, while the program and policy review section provides support that enables the Office to operate in an efficient and economic manner.¹⁴⁹ The investigative section conducts “criminal and administrative investigations” into city business and the conduct of city employees, and has the authority to subpoena.¹⁵⁰ Lastly, the hiring compliance section is tasked with “monitoring the City’s hiring and employment

inside.php?page=overview.

¹⁴⁰ *Division of Inspector General*, CLERK & COMPTROLLER: PALM BEACH COUNTY, FLA., <http://www.mypalmbeachclerk.com> (follow “Inspector General & Audit” hyperlink).

¹⁴¹ *Division of Inspector General: Audit Services Unit*, CLERK & COMPTROLLER: PALM BEACH COUNTY, FLA., <http://www.mypalmbeachclerk.com/> (follow “Inspector General & Audit” hyperlink; then follow “Audit Services Unit” hyperlink).

¹⁴² *Id.*

¹⁴³ *Division of Inspector General: Public Integrity Unit*, CLERK & COMPTROLLER: PALM BEACH COUNTY, FLA., <http://www.mypalmbeachclerk.com/> (follow “Inspector General & Audit” hyperlink; then follow “Public Integrity Unit” hyperlink).

¹⁴⁴ *See id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *See Our Office*, *supra* note 138.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

compliance” procedures.¹⁵¹

The New Orleans Office of Inspector General also has several subdivisions.¹⁵² The Investigations Division “prevents fraud and abuse through conducting fraud awareness seminars” and other programs with city employees and citizens.¹⁵³ The Audit and Review Division “conducts, coordinates, and oversees all auditing activities relating to the City of New Orleans programs and operations.”¹⁵⁴ This division executes audits, issues reports with findings and recommendations, and advises the city on “developing sound management information and financial reporting systems.”¹⁵⁵ The Inspections and Evaluations Division’s responsibilities include: “initiat[ing] inspections, evaluations, and performance reviews;” monitoring contracts to detect fraud; issuing reports to the city’s management; “improving government accountability;” and “promoting the interests of the citizens.”¹⁵⁶

E. Resources and Budgets

An office of inspector general cannot function without proper funding to advance the pursuits articulated in the local code. As the previous sections have demonstrated, duties and responsibilities of the offices vary and the size of the municipal government can be a factor in determining a sufficient level of funding. Ultimately, this is another place where governments and the public must ensure independence by providing adequate funding to ensure thorough investigations.

Municipalities differ in the method used for appropriations. For instance, in New Orleans, the Office is funded through annual appropriations by the city council.¹⁵⁷ In turn, the Inspector General must prepare an annual operating budget detailing proposed expenses and submit it to the chief administrative officer.¹⁵⁸ In contrast, the Montgomery County Inspector General must submit a projected budget to both the executive and council for the entire four-year term.¹⁵⁹ Additionally, the Chicago Inspector General is

¹⁵¹ *Id.*

¹⁵² *Overview, supra* note 139 (including The Investigations Division, The Audit & Review Division, and The Inspections & Evaluations Division).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(5)(a) (2011).

¹⁵⁸ *Id.* § 2-1120(5)(b).

¹⁵⁹ MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(f) (2011).

funded and staffed according to an annual appropriations ordinance.¹⁶⁰ These examples illustrate that the funding of an office of inspector general can be accomplished through various means. The means chosen can be used as a mechanism to promote or constrain the independence of the office from a single branch of government.

The actual dollar amounts allocated for the various inspectors general also varies. Undoubtedly this variation is attributable to the differing geographic and population characteristics, as well as the goals and structure of the office. According to the City of Chicago's 2010 annual budget, the Office of Inspector General was appropriated, in total, \$2,170,842.¹⁶¹ As a comparison, the budget for the Inspector General of Yonkers, New York, is approximately \$432,487.¹⁶² Similarly, the most recently reported municipal expenditure for the Montgomery County, Maryland, Office of Inspector General was \$617,717.¹⁶³

Inspector general offices may also receive separate funds in addition to those budgeted through a municipality's general fund. For example, the Palm Beach County Inspector General is funded by the County as requested by the Inspector General, but is also funded based upon fees assessed to the county, participating local governments, and public agencies.¹⁶⁴ Thus, a portion of the budget is offset, not burdening the County alone.¹⁶⁵ Under this cost-sharing scheme, the cost for audits, reviews, inspections, and investigations that are conducted by the Inspector General for other agencies are "defrayed by imposition of a fee which shall be equal to one quarter of one percent (.25%) of the price of qualifying contracts."¹⁶⁶ As such, the Office of Inspector General gets paid

¹⁶⁰ CHI., ILL., MUN. CODE, § 2-56-010 (2011).

¹⁶¹ 2010 CITY OF CHI., ANN. APPROPRIATION ORDINANCE FOR THE YEAR 2010 20, <http://www.chicityclerk.com/citycouncil/budget/> (follow "Annual Appropriation 2010.pdf" hyperlink) [hereinafter CHICAGO 2010 ANN. APPROPRIATION ORDINANCE] (appropriating its budget primarily to its payroll, for a total of \$1,860,007).

¹⁶² 2009 DEPT. OF INSPECTOR GEN., CITY OF YONKERS ANN. REP. 3, *available at* <http://www.yonkersny.gov/> (follow "Departments G-V" under "Government; then follow "2009 Annual Report").

¹⁶³ 2009 OFF. OF INSPECTOR GEN., MONTGOMERY COUNTY, MD. ANN. REP. 11, *available at* http://www.montgomerycountymd.gov/content/InspectorG/pdf/fy09_annual_report.pdf. The report indicated that the Inspector General and the County leaders should re-evaluate and increase the current allocated resources, as the results produced by the office justify an increase. *Id.* An appendix to the report further notes that the 2006 budget was \$438,625, the 2007 budget was \$534,614, and the 2008 budget was \$587,329. *Id.* at 13 app. A.

¹⁶⁴ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-429 (2011).

¹⁶⁵ *Id.*

¹⁶⁶ 2009 CLERK & COMPTROLLER: PALM BEACH COUNTY, FLA., COMPREHENSIVE ANN. FIN.

based upon the monetary value of the contracts audited.¹⁶⁷ Similarly, the Miami-Dade County Office of Inspector General receives its funding from three sources: “propriety contract fees assessed on County contracts; direct payments collected through memorandums of understanding contracted with various County departments; and general funds allocated through the County’s budget process.”¹⁶⁸

IV. CO-EXISTENCE: THE INSPECTOR GENERAL, PROSECUTOR, AND ETHICS ENFORCEMENT

One of the problems in the area of government oversight is the proliferation of agencies charged with investigation and enforcement, which often have overlapping jurisdiction.¹⁶⁹ For example, federal and state prosecutors are vested with the authority to enforce the law through the criminal justice system, reprimanding those who violate criminal prohibitions.¹⁷⁰ Ethics agencies are usually focused on preventing, uncovering, and penalizing breaches of ethical standards.¹⁷¹ And the offices of inspector general have been created with the purpose of rooting out fraud, waste, inefficiency, abuse of official power, and the like, without enforcement ability.¹⁷² Given the broad scope of these

REP. iv, <http://www.mypalmbeachclerk.com/> (follow “County Financial Reports” under “Public Funds”; then follow “Fiscal Year 2009” hyperlink).

¹⁶⁷ See *id.*

¹⁶⁸ 2007 MIAMI-DADE OFF. OF THE INSPECTOR GEN. ANN. REP. 6, <http://www.miamidadeig.org/annualreports/2007annual.pdf>. Under this model, in the 2006–2007 fiscal year, the proposed budget was roughly \$5.1 million, yet only \$1.7 million came from the county’s general fund. *Id.*

¹⁶⁹ For a discussion of multiple agencies that investigate a single ethical violation see N.Y. STATE BAR ASS’N TASK FORCE ON GOVERNMENT ETHICS 29 (2011), *available at* <http://www.nysba.org/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=46069>.

¹⁷⁰ See, e.g., FLA. STAT. § 27.02(1) (2011) (“The state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party . . .”).

¹⁷¹ See, e.g., MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1072(a) (2011) (stating the Miami-Dade County Ethics Commission has the authority to enforce the County’s Code of Ethics Ordinances; Conflict of Interests Ordinances; Lobbyist Registration and Reporting Ordinances; and the Ethical Campaign Practices Ordinance).

¹⁷² See, e.g., NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011) (“The purpose of this section is to establish a full-time program of oversight to prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in city programs and operations.”); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-283 (2011) (“The purpose of the Office of Independent Inspector General is to detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government.”); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(a)(2) (2011) (“The goals of the Inspector General are to . . . prevent and detect fraud, waste, and abuse in government

mandates, there is certain to be instances of overlapping jurisdiction, and potential turf issues among and between the entities. This section explores the jurisdictional relationships between the various bodies, as well as how they may best co-exist and cooperate given their different roles in the system.

A. *Jurisdiction: Inspectors General and Prosecutors*

Generally, the duty of the prosecuting attorney is to investigate and bring to justice those who violate the penal law.¹⁷³ As such, the prosecutor's subject matter jurisdiction is much broader than that afforded to the inspector general, as they are concerned with violations of all the criminal laws of the state.¹⁷⁴ However, the municipal office of the inspector general is also given the power to investigate conduct that can likewise constitute a violation of the criminal law.¹⁷⁵ Thus, there is the potential for overlap in the investigatory phases.¹⁷⁶

activities . . .").

¹⁷³ See, e.g., *About DOJ*, U.S. DEPT OF JUSTICE, <http://www.justice.gov/02organizations/about.html> (last visited Oct. 20, 2011) ("[The mission of the United States Department of Justice is t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans."); FLA. STAT. § 27.02 (providing that the State Attorney of Florida is responsible for representing the state in either prosecuting or defending legal actions when Florida is a party to that action).

¹⁷⁴ Compare LA. CONST. art. 5, § 26(B) (2011) ("[A] district attorney . . . shall have charge of every criminal prosecution by the state in his district . . ."), with NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011) ("[Inspector General's] oversight includes audits, criminal and administrative investigations, inspections and evaluations, and monitoring.").

¹⁷⁵ See N.Y. PENAL LAW §§ 200.10–200.12 (McKinney 2011) (prohibiting public servants from receiving bribes). This prohibits local officials from receiving bribes. See *United States v. Brennan*, 629 F. Supp. 283, 294 (E.D.N.Y. 1986) ("New York Penal Law defines a public servant as any public officer or employee of the State of New York or a political subdivision or governmental instrumentality within the State of New York.") (emphasis added). In Louisiana, district attorneys have the duty to prosecute those who violate the law. LA. CONST. art. 5, § 26(B). Louisiana has also made it a violation of the criminal law to commit public contract fraud. LA. REV. STAT. ANN. § 14:140 (2011). Additionally, the New Orleans, Louisiana, Office of Inspector General has the mandate to detect fraud. NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011). As such, if a municipal official fraudulently executes a public contract, both bodies have jurisdiction over the controversy at hand.

¹⁷⁶ Beyond the basic overlap of jurisdiction experienced by the prosecutor and the inspector general, there may be instances where the inspector general has near identical subject matter jurisdiction with particularized investigations units within a district attorney's office. As we know, the primary duty of a local inspector general's office is to "prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in city programs and operations." NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(2) (2011). The goal of some special prosecuting units mirrors such aspirations. For example, in Sacramento County, the District Attorney's Office has a special investigations unit prosecuting "specialized cases

When there is such overlap local law enforcement typically receives primary authority.¹⁷⁷ As previously discussed, the inspectors general of Albuquerque, New Mexico; Chicago, Illinois; Cook County, Illinois; and Jacksonville, Florida, must refer detected criminal activity to the appropriate law enforcement agency.¹⁷⁸ Additionally, when such activity is detected and referred, the inspectors general of Miami-Dade County, Florida; Montgomery County, Maryland; and New Orleans, Louisiana, have the authority to cooperatively investigate with law enforcement.¹⁷⁹ However, even where cooperation is permitted, law enforcement is specifically given the lead in New Orleans and Miami-Dade County, and it is the role of the inspector general to assist.¹⁸⁰

Furthermore, some municipalities have taken additional steps to limit any unintended obstruction inspectors general may present for law enforcement. For example, the Inspector General of Palm Beach County, Florida is specifically not permitted to interfere with U.S. or State Attorney criminal investigations or prosecutions.¹⁸¹ If a U.S. or State Attorney notifies the Inspector General of Palm Beach County that the Inspector General is interfering with an investigation, the Inspector General must “suspend service of subpoena, examination of witnesses, or other investigative activities as set forth in the notice.”¹⁸² Similarly, if an investigation by the Cook County, Illinois, Inspector General “threatens to interfere with an investigation by a different county, city, state, or federal law

including misconduct by public officials, political corruption, and election fraud.” *Special Investigations*, SACRAMENTO COUNTY DISTRICT ATT’Y, [http://www.sacda.org/divisions/units/follow “Special Investigations” hyperlink](http://www.sacda.org/divisions/units/follow%20Special%20Investigations) (last visited Oct. 20, 2011). Also, within the Los Angeles County District Attorney’s Office is the Public Integrity Division, which “use[s] all resources at its disposal to detect, investigate and prosecute criminal misconduct at all levels of public service.” *Public Corruption*, L.A. CNTY. DIST. ATTORNEY’S OFFICE, <http://da.co.la.ca.us/pid.htm>. Specifically, this Division of the District Attorney’s Office handles a variety of cases concerning corruption and misconduct of public and school officials, while restoring the public’s confidence in government. *Id.*

¹⁷⁷ See, e.g., PALM BEACH COUNTY, FLA., CODE OF ORDINANCES §2-423(3) (2011) (“The inspector general shall not interfere with any ongoing criminal investigation or prosecution of the state attorney or the U.S. Attorney for the Southern District of Florida.”).

¹⁷⁸ ALBUQUERQUE, N.M., CODE OF ORDINANCES § 2-17-6(A) (2011); CHI., ILL., MUN. CODE § 2-56-050 (2011); COOK COUNTY, ILL., CODE OF ORDINANCES § 2-284(6) (2011); JACKSONVILLE, FLA., CODE OF ORDINANCES § 20.203(e) (2011).

¹⁷⁹ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(7) (2011); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(h)(2) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(10)(g) (2011).

¹⁸⁰ NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(11)(d)(1)(a) (2011); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(7) (2011).

¹⁸¹ PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 2-423(3) (2011).

¹⁸² *Id.*

enforcement agency, the [Inspector General] will cooperate in all respects with such law enforcement agency," acquiescing in their investigation should it be requested.¹⁸³ Further evidencing deference to law enforcement, the Miami-Dade County Inspector General may not interfere with U.S. and State Attorney criminal investigations and must notify the same whenever the Inspector General may issue a subpoena.¹⁸⁴

B. Jurisdiction: The Inspector General and Ethics Enforcement Bodies

Municipal ethics boards and commissions constitute the primary enforcement body of a jurisdiction's ethical standards, which are designed to extirpate public corruption and fraud, restoring the public's trust in government.¹⁸⁵ Ethics commissions "serve as the guardian of the public trust by, among other things, educating the public, candidates for elective office, elected and appointed officials and other public servants as to the required standards of ethical conduct and enforcing those standards of conduct."¹⁸⁶ To accomplish this goal, these agencies enforce the applicable code of ethics and other ethical requirements.¹⁸⁷

Ensuring compliance with such standards may, however, overlap with the work of the local inspector general,¹⁸⁸ creating instances where the inspector general and the ethics enforcement body may find themselves investigating the same matter.

A practical solution to this issue is at the core of the inspector general's mandate—to investigate and then report. Once this report is made the ethics enforcement body may then proceed with hearings and other procedural mechanisms to determine whether the facts proffered by the inspector general, supplemented by additional investigation, support the existence of a violation, and then to impose a punishment where necessary. Given these diverging roles and abilities, overlap need not exist.

Some municipalities even take advantage of this particular skill

¹⁸³ COOK COUNTY, ILL., CODE OF ORDINANCES § 2-284(6) (2011).

¹⁸⁴ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1076(d)(3) (2011).

¹⁸⁵ See, e.g., NEW ORLEANS, LA., CODE OF ORDINANCES § 2-719(a) (2011) (describing that the Ethics Review Board is to enforce the New Orleans Code of Ethics); see also *id.* §§ 2-766–784 (2011) (City Code of Ethics).

¹⁸⁶ MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 2-1067 (2011).

¹⁸⁷ *Id.* § 2-1068.

¹⁸⁸ Compare NEW ORLEANS, LA., CODE OF ORDINANCES § 2-719 (2011) (authorizing the New Orleans Ethics Review Board power to enforce the City's Code of Ethics), with *id.* § 2-1120(2) (providing the New Orleans Inspector General with jurisdiction over all city departments).

set of their inspector general office, requiring the inspector general to assume the investigatory role of the ethics board.¹⁸⁹ However, where this relationship is not imposed, municipalities may nonetheless require the inspector general to relay discovered breaches of ethical standards by providing notice¹⁹⁰ or filing a complaint with the ethics enforcement body.¹⁹¹

As with law enforcement overlaps, it is in the best interests of the public to avoid the costs associated with duplicative investigations and the potential for political gamesmanship, which may involve arguments over which agency has the “lead authority” at any given point in time. Addressing these issues when drafting the local law will reduce costs and help to ensure public trust.

C. Inspectors General: Filling the Jurisdictional Void

A valuable aspect of the inspector general construct is its duty and ability to detect waste and inefficiency,¹⁹² including saving, avoiding, and recovering municipal funds inappropriately expended.¹⁹³ This is a role neither the prosecutor nor the ethics enforcement body occupies, as mere inefficiency is not intrinsically unethical or criminal. Without the inspector general, the auditing and investigation of municipal operations could be ignored, leading to needless expenditure of public funds. Examples of the cost savings and recoveries from these offices are discussed in greater detail in Part V.

D. Co-Existence

The fundamental differences between the bodies permit and perhaps advocate for the existence of all three institutions. The inspector general is an agent of detection, having only the authority, abilities, and mission to attack official misconduct and inefficiency.

¹⁸⁹ *E.g.*, ALBUQUERQUE, N.M., CODE OF ORDINANCES 2-17-6(F) (2011) (“The Inspector General shall investigate any alleged violation of the Code of Ethics . . .”).

¹⁹⁰ *E.g.*, COOK COUNTY, ILL., CODE OF ORDINANCES § 2-284(7) (2011) (requiring the Inspector General to notify the County Board of Ethics if an ethical violation has occurred).

¹⁹¹ *E.g.*, NEW ORLEANS, LA., CODE OF ORDINANCES § 2-1120(10)(m) (2011).

¹⁹² CHL., ILL., MUN. CODE § 2-56-030(c) (2011) (“To promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government . . .”); MONTGOMERY COUNTY, MD., COUNTY CODE § 2-151(a)(1) (2011) (“The goals of the Inspector General are to review the effectiveness and efficiency of programs and operations of County government and independent County agencies.”).

¹⁹³ See MIAMI-DADE OIG ANN. REP., *supra* note 132, at 11 (explaining that since the inception of the office in 1998, the total prevented losses, savings, and recoveries total \$70 million).

Though the different bodies do overlap in certain instances, this overlap is only in the investigatory phase and is remedied by the inspector general's ability to provide information to the enforcement body with jurisdiction over the particular offense. If a municipality has the resources available to fund such an office, as well as the quantity of municipal contracts and agencies requiring constant auditing, the appointment of an inspector general may be an appropriate mechanism to enhance the transparency, oversight, and accountability of the government officials, employees, and contractors.

V. THE DOLLARS AND CENTS BENEFITS OF MUNICIPAL INSPECTORS GENERAL

Inspector general offices at the municipal level may come with a hefty price tag, as discussed earlier.¹⁹⁴ Therefore, an examination of the tangible benefits of these offices is necessary. However, the benefits cannot be measured solely on financial return. As described above, there is value in avoiding, recovering, and remedying losses; preventing misconduct and abuse; and in restoring the public's trust in government.¹⁹⁵ This section addresses the illustrative results achieved by some of the municipal inspectors general, addressing, when available, whether the returns experienced by the offices exceeded the funds expended.¹⁹⁶

A. Miami-Dade County, Florida, Office of the Inspector General

The Miami-Dade Office of the Inspector General is budgeted for a staff of thirty-eight people,¹⁹⁷ and in the 2009–2010 financial year, had an office budget of \$5,329,000—\$1,074,000 of which originated

¹⁹⁴ See, e.g., CHICAGO 2010 ANN. APPROPRIATION ORDINANCE, *supra* note 161, at 20 (providing that the 2010 annual appropriation for the Chicago Office of the Inspector General exceeded \$2 million).

¹⁹⁵ See MIAMI-DADE OIG ANN. REP., *supra* note 132, at 3 (“The ultimate goal of the Office is to prevent misconduct and abuse and to seek appropriate remedies to recover public monies. Above all, our principal objective is to promote honesty, efficiency, and ethics in government, and to maintain and promote the public's trust in government.”).

¹⁹⁶ The information regarding recovery and averting losses is generally obtained from annual reports. See, e.g., *id.* at 11. Information concerning the budget of the office can be found in the annual report, but may also be found in the municipality's budget. E.g., 2010 MIAMI-DADE COUNTY, Q. BUDGET REP. 30, available at http://www.miamidade.gov/budget/FY2010-11/pdf/12010-First_Qtr_Budget_Report_FY_2009-10.pdf [hereinafter 2010 MIAMI-DADE Q. BUDGET REP.]

¹⁹⁷ 2010 MIAMI-DADE Q. BUDGET REP., *supra* note 196, at 30; see also MIAMI-DADE OIG ANN. REP., *supra* note 132, at 10.

from the general fund.¹⁹⁸ The rest of the funding derived from the prior year's budget, as well as proprietary, and interagency, or interdepartmental fees.¹⁹⁹ The prior financial year's budget, 2008–2009, evidenced a similar funding structure with an overall \$5,553,000 budget—\$363,000 of which was issued from the general fund.²⁰⁰ Since its establishment in 1998, the Office has used these funds well, highlighting “an accumulated sum of \$133 million in identified questionable costs and losses, and \$70 million in averted losses/savings/recoveries”²⁰¹

The most recent annual report provided by the Office leads to the conclusion that this money was well spent. For the fiscal year 2008–2009, the Office reported that it identified \$9.1 million in “questionable costs and losses” and averted \$1.9 million in losses.²⁰² Additionally, in an ongoing project regarding the Marlins baseball team, the Office has already saved \$1 million.²⁰³ The savings in these two areas alone far surpassed the \$363,000 general fund expenditure.

The Miami-Dade Office has also experienced success in areas other than the identification, recovery, or averting of loss, as the office contributed to criminal investigations.²⁰⁴ In 2009, a joint investigation by the Office and the State Attorney uncovered evidence that a local businessman used \$132,000 of grant money for personal benefits.²⁰⁵ This investigation culminated in a guilty plea to the criminal charge of organized scheme to defraud, and the businessman receiving a six-month prison sentence and 29.5 years probation.²⁰⁶ Another investigation led to the conviction of an accomplice in an embezzlement scheme, resulting in a prison term of three years, as well as \$40,000 in restitution to the County, and \$600,000 restitution to the County's insurer.²⁰⁷

The Miami-Dade Office of the Inspector General also provided a benefit to the County through its issuance of recommendations. For example, in 2009 the Office found that “2007 collectible tax

¹⁹⁸ 2010 MIAMI-DADE Q. BUDGET REP., *supra* note 196, at 30.

¹⁹⁹ *See id.*

²⁰⁰ 2009 MIAMI-DADE COUNTY Q. BUDGET REP. 29, available at http://www.miamidade.gov/budget/FY2009-10/pdf/09-02-17-First_Quarter_Budget_Report_Fiscal_Year_2008-2009.pdf [hereinafter 2009 MIAMI-DADE Q. BUDGET REP.].

²⁰¹ MIAMI-DADE OIG ANN. REP., *supra* note 132, at 11.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *See id.* at 13.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

revenues on properties with a cumulative assessed value of over \$6 million were not identified.”²⁰⁸ As a result, the Office made recommendations to the appraiser’s office, which were implemented.²⁰⁹ Additionally, in 2008, the Miami-Dade Office found that service providers at the Miami International Airport had underreported revenues by over \$2.2 million in an attempt to avoid paying permit fees due the county.²¹⁰ The Office recommended that the municipality take action to “recoup the additional fees owed to the County; that Miami-Dade Aviation Department enforce the issuance and timely renewal of permits; and that a system be put in place to identify and monitor permittees, and to ensure accurate reporting of gross revenues from security-related service activities.”²¹¹

B. Chicago Office of the Inspector General

On April 7, 2011, the Chicago Office of the Inspector General announced the completion of an audit of the city’s Office of Emergency Management and Communications.²¹² The audit findings revealed that in auditing a sample of fifty-three percent of the nonpayroll disbursements, thirty-five percent of the commodities purchased did not match the order or did not relate to the purchase at all.²¹³ Furthermore, the Inspector General discovered that in a sample of goods received, fifteen percent of the inventory was missing, including “38 laserjet [sic] printers, 10 computer carrying cases, seven notebook computers and a digital camera,” totaling \$19,001.²¹⁴ Given these alarming examples of waste, and perhaps even fraud, the Office of Inspector General provided recommendations,²¹⁵ and the Office of Emergency Management and Communications began “to implement appropriate policy and procedural changes to the broad scale,

²⁰⁸ *Id.* at 15.

²⁰⁹ *Id.*

²¹⁰ 2008 MIAMI-DADE OFFICE OF THE INSPECTOR GEN. ANN. REP. 13, *available at* <http://www.miamidadeig.org/annualreports/2008annualBW.pdf>.

²¹¹ *Id.*

²¹² OFFICE OF THE INSPECTOR GEN., CITY OF CHI., REPORT OF THE INSPECTOR GENERAL’S OFFICE: OFFICE OF EMERGENCY MANAGEMENT AND COMMUNICATIONS DISBURSEMENTS AUDIT 3 (2011), *available at* <http://chicagoinspectorgeneral.org/wp-content/uploads/2011/04/OEMC-DISBURSEMENTS-AUDIT-FINAL.pdf>.

²¹³ *Id.* at 6.

²¹⁴ *Id.* at 3, 15.

²¹⁵ *Id.* at 9–15.

systemic deficiencies discussed in the audit.”²¹⁶

Additionally, Chicago Inspector General investigations have led to convictions of numerous public employees. While conducting an unrelated investigation, a check was found payable to Ming Liu, a project administrator for the City of Chicago Department of Cultural Affairs, for \$20,000 from the Chicago Tourism Fund’s executive director.²¹⁷ Through the course of that investigation, it was determined that Liu had forged the signature of the executive director and, to avoid detection, altered the payee of the check in the Fund’s computer system.²¹⁸ Ming Liu pled guilty on March 4, 2010 to one count of felony theft and, as part of a plea deal with the State Attorney’s Office, received two years of probation and paid restitution.²¹⁹

In another joint investigation—a collaboration between the Chicago Inspector General, the FBI, and the U.S. Postal Inspection Service—led to the conviction of another city official for bribery.²²⁰ The former ventilation inspector with the City of Chicago Department of Buildings was sentenced to twenty-one months in prison and “was also sentenced to two years of supervised release, a \$15,000 fine, an additional \$100 special assessment, and [was] required to pay back \$500 in government money used during the investigation.”²²¹

C. Montgomery County, Maryland, Office of the Inspector General

The Office of the Inspector General for Montgomery County, Maryland, has also demonstrated both short- and long-term success and financial savings. Over the course of the past five years, the Office reported that it had a positive effect on executive and

²¹⁶ Press Release, Office of the Inspector Gen., City of Chi., Inspector General Releases OEMC Audit Report (Apr. 7, 2011), *available at* <http://chicagoinspectorgeneral.org/wp-content/uploads/2011/04/OEMC-Audit-Release.pdf>.

²¹⁷ Press Release, Office of the Inspector Gen., City of Chi., Former City Employee Repays \$20,000, Avoids Prison Time for Felony Theft (Mar. 4, 2010), *available at* http://chicagoinspectorgeneral.org/wp-content/uploads/2011/03/release_tourism-fund_plea.pdf.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Press Release, Office of the Inspector Gen., City of Chi., City of Chicago Employee Sentenced for Bribery Under *Operation Crooked Code* (Aug. 27, 2010), *available at* http://chicagoinspectorgeneral.org/wp-content/uploads/2011/03/Zirolis_Sentencing_08-27-10.pdf (emphasis in original).

²²¹ *Id.* This conviction was part of a “federal corruption investigation, code-named *Operation Crooked Code*,” a cooperative effort consisting of federal bodies such as the FBI, Federal Inspector General, the USPIS, and the U.S. Attorney’s Office, resulting in the conviction of seventeen individuals. *Id.*

legislative decisions involving more than \$37 million, while having an operating cost of \$2.8 million over the same time period.²²² Specifically, over this time period, the Office stated it identified \$12.891 million in questionable costs or potential savings, as well as recovered or recommended the better use of \$24.95 million in county funds.²²³ Furthermore, over these past five years, the Montgomery County Office reported instances of fraud, waste, and abuse to the municipal government forty-three times.²²⁴

Evidencing short-term success, the Office conducted an audit of the county government's overtime policies, procedures, and uses for the Montgomery County Fire and Rescue Service ("MCFRS").²²⁵ As a result of the recommendations issued after the audit, the county government reduced the MCFRS' annual overtime payments by \$3.7 million, or 21.6 percent, in one quarter alone.²²⁶ Additionally, the Office made recommendations to the county legislature concerning abuse of the disability retirement system, resulting in the passage of a bill reforming the law.²²⁷

D. Philadelphia Office of Inspector General

The 2009 Annual Report of the Philadelphia Inspector General revealed that it had received 688 complaints, 298 of which were assigned case numbers.²²⁸ Over the course of the year, the fiscal impact of the office was approximately \$4,198,386.24, including over \$580,000 in pension savings, and over \$230,000 in fines, suspensions, restitution, retirement forfeiture, and salary reduction.²²⁹

The investigations described in the 2009 report included cases of fraud, waste, and abuse.²³⁰ One investigation resulted in the resignation of a twenty-six-year employee who "used

²²² 2010 OFFICE OF INSPECTOR GEN., MONTGOMERY COUNTY, MD. ANN. REP. 1, *available at* http://www.montgomerycountymd.gov/content/InspectorG/pdf/FY10_Annual_Report.pdf.

²²³ *Id.* at 6.

²²⁴ *See id.*

²²⁵ 2009 OFF. OF INSPECTOR GEN., MONTGOMERY COUNTY, MD. ANN. REP. 6, *available at* http://www.montgomerycountymd.gov/content/InspectorG/pdf/fy09_annual_report.pdf.

²²⁶ *Id.*

²²⁷ *Id.* at 6–7. This new bill requires that doctors appointed to the panel are independent from the employee organizations, requires all members on the panel be certified and having practiced for ten years in occupational medicine, as well as strengthens the review of past disability retirements by ensuring that the disability exists, among others reforms. *Id.* at 7.

²²⁸ 2009 OFFICE OF THE INSPECTOR GEN., CITY OF PHILA. ANN. REP. 1, *available at* http://www.phila.gov/oig/pdfs/OIGANNUAL_REPORT.pdf.

²²⁹ *Id.*

²³⁰ *Id.* at 7.

[approximately] 242 hours of city time to work an unauthorized second job,” resulting in a near seven thousand dollar instance of fraud.²³¹ In another investigation, a former Housing Development Corporation employee sold a city-owned house to her daughter’s boyfriend for \$1.00.²³² The latter employee pled guilty to theft of federal funds and witness tampering, resulting in five months in prison, another five months in household confinement, forfeiture of pension, and restitution to the city totaling \$52,700.²³³ Additionally, the Executive Director of Colours, a nonprofit agency, was charged with stealing over \$138,000 in government funds.²³⁴ This individual spent the money on travel expenses, dog grooming, and plastic surgery; she was ordered to pay restitution and was sentenced to one year in prison, including three years of supervised release.²³⁵

In addition to the rewards experienced in 2009, during the time period covered in the 2010 annual report, \$9,090,627.00 in financial accomplishments were credited to the Office, including \$3,434,187.52 in fines, assessments, and recoveries, as well as \$2,042,343.68 in pension disqualification savings.²³⁶ These financial accomplishments were achieved with the municipality’s investment of only \$1,309,677 to fund the Office.²³⁷

VI. CONCLUSION

In the current era of scarce fiscal resources, especially at the local level, municipalities should consider whether the establishment of an inspector general office can assist in not only furthering a commitment to ethical government, but in identifying cost-savings and expenditure recoupment for the locality. Regardless of whether an effective local ethics agency exists in a given jurisdiction, the experiences studied of those municipalities that have both, reveal that both agencies can effectively cooperate in instances where aspects of their jurisdiction overlap. Law enforcement, ethics, and inspector general offices, together, represent the trifecta of ensuring

²³¹ *Id.*

²³² *Id.* at 10.

²³³ *Id.*

²³⁴ *Id.* at 11.

²³⁵ *Id.*

²³⁶ 2010 OFFICE OF THE INSPECTOR GEN., CITY OF PHILA. ANN. REP. 1, *available at* <http://www.phila.gov/oig/pdfs/annualreport2010.pdf>.

²³⁷ CITY OF PHILA.: FISCAL 2010 OPERATING BUDGET § V § 2.2 (2009), *available at* http://www.phila.gov/finance/pdfs/Budget_FY10.pdf.

good, honest, and efficient government. The combination offers an effective strategy for furthering the public trust in government.