



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

January 16, 2008

The Honorable Gary Skalko
Mayor, City of Mountain Iron
8586 Enterprise Drive, South
Mountain Iron, Minnesota 55768

Dear Mayor Skalko:

The Office of the State Auditor reviewed donations the City of Mountain Iron (City) made to two private cemetery associations in 2005, 2006, and 2007. Based upon our review, it appears the City did not have the authority to donate more than \$2,500 per year in public funds to the private cemetery associations. This letter presents our findings and outlines our recommendations regarding these matters.

Under Minnesota law, a city may appropriate up to \$2,500 per year to any public or privately owned cemetery.¹ The city does not need an ownership interest in the cemetery, and the cemetery may be located within or outside the boundaries of the city.

A city may expend city funds for the support and maintenance of a cemetery that the city owns and manages.² In addition, a city may enter into a maintenance agreement with a contiguous city or town that owns and maintains a cemetery.³ Each city or town entering into such a maintenance agreement may levy a tax or appropriate up to \$10,000 per year.⁴

According to the City Administrator, the City does not own a municipal cemetery. However, for many years, the City has donated City funds to two private cemetery

¹ See Minn. Stat. § 471.84 (1957 amendment raised the maximum appropriation amount from \$1,500 to \$2,500 and extended the statute to public cemeteries). Burial of the dead in the cemetery must be allowed without restriction. *Id.* See also Op. Att’y Gen. 870-J (September 29, 1960) (village may appropriate up to \$2,500, but could not levy a special tax for the public cemetery association), Op. Att’y Gen. 870-J (August 5, 1957) (village may appropriate up to \$2,500 to a public cemetery), and Op. Att’y Gen. 870-J (May 16, 1955) (village may appropriate up to \$1,500 to public cemetery that is privately owned).

² See Minn. Stat. § 412.221, subd. 9. The subdivision provides: “The council shall have power to acquire by purchase, gift, devise, condemnation or otherwise, *hold and manage* cemetery grounds, to enclose, lay out and ornament such grounds and sell and convey lots therein. It may by ordinance regulate cemeteries and the disposal of dead bodies.” (*Emphasis added.*)

³ See Minn. Stat. § 471.24.

⁴ *Id.*

associations that own cemeteries located in Virginia, Minnesota.⁵ The City Administrator also informed us that the City does not have a maintenance agreement with either of the cemetery associations or with the City of Virginia.

In 2005, the City donated \$1,250 to each of the cemetery associations.⁶ That amount falls within the amount allowed by statute. However, in both 2006 and 2007, the City gave each of the two cemetery associations \$3,000 each year.⁷ In addition, the City donated \$12,500 in 2006 to one of the cemetery associations for a building expansion project.⁸ In the 2007 budget, the City Council approved \$12,500 for capital improvements for the other cemetery association.⁹ The City Council approved the increased cemetery donations after seeking the advice of the City Attorney. In May 2006, the City Attorney took the position that the donations were allowable under the City's statutory power to "manage" cemetery grounds.¹⁰ The City Attorney reasoned that the cemetery associations were the City's agents for this purpose.¹¹

We know of no authority for the City to donate more than \$2,500 in public funds per year to a private cemetery association such as the ones currently receiving funds from the City. In addition, under Minnesota law, before a city may appropriate up to \$10,000 in public funds for the maintenance of a cemetery it does not own, the city must have

⁵ The two cemetery associations are the Calvary Cemetery Association and the Greenwood Cemetery Association. According to the City Administrator, the associations own the cemeteries. *See* City Council Meeting Minutes (November 28, 2005) at page 4.

⁶ *See* City checks dated February 8, 2005, to the Calvary Cemetery for \$1,250, and to the Greenwood Cemetery Association for \$1,250. *See also* City Council Meeting Minutes (February 7, 2005) at page 5.

⁷ *See* City checks to the Calvary Cemetery Association dated April 5, 2006, for \$1,250; dated May 4, 2006, for \$14,250 (\$12,500 for cemetery building expansion; \$1,750 for "appropriation"); and dated March 20, 2007, for \$3,000. *See* City checks issued to the Greenwood Cemetery dated May 4, 2006, for \$3,000, and dated March 20, 2007, for \$3,000. *See also* City Council Meeting Minutes (May 1, 2006) at page 3 (approval contingent on City Attorney recommendation); City Council Meeting Minutes (March 19, 2007) at page 4.

⁸ *See* City check to the Calvary Cemetery Association dated May 4, 2006, for \$14,250 (including \$12,500 for cemetery building expansion). *See also* City Council Meeting Minutes (March 21, 2005, and April 18, 2005) (approving 2006 budget allocation of \$12,500 for the Calvary Cemetery Association building expansion project); and City Council Meeting Minutes (April 3, 2006) (approving appropriation of the 2006 budgeted amount to the Calvary Cemetery Association).

⁹ *See* City Council Meeting Minutes (October 30, 2006) at page 3; City Council Meeting Minutes (February 20, 2007) at page 2 (allocation contingent on contribution from the City of Virginia). The City Administrator stated that the City has not yet appropriated the 2007 funds for the Greenwood Cemetery Association.

¹⁰ *See* email from Sam A. Aluni, Mountain Iron City Attorney, addressed to the Craig Waino, City Administrator, City of Mountain Iron, dated May 4, 2006 ("Email"). The City Attorney relied upon Minn. Stat. § 412.221, subd. 9. The email also stated that the Mr. Aluni had conferred with the Attorney for the City of Virginia and the City of Virginia had taken the same position. The City of Virginia is also receiving a letter from the Office of the State Auditor regarding this matter.

¹¹ *See* Email. *See also* City Council Meeting Minutes (April 17, 2006) at page 2.

The Honorable Gary Skalko
Mayor, City of Mountain Iron
January 16, 2008
Page 3

entered into a maintenance agreement with another city or town that does own the cemetery.

We recommend that the City comply with Minnesota law and appropriate no more than \$2,500 per year to either of the private cemetery associations. Alternatively, the City may want to obtain an ownership interest in the cemeteries, enter into joint maintenance agreements with a municipality having an ownership interest in the cemeteries, seek a clarifying opinion from the Minnesota Attorney General's Office, or attempt to obtain a change in the law.

If you have any questions about the issues discussed in this letter, please feel free to contact me directly at (651) 297-7108.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

cc: Craig Waino, City Administrator
Gary Giroux, Walker, Giroux & Hahne, City Auditor
Sam A. Aluni, Trenti Law Firm, City Attorney