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April 15, 2009

The Honorable James E. Wallin
Mayor, City of Brainerd
501 Laurel Street
Brainerd, MN 56401-3595

The Honorable Kelly Bevans
501 Laurel Street
Brainerd, MN 56401-3595

The Honorable Bonnie Cumberland
501 Laurel Street
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The Honorable Anne Nelson Fisher
501 Laurel Street
Brainerd, MN 56401-3595

The Honorable Kevin Goedker
501 Laurel Street
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The Honorable Mary Koep
501 Laurel Street
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The Honorable Lucy Nesheim
501 Laurel Street
Brainerd, MN 56401-3595

The Honorable Robert E. Olson
501 Laurel Street
Brainerd, MN 56401-3595

Dear Mayor Wallin and Brainerd City Council Members,

The Office of the State Auditor reviewed 2008 and selected 2007 expenditures made by City of Brainerd ("City") Mayor James E. Wallin and approved by the City Council for reimbursement from the Mayor's Contingency Fund.

This Office wrote to the City on September 8, 2006, regarding concerns we received about the Mayor's Contingency Fund.¹ As we stated in our prior letter, cities must have the authority to make expenditures through either state statute or city charter. We recognized that the Brainerd City Charter grants the Mayor broad authority to expend City funds to cover expenses incurred while "promoting the best interests of the City."²

¹ See Letter dated September 8, 2006, from Deputy State Auditor/General Counsel Carla Heyl to City Administrator Daniel J. Vogt. Mayor Wallin, Members of the City Council, and City Attorney Tom Fitzpatrick were copied on the letter.

² Brainerd City Charter, Chapter 3, Section 46, No. (10). "A contingent fund in the sum of \$2500.00 shall be established at the beginning of each fiscal year for the use of the Mayor in paying expenses incurred by the mayor in promoting the best interests of the City and not payable out of any of the other funds herein provided. This fund shall be under the control of the Mayor, and checks may be drawn thereon without

We also noted, however, that the Minnesota Constitution requires all expenditures of public tax dollars to serve a “public purpose.”³ In general, an expense is considered to serve a “public purpose” when it:

- benefits the community as a whole,
- is directly related to the functions of government, and
- primarily serves a public interest rather than a private interest.⁴

Donations to non-profits, charities, or individuals are generally not considered to serve a public purpose.⁵ The assumption is that a gift of public funds to an individual or private entity necessarily serves a private purpose rather than a public purpose. In addition, the mere attendance of a city official at a social event does not qualify the city official’s expenses as public expenses, absent documentation of legitimate city business.⁶ Generally, public officials may not claim expenses whenever they meet with a constituent group.

During 2007 and 2008, the Mayor’s Contingency Fund was used for charitable donations, birthday cards, four tickets to a Minnesota Wild hockey game for three students from Brainerd’s Sister City, Leksand Sweden, and their adult chaperone, and a variety of other items. The Fund also appears to have been used to reimburse the Mayor for his mileage to attend fundraisers, a festival in another city, the Minnesota Sesquicentennial, a couple’s sixty-fifth wedding anniversary, parades, Kiwanis events, a funeral, and a Special Council meeting held on June 9, 2008. It also appears to have been used to reimburse the Mayor for mileage related to answering phone calls and inquiries.

The City Council is in the best position to determine whether the Mayor’s attendance at an event should properly be reimbursed. The City Council should be able to explain to the public why the Mayor’s attendance at an event directly related to the functions of government, benefitted the community as a whole, served the public interest, and promoted the best interests of the City.

previous allowance by the City Council of the claim or claims for which any such check shall be drawn. The balance of said fund, if any, remaining at the end of each fiscal year shall revert to the City Treasury.”

³ Minn. Const. Art. X , § 1.

⁴ See *Visina v. Freeman*, 252 Minn. 177, 184 (1958).

⁵ See Office of the State Auditor’s Statement of Position on Public Expenditures: Donations and Dues, available on our website at:

http://www.auditor.state.mn.us/other/Statements/publicexpdonationsdues_0809_statement.pdf.

⁶ See Office of the State Auditor’s Statement of Position on County Commissioner Per Diem Payments, available on our website at:

http://www.auditor.state.mn.us/other/Statements/commissionerPerDiem_0707_statement.pdf.

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In our September 8, 2006, letter, we explained that mileage reimbursement claims should include the date, location, and manner of travel, the total mileage claimed, and the purpose or reason for travel.⁷ However, for some of the Mayor's mileage reimbursement claims, the City only provided us with copies of the "Mayor's Report to Council" containing handwritten annotations as support for the mileage reimbursement requests.⁸

City employees use a standard form to request reimbursements for mileage expenses. The same reimbursement procedures should apply to all City employees and officials. We recommend that the Mayor submit his reimbursement requests, such as those for his mileage claims, using the same expense reimbursement form required of all other City employees.

This is not the first time that we have written to the City about the Mayor's Contingency Fund. We encourage the City and the City's Charter Commission to review whether the Mayor's Contingency Fund Charter provision should be amended or repealed, or whether other steps can be taken to resolve the continued controversies that seem to arise over the use of this Fund.

Please feel free to contact me directly at 651-297-5853 with any questions or concerns.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel
Office of the State Auditor

cc. City Administrator Daniel Vogt
City Finance Director Theresa Goble
City Attorney Tom Fitzpatrick

⁷ As explained in our September 8, 2006, letter to the City, Minnesota law requires claims to be itemized and a declaration that the claim is correct and has not previously been paid. *See* Minn. Stat. §§ 471.38, subd. 1, and 471.391, subd. 2; *see also* *Leskinen v. Pucelj*, 262 Minn. 461, 465 (1962).

⁸ The Mayor submitted two mileage reimbursement requests in 2008 – one covering a time period of five months, and one covering a time period of seven months. We remind the City that employee expenses submitted for reimbursement more than 60 days after the expense is incurred may be taxable, and appropriate withholdings would need to be made. Further, some transportation expenses are subject to state and federal withholdings. *See* IRS Publication 463 titled "Travel, Entertainment, Gift, and Car Expenses" at: <http://www.irs.gov/pub/irs-pdf/p463.pdf>.