



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@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

October 17, 2016

The Honorable Tim Freerksen
Chair, LeRoy Town Board
76213 - 105th Street
LeRoy, Minnesota 55951

Dear Chair Freerksen:

The Office of the State Auditor (“OSA”) received concerns about the Town of LeRoy (“Town”). Specifically, concerns were raised as to the Town’s past hiring of a Town Board Supervisor to perform work for the Town and about the Town’s processes for auditing and approving claims for payment. This letter will summarize the OSA’s review and provide the Town with guidance for complying with Minnesota law in the future.

Hiring of and Work Performed By Town Board Supervisor

The OSA received concerns that the Town paid a Town Board Supervisor for mowing services performed during calendar year 2014. The Town did not provide to the OSA a Town Board Resolution authorizing the work, nor did it provide an affidavit containing the requisite elements to support such a resolution.¹

Under Minnesota’s general conflict of interest law, “a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.”² Similarly, Minnesota town law generally provides that “a supervisor or town board must not be a party to, or be directly or indirectly interested in, a contract made or payment voted by the town board.”³ Because the general rules are so strict, the legislature has created a number of exceptions.⁴ For example, a town board, “by unanimous vote, may contract for goods or services with an interested officer” if the contract is one “for which competitive bids are not required by law.”⁵

¹ Minn. Stat. § 471.89.

² Minn. Stat. § 471.87.

³ See Minn. Stat. § 365.37, subd. 1.

⁴ See Minn. Stat. §§ 471.88 - 89. See also Minn. Stat. § 365.37, subd. 1.

⁵ See Minn. Stat. § 471.88, subds. 1 and 5. Generally, competitive (sealed) bids are not required unless the amount of the contract is estimated to be over \$100,000. See Minn. Stat. § 471.345, subds. 3 and 3a.

To use this broad exception, however, a town and the interested supervisor must follow additional procedures. First, the town board must “authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere.”⁶ In addition, before claims are paid on the contract, the interested officer must file with the town clerk “an affidavit stating:

- (a) the name of the officer and the office held by the officer;
- (b) an itemization of the commodity or services furnished;
- (c) the contract price;
- (d) the reasonable value;
- (e) the interest of the officer in the contract; and
- (f) that to the best of the officer’s knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.”⁷

The OSA recommends that when the Town contracts with a member of the Town Board, it adopt the required resolution and obtain the required affidavit. For additional guidance on contracting with a Town Supervisor, the OSA recommends that the Town consult with its attorney or review Chapter 9 of the Township Manual found on the Minnesota Association of Township’s website (www.mntownships.org). The Township Manual includes sample affidavits and resolutions.

Claims for Payment and Supporting Documentation

The OSA received concerns about several payments made by the Town. The expenditure of public funds requires both a public purpose and legal authority. Authority may be specifically stated in statute or implied as necessary to do something that is expressly authorized.⁸

Generally, a town board can pay a claim only if the claim is itemized, as long as itemization is possible in the ordinary course of business.⁹

Under Minn. Stat. § 15.17, public officers “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.”

⁶ See Minn. Stat. § 471.89.

⁷ *Id.*

⁸ See, e.g. *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (1966).

⁹ Minn. Stat. § 471.38.

During its review, the OSA reviewed claims for payment underlying several disbursements made by the Town from January 1, 2014, through December 31, 2014. As described below, the OSA found that many claims did not include an itemization of the services or items purchased by the Town, and documentation for some transactions was missing:

- 1) **Insufficient Claim Detail.** Claims presented by the Town Board Supervisor listed a total number of hours of undefined services for which payment was sought but did not list the services provided, the dates of the services, or any other detail that would indicate what the payments were for. A few hand-prepared claim slips for disbursements to a vendor stated “Diesel for Mower” or “Diesel” and an amount, without providing any additional detail such as the dates of purchase, the name of the individual obtaining the fuel, the number of gallons purchased, and the costs charged per gallon. There was no original receipt from the vendor.
- 2) **No Invoices.** The Town made several disbursements to a vendor for repair and maintenance services on the Town-owned tractor, but the Town did not have invoices to support all of the disbursements, although the vendor told the OSA that it sent itemized invoices to the Town for all services provided.
- 3) **Insufficient Support for Payments.** The Town paid the former Town Board Supervisor for 18 meetings during the 2014 fiscal year. The Town Clerk reported that the Town held 12 regular Board meetings during the year. The Town Clerk also reported that the Town Board Supervisor was paid for an “Audit” meeting but was not able to determine the other meetings for which the Supervisor was paid.

Minnesota law generally requires itemization of claims against a town.¹⁰ In addition to being required by law, itemization is an important tool to assure that goods and services paid for are actually received and that expenditures are authorized by law and serve a public purpose.

Adequate support for payments is a fundamental requirement of a sound accounting system. To comply with Minnesota law and reduce the risk of erroneous payments and disputes over work performed, the OSA recommends the Town obtain an itemization from vendors and service providers that describes the work provided to the Town, including the date and location of the work performed. The OSA also recommends that the Town maintain in its records copies of all invoices provided by its vendors and require original, detailed receipts to support Town disbursements.

¹⁰ See Minn. Stat. § 471.38, subd. 1.

Meeting Minutes

During its review, the OSA reviewed Town Board meeting minutes for 2014.¹¹ While the minutes generally report the approval of a treasurer's report, the minutes do not report the claims approved by the Town Board or the votes of each Town Board Supervisor on the claims presented.¹² Some minutes document a "motion to pay bills," but do not provide any detail about the bills being approved.¹³ Some of the Town's minutes do not refer to the payment of claims.¹⁴

The OSA recommends that the Town Board meeting minutes include a listing of the claims approved by the Town Board for payment and record the vote of each Supervisor on the claims list presented. The Town Board meeting minutes should also specifically record when a Town Board Supervisor abstains from voting on a matter. For further guidance on meeting minutes, the OSA has enclosed a copy of our Statement of Position on Meeting Minutes, also available on our website at www.auditor.state.mn.us.

Pre-numbered Checks

The Town Clerk reported that the Town is not using sequentially pre-numbered checks. The Clerk manually assigns numbers to checks when they are written.

Using sequentially pre-numbered checks is an essential internal control over cash disbursements. It enables bank statement reconciliations through which irregularities such as missing checks can be detected. The absence of this control jeopardizes the Town's ability to monitor check usage, prevent misuse or theft of funds, and identify situations requiring further investigation.

We recommend that the Town's check stock be sequentially pre-numbered so the Town can properly monitor check usage.

¹¹ Although minutes were requested by the OSA for the entire 2014 calendar year, the Town provided the OSA with meeting minutes from May through December of 2014 and minutes from the Town's 2014 Annual Meeting.

¹² The treasurer's report presented at Town Board meetings appears to be a report on the Town's financial accounts, indicating the ending balance in the Town's savings and checking accounts.

¹³ See, for example, the November 10, 2014, Town Board meeting minutes. Although a motion was made, the meeting minutes do not note that it was seconded or whether it passed.

¹⁴ See, for example, the September 8, 2014, Town Board meeting minutes.

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Conclusion

The OSA has completed its review of concerns and suggests that in the future, the Town follow the recommendations in this letter. If you have any questions, please feel free to contact me by telephone at (651) 296-4717 or by email at Mark.Kerr@osa.state.mn.us.

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr, J.D.
Special Investigations Director

Enclosures

cc: The Honorable Jim Olson, Town Board Supervisor
The Honorable Paul Hamlin, Town Board Supervisor
The Honorable Melinda Morse, Town Clerk
The Honorable Diane Lunning, Town Treasurer



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Statement of Position Meeting Minutes

Minnesota law requires all public authorities and political entities to “make and preserve all records necessary to a full and accurate knowledge of their official activities.”¹ That is, the law requires that meeting minutes be created and maintained. Auditors review the minutes of a governing body when performing financial and compliance audits. Minutes are reviewed to determine if actions taken at the meeting meet statutory requirements. Consequently, the Office of the State Auditor receives questions concerning what items must or should be included in meeting minutes.

Minutes may be defined as a record of the “proceedings” of a governing body.² Minnesota law defines the term “proceedings” (and, therefore, the contents of the record or minutes of the “proceedings”) to include at minimum:

- the subject matter of a motion;
- the persons making and seconding a motion;
- the roll call vote on a motion;
- the character of resolutions or ordinances offered, including a brief description of their subject matter; and
- whether the motion to approve a resolution or ordinance was defeated or adopted.³

Similarly, Minnesota’s “Open Meeting” law requires that minutes include the individual votes of each member of the governing body on any action, including each appropriation of money other than “payments of judgments, claims, and amounts fixed by statute.”⁴

¹ Minn. Stat. § 15.17.

² Various statutes that refer to taking or publishing minutes use the term “proceedings” or “official proceedings.” *See, e.g.*, Minn. Stat. §§ 384.09 (counties); 412.151, subd. 1 (statutory cities); 367.11(1) (towns); and 123B.09, subd. 10 (school districts).

³ *See* Minn. Stat. § 331A.01, subd. 6. The League of Minnesota Cities has also compiled a list of items required in meeting minutes in their information memo titled “Meetings of City Councils,” at http://www.lmc.org/media/document/1/meetings_of_city_councils.pdf?inline=true.

⁴ Minn. Stat. § 13D.01, subd. 4.

Reviewed: January 2014
Revised: July 2012

2007-1024

This Statement of Position is not legal advice and is subject to revision.

Beyond these statutory requirements, the decision regarding how elaborate or extensive the minutes should be is within a governing body's discretion.⁵ The amount of detail which is appropriate for inclusion in the minutes is likely to vary, depending on the nature of the proceedings and the subject matter involved. The minutes need not record the discussions of the members and others, or information relating to the process by which a decision is made. Moreover, the minutes should not be cluttered with unnecessary detail that could hamper efforts to review or otherwise use the minutes at a later date. In addition, the minutes should never reflect the clerk's or secretary's opinion on anything said or done.

Nevertheless, there will be instances where it would be wise for the governing body to include in the minutes information in addition to what is required to satisfy the minimum statutory requirements. For example, a governing body's reasons for reaching a particular decision may be important for defending a challenge to the action taken. In that circumstance, the minutes should include all findings of fact, conclusions, and reasons for conclusions so that an entity may defend its actions. Including this additional detail should protect the board against claims that it acted arbitrarily or capriciously in making its decision.

The Office of the State Auditor often reviews meeting minutes and recommends that meeting minutes include the following information in addition to the statutory requirements:

- type of meeting (regular, special, adjourned regular, adjourned special, recessed, or emergency);
- type of group that is meeting (*i.e.*, the governing body or a committee);
- date and place the meeting was held;
- the time the meeting was called to order;
- approval of minutes of the previous meeting, with any corrections noted;
- identity of parties to whom contracts were awarded;
- abstentions from voting due to a conflict and the member's name and reason for abstention;
- reasons the governing body awarded a particular contract to a bidder other than the lowest bidder;
- granting of variances and special use permits;
- approval of hourly rates paid for services provided, mileage rates, meal reimbursement amounts, and per diem amounts;
- a listing of all bills (including per diems) allowed or approved for payment, noting the recipient, purpose and amount;
- a list of all transfers of funds;
- appointments of representatives to committees or outside organizations;
- reports of the officers;

⁵ Charter cities may have adopted additional meeting minute requirements in their charters.

- authorizations and directions to invest excess funds, and information on investment redemptions and maturities; and
- the time the meeting concluded.

The Office of the State Auditor recommends that the minutes be signed by the clerk or secretary.

Meeting minutes also should be approved by the governing body, usually at the next meeting. The minutes should be signed and dated by a designated member of the governing body to indicate that they are the official meeting minutes.⁶ The approved minutes are the official record of the proceeding.

Audio or video recordings of meetings are not meeting minutes and are not a substitute for meeting minutes.⁷

⁶ For some entities, Minnesota law specifies who must sign meeting minutes. *See, e.g.*, Minn. Stat. § 365.55 (requiring the minutes of town meetings to be signed by “the clerk of the meeting and the moderator”).

⁷ With certain exceptions, however, a governing body must electronically record all closed meetings at its own expense. *See* Minn. Stat. § 13D.05, subd. 1(d).