



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

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July 30, 2008

The Honorable Cindy Bell  
Mayor, City of Delhi  
233 - 3<sup>rd</sup> Street  
Delhi, Minnesota 56283-3106

Dear Mayor Bell,

The Office of the State Auditor received concerns that the City of Delhi ("City") contracted with City Council Member Richard Grejtak for his services as a part-time maintenance employee. Further, it was alleged that Mr. Grejtak was using the City's mower to maintain his personal property.

Based upon our review, it appears that proper procedures were not followed when the City hired Mr. Grejtak as an employee. It also appears that Mr. Grejtak's personal use of City equipment is improper because it does not serve a public purpose.

### **I. City Employment of Elected Officials**

Generally, a city may not contract with a city council member.<sup>1</sup> Minnesota Statutes Section 471.87 provides that a public officer, authorized to make a contract, may not have a personal financial interest in that contract. Although many employment situations do not result in formal written contracts, an oral or an implied employment agreement is still viewed as a contract under the State's conflict of interest laws.

There is an exception to this general rule. If the contract does not require competitive bidding, the city may contract with a council member if certain additional steps are taken.<sup>2</sup> Minnesota Statutes Section 471.89 allows a city to contract with an interested officer by unanimously adopting a resolution that the contract price is as low as, or lower than, prices found elsewhere.

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<sup>1</sup> See Minn. Stat. §§ 412.311; 471.87 (2007).

<sup>2</sup> See Minn. Stat. §§ 471.88, subd. 5; 471.89 (2007) (when the contract is estimated to cost less than \$50,000, competitive bidding is not required; as of August 1, 2008, the amount will be raised to \$100,000).

This statute also requires that, before claims are paid, the interested officer must file an affidavit with the city clerk providing all of the following:

- a list of services;
- the officer's interest in the contract; and
- a statement that the price is as low as, or lower than the price at which the services could be obtained elsewhere.

The required resolution and affidavit help to assure taxpayers that the City's contracting process is honest, open and in the City's best interests.

From our review of the relevant City Council meeting minutes and our discussions with the City Clerk, it appears that the City did not pass the required resolution, and did not obtain an affidavit prior to compensating Mr. Grejtak for his services. We recommend that the City adopt the required resolution and obtain the required affidavit before any further payments are made to Mr. Grejtak. I have enclosed copies of the relevant statutes, as well as a sample resolution and affidavit from the League of Minnesota Cities, for your review.

Please provide this Office with a copy of the resolution adopted by the City Council regarding the work Mr. Grejtak is performing for the City. The City Council's vote on the resolution will need to be unanimous, with Mr. Grejtak abstaining. Please also provide us with copies of the City Council meeting minutes showing passage of the resolution, as well as the affidavit filed by Mr. Grejtak in support of his claim for payment.

## **II. Personal Use of City Equipment**

Public money may only be spent for purposes that are authorized by statute or city charter. In addition, these expenditures must be for a "public purpose."<sup>3</sup> The courts have defined a public purpose as an activity that will benefit the community as a body and is directly related to the function of government.<sup>4</sup>

It is our understanding that City equipment has been used to mow Mr. Grejtak's private property. We know of no authority for an elected official or a city employee to use city equipment to maintain personal property. We believe that the use of the City's mower to maintain private property serves a private, as opposed to a public, purpose.

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<sup>3</sup> See Minn. Const., art. X, § 1.

<sup>4</sup> *Visnia v. Freeman*, 89 N.W.2d 635, 643 (1958).

We recommend that the City prohibit Mr. Grejtak from using the City's equipment to maintain his private property. We also recommend that the City consider seeking reimbursement from Mr. Grejtak for his prior use of the City's mower.<sup>5</sup> Finally, we recommend that the City adopt a written policy regarding the personal use of City equipment.

Please provide us with a copy of the City Council meeting minutes where this issue is discussed and resolved.

### **III. Conclusion**

We look forward to receiving the requested documents. The documents should be sent to my attention at the address identified in the letterhead, or via e-mail at [heidi.holst@state.mn.us](mailto:heidi.holst@state.mn.us).

As required by Minn. Stat. § 6.51, a copy of this letter is being provided to the Redwood County Auditor and the Redwood County Attorney. If you have any questions, please feel free to contact me directly at 651-282-2388, or Nancy Bode at 651-297-5853.

Sincerely,

*/s/ Heidi A. Holst*

Heidi A. Holst  
Office of the State Auditor

#### Enclosures

cc: Don Beadell, City Council Member  
Richard Grejtak, City Council Member  
Orien Stage, City Council Member  
Jessica Nordby, City Clerk  
Karen Haak, City Treasurer  
Kevin Passe, City Attorney  
Michelle A. Dietrich, Redwood County Attorney  
Jean Price, Redwood County Auditor-Treasurer

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<sup>5</sup> For example, the City could bill Mr. Gerjtak at a rate of \$45 per mow for the use of the City's mower to maintain his property. This is the rate charged to residents for mowing under City Ordinance 9.103, according to the City Council motion detailed in the May 2, 2005 meeting minutes.