



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

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March 11, 2014

The Honorable Pete Kuhlmann  
Mayor, City of Rose Creek

Rose Creek, Minnesota 55970

The Honorable Randy Stephenson  
Chair, Marshall Township

Rose Creek, Minnesota 55970

The Honorable Bryan May  
Chair, Nevada Township

Rose Creek, Minnesota 55970

The Honorable Tom Verdoorn  
Chair, Windom Township

Rose Creek, Minnesota 55970

Dear Mayor and Town Board Chairs:

The Office of the State Auditor (OSA) received concerns about the handling of Fire Department funds by the City of Rose Creek (City). This letter will provide the City and the Towns of Marshall, Nevada, and Windom (Towns) with guidance to bring the handling of Fire Department funds into compliance with Minnesota law.

The Rose Creek Volunteer Fire Department serves the City and the Towns. It appears the City maintained funds related to the Fire Department in two separate financial accounts, a savings account and a checking account.<sup>1</sup> The City Clerk/Treasurer was responsible for the handling of the accounts. Only one signature was required on Fire Department checks.

While the OSA was not provided with a written agreement between the City and the Towns, the OSA was informed that the City and the Towns were supposed to contribute equally to the costs related to the operation of the Fire Department, based upon a long-term understanding. The OSA was also informed that the Towns considered themselves to be part of a Rural Fire Association, but no paperwork supporting the creation or defining the legal status of a Rose Creek Rural Fire Association was provided to the OSA.

As currently operated, the Fire Department appears to be a municipal volunteer fire department providing services to the Towns. However, the handling of the Fire Department funds by the City does not comply with Minnesota law.

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<sup>1</sup> Both accounts are maintained at Farmers State Bank of Adams. The savings account is called the City of Rose Creek Fire Equipment Fund; the checking account is called the Rose Creek Area Fire Department account.

The OSA recommends that the City and Towns determine how the Fire Department should be operated in the future. Fire Department funds must be handled in compliance with Minnesota law.

The Fire Department could remain a City Volunteer Fire Department. In that case, the City should enter into written contracts with each of the Towns to memorialize each party's responsibilities for the Fire Department.<sup>2</sup> The Fire Department funds would remain under City control, but the handling of the funds must comply with Minnesota law. For example, more than one signature must be obtained on checks, claims must be itemized and approved by the City Council, and cost data must be provided to the Towns upon request.<sup>3</sup>

Alternatively, the Fire Department could become a joint powers entity. In that case, the City and the Towns should enter into a joint powers agreement under Minnesota's joint powers statute.<sup>4</sup> Enclosed is an article by the State Auditor that describes joint powers agreements for shared fire services.<sup>5</sup> If the joint powers agreement provides a joint powers board with the authority to disburse public funds, the handling of the funds must "agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement."<sup>6</sup>

The OSA is unable to provide the City or the Towns with legal advice. However the League of Minnesota Cities, the City or Town Attorneys, or the Minnesota Association of Townships may be able to provide you with additional assistance.

Please inform the OSA of the City's plan to bring the handling of Fire Department funds into compliance with Minnesota law. If a joint powers agreement is adopted, please provide the OSA with a copy of the agreement.

Thank you in advance for your cooperation. If you have any questions, please feel free to contact me at [Nancy.Bode@osa.state.mn.us](mailto:Nancy.Bode@osa.state.mn.us) or 651-297-5853, or Terrilyn Diamond at [Terrilyn.Diamond@osa.state.mn.us](mailto:Terrilyn.Diamond@osa.state.mn.us) or 651-297-7108.

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<sup>2</sup> Sample fire contracts are available on the League of Minnesota Cities website, [www.lmc.org](http://www.lmc.org) ("Contract Between City and Township for Fire Protection"), and on the Minnesota Association of Townships website, [www.mntownships.org](http://www.mntownships.org) (Document Number C5700 – "Sample Fire Contract").

<sup>3</sup> See, e.g., Minn. Stat. §§ 365.181, subd. 2 (cost data); 412.271, subs. 1 and 3 (multiple signatures on checks; claims "audited and allowed" by city council); 471.38 (itemization of claims).

<sup>4</sup> See Minn. Stat. § 471.59.

<sup>5</sup> Links to sample joint powers agreements are found on page 65 of *A Blueprint for Shared Services*, available on the Minnesota Department of Public Safety website, <https://dps.mn.gov/>.

<sup>6</sup> See Minn. Stat. § 471.59, subd. 3.

City of Rose Creek, and Towns of Marshall, Nevada and Windom - Fire Department

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Sincerely,

*/s/ Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel

Enclosures

cc. Mr. Fred Ulven, Fire Chief  
Ms. Janet Nelsen, City Clerk/Treasurer  
Ms. Rita Hanegraaf, Windom Township Treasurer  
CliftonLarsonAllen, City's Auditors



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March-April 2011

Article for *Minnesota FIRE CHIEF*

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## **Joint Powers Fire Departments and Fire Districts: What You Need to Know**

*By Rebecca Otto, State Auditor*

The sharing of fire services among local units of government may provide opportunities to improve the level of services provided to residents while keeping costs under control. A 2010 report entitled, "A Blueprint for Shared Services, Fire and Rescue Shared Services Task Force" details these types of arrangements and the different forms that they take. One model for sharing fire services is the use of joint powers agreements. This article will focus on what you need to know when joint powers agreements are used for sharing fire services.

### **The Joint Powers Agreement – Getting it Right**

Because joint powers agreements are legal documents, local governments entering into them for fire services should work with their attorneys for assistance in drafting the agreements. Getting it right the first time will help to avoid problems down the road.

First, the agreement must state its purpose, and how the purpose will be accomplished. For example, the agreement may specify that one of the parties to the agreement will provide services on behalf of the other participating local governments.

To avoid confusion later, the Office of the State Auditor (OSA) recommends that joint powers agreements for fire services explain how municipal contributions to fire relief associations will be paid, and how relief association bylaws and benefit changes will be approved.

State law also requires that joint powers agreements contain certain provisions in the event of dissolution. For example, the agreement must provide for the disposition of any property acquired as a result of the joint exercise of power. It must also require that any surplus moneys remaining after the dissolution be returned to the parties to the agreement in proportion to their contributions.

As a matter of best practices, local governments that have a joint powers agreement in place for fire services should review the agreement on a regular basis. The agreement should be modified

if circumstances affecting the agreement have changed since the agreement was first adopted.

### **Joint Powers Board**

The joint powers agreement may create a new, separate entity. A joint powers board may be created to operate the new entity. If so, the board must be representative of the parties to the agreement.

A joint powers board may be structured in a number of different ways. For example, some boards serve only as “advisory” boards, requiring most decisions made by the board to be ratified by the governing bodies of the parties to the agreement. Some boards are granted significant independent authority to run the day-to-day operations of the joint powers entity, but they must obtain specific authority from the parties to the agreement for such things as setting budgets, setting rates/fees, or purchasing land, facilities or equipment. Finally, some boards are granted broad authority to make independent decisions. The joint powers agreement should clearly spell out the authority granted to the joint powers board.

### **Handling Public Funds**

The joint powers agreement might provide that one of the parties to the agreement will act as the fiscal agent for the entity. In that case, the joint powers entity would not handle public funds. Instead, public funds would be handled by the local unit of government serving as the fiscal agent.

If the joint powers agreement gives the joint powers board the authority to disburse public funds, the joint powers entity must handle the funds in the same way that local governments handle their funds. Under Minnesota law, the disbursement of funds by a joint powers entity must “agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement.” The joint powers entity must also follow the local government’s contracting and purchasing requirements.

For example, the joint powers board should require that claims be itemized, just as local governments require itemized claims. All claims should be approved by the joint powers board prior to payment, just as claims are approved by a city council or town board prior to payment. More than one signature should be required on checks issued by the joint powers entity, just as more than one signature is required on checks issued by a local government.

For more information on claims approval and multiple signatures on a check, go to the OSA’s website at [www.auditor.state.mn.us](http://www.auditor.state.mn.us). Go to “Local Officials,” and click on “Avoiding Pitfalls.” You will find information on the claims approval process and the multiple signature requirement under “Disbursement Process.”

### **Do We Have to Have an Audit?**

The joint powers entity may be subject to audit requirements. A Minnesota law passed in 2008 requires “special districts” to have annual audits if the special district’s annual revenue is greater

than a threshold dollar amount. A fire district or fire department created through a joint powers agreement has a special or limited purpose, and is generally funded, at least in part, by property tax revenues or other public funds. Therefore, it is a “special district” if:

- It is not included in a city, county or town financial report as a component of that local government; and
- It is governed by 1) people directly elected to the governing board; 2) people appointed to the governing board by local elected officials; 3) local elected officials who serve on the board by virtue of their elected office; or 4) a combination of these selection methods.

If the joint powers entity meets the definition of a “special district,” the entity’s joint powers agreement, and any other documents relating to the governance of the entity, must be filed with the OSA within 60 days of adoption.

A “special district” also needs an annual audit if it meets the annual revenue threshold level, which gets released by the OSA each year at the beginning of February. The 2009 audit threshold was revenues of \$185,000. The 2010 audit threshold will be available on the OSA’s website in early February. If the special district’s annual revenue is less than or equal to the threshold amount, an audit is required at least once every five years, and financial statement reporting forms must be filed with the OSA for years when the special district is not audited. The financial statements and audits must be completed, presented to the entity’s governing board, and filed with the OSA within 180 days after the end of the entity’s fiscal year.

## **Conclusion**

Joint powers agreements allow collaboration and the sharing of services among local units of government. However, because public funds are involved, entities created by joint powers agreements are subject to many of the same requirements as any local government. Understanding these requirements will help the joint powers entity safeguard public funds and avoid needless pitfalls down the road.