

**2019 OSA City of Canton Investigation & 2021 OSA City of Whalan Investigation  
Resulted in Multiple Felony Convictions****March 31, 2022**

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The Office of the State Auditor (OSA) received a report from the **City of Canton** of possible misuse of City funds. Specifically, concerns were raised about City checks written to the now former City Clerk/Treasurer (former Clerk/Treasurer).

Based on its review of information provided by the City and the City's external auditors, the OSA prepared an Investigative Report that revealed **\$134,639** in apparently improper payments to the former Clerk/Treasurer. The OSA filed its Investigative Report with the Fillmore County Sheriff's Office and the Fillmore County Attorney's Office on October 3, 2019. At that time the Investigative Report was not public pending the resulting prosecution, pursuant to Minn. Stat. § 6.715. The public version of the Investigative Report is now available on the OSA website.

Subsequently, on December 27, 2019, Fillmore County filed a 26-count amended criminal complaint charging the former Clerk/Treasurer with 15 counts of felony theft, five counts of felony embezzlement of public funds, five counts of felony receiving stolen property, and one count of felony public officer permitting false claims against the government. See Register of Actions, Case No. 23-CR-19-671.

At a later date, the OSA received an audit request from the **City of Whalan**. Specifically, City of Whalan officials were concerned in part about City checks written to its former Clerk/Treasurer, who was also the subject of the OSA's City of Canton Investigative Report.

Based on its review of information provided by the City of Whalan, the OSA prepared another Investigative Report that revealed **\$13,770** in apparently improper payments to or on behalf of the former Clerk/Treasurer. The OSA filed its Investigative Report with the Fillmore County Sheriff's Office and the Fillmore County Attorney's Office on March 11, 2021. At that time the Investigative Report was not public pending the resulting prosecution, pursuant to Minn. Stat. § 6.715. The public version of the Investigative Report is now available on the OSA website.

Subsequently, on March 22, 2021, Fillmore County filed a 23-count criminal complaint charging the former Clerk/Treasurer with 15 counts of felony theft, three counts of felony embezzlement of public funds, and five counts of felony receiving stolen property. See Register of Actions, Case No. 23-CR-21-130.

The former Clerk/Treasurer pleaded guilty to a felony charge of theft by swindle (Case No. 23-CR-19-671) and a felony charge of embezzlement of public funds (Case No. 23-CR-21-130). She was sentenced on March 7, 2022, to 120 days in jail, up to 10 years of supervised probation, and to perform 50 hours of community work service. She was ordered to pay a combined \$79,554 in restitution (\$69,916 to the City of Canton and \$9,638 to the City of Whalan).



INVESTIGATIVE REPORT

City of Canton

PUBLIC VERSION<sup>1</sup>

Executive Summary

The Office of the State Auditor (OSA) received a report from the City of Canton (City) and the City's external auditors (CPA Firm) of possible misuse of City funds. Specifically, concerns were raised about City checks written to the now former City Clerk/Treasurer (former Clerk/Treasurer).<sup>2</sup> In its Independent Auditors' Report, the CPA Firm reported that "the City became aware that a key employee had been misappropriating assets through payroll and employee reimbursement transactions."<sup>3</sup>

In response, the OSA communicated with the City, the CPA Firm, the Fillmore County Sheriff's Office, and the Fillmore County Attorney's Office. The OSA reviewed certain financial records provided to it by the CPA Firm and the City for the period January 1, 2012, through March 31, 2019. In total, the OSA's review revealed at least **\$134,639** in apparently improper payments to the former Clerk/Treasurer as follows:

1. City checks were issued to the former Clerk/Treasurer, for which the supporting documentation in the City's files is erroneous (\$37,366),
2. City checks were issued for what appear to be non-business purposes (\$68,563), and
3. City checks were issued to the former Clerk/Treasurer for which the relevant City files reviewed by the OSA contained no support (\$28,710).

In addition, the OSA questions the legitimacy of numerous advance payments to the former Clerk/Treasurer for hours supposedly worked and expenses supposedly incurred before the relevant time period, in some cases 30 days or more in advance. The former Clerk/Treasurer received such advance payments totaling **\$347,863** from January 1, 2012, through March 31, 2019.

This report summarizes the OSA's findings and provides additional information about the apparently improper payments of City funds.

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<sup>1</sup> A not public version of the Investigative Report was provided to law enforcement on October 3, 2019.

<sup>2</sup> This Investigative Report covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues, nor the approval of any act or transaction not mentioned. We understand that law enforcement is continuing its investigative work and that additional information may exist or arise.

<sup>3</sup> See City of Canton, Minnesota Financial Statements with Independent Auditors' Report December 31, 2018. The CPA Firm provided the OSA a list of items prepared by the former Clerk/Treasurer that indicate certain diverted City funds she allegedly repaid to the City. The OSA found no evidence showing that the City actually was reimbursed for these payments.

## Investigative Report

### **Background**

The City is a statutory city with a population of approximately 350. The City has a five-member City Council, consisting of the Mayor and four Council Members. The City Council appoints a combined Clerk/Treasurer for the City. The City informed the OSA that former Clerk/Treasurer served as the City Clerk/Treasurer until March 13, 2019. In its fiscal year-end 2018 financial statements, the City reported total receipts of \$283,469 and disbursements of \$321,919 in its Governmental Funds. It also reported receipts that totaled \$150,611 and disbursements that totaled \$160,906 in its Proprietary Funds.<sup>4</sup>

The City informed the OSA that no one from the City reviewed the former Clerk/Treasurer's claims for wages or reimbursements, and that the City Council expected the former Clerk/Treasurer to work roughly 32 hours per week.

It does not appear that the former Clerk/Treasurer or any supervisor signed the appropriate payroll declarations as required by Minn. Stat. § 412.271, subd. 2.<sup>5</sup> The former Clerk/Treasurer signed her payroll checks, and some contain only her signature.

### **Apparently Improper Payments of City Funds**

The OSA requested and was provided City documents including payroll records from January 1, 2012, through March 13, 2019. The OSA also obtained City bank statements directly from the bank for all City accounts from January 1, 2012, through February 28, 2019.<sup>6</sup>

City bank statements reviewed by the OSA indicated that other City employees were consistently issued two checks each month (one mid-month and one at the end of the month). The former Clerk/Treasurer's checks did not follow a similar, regular schedule. Instead, the timing of payroll checks issued to the former Clerk/Treasurer was haphazard.

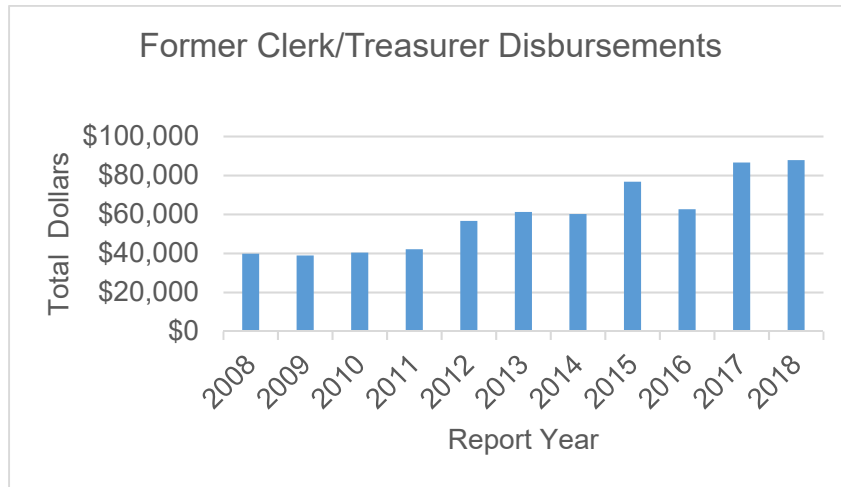
It was also apparent from the City's Audited Financial Statements that City disbursements to the former Clerk/Treasurer grew significantly over time as shown in the following chart.

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<sup>4</sup> The City reported eight funds including a General Fund, four Special Revenue Funds, and three Proprietary Funds for the year ended December 31, 2018. See City of Canton, Minnesota Financial Statements with Independent Auditors' Report December 31, 2018.

<sup>5</sup> Minn. Stat. § 412.271, subd. 2 provides that the city clerk "shall keep a payroll giving the name of each employee and the number of hours or days worked by each and the timekeeper, supervisor or other officers or employee having knowledge of the facts shall sign a declaration that the facts recited on the payroll are correct to the best of the declarant's information and belief; and when any claim for wages listed on a payroll is paid, the employee shall sign a declaration . . . to the effect that the employee has received the wages and done the work for which wages have been paid."

<sup>6</sup> The City provided a copy of its March 2019 bank statements to the OSA.



The OSA compared all City checks written to the former Clerk/Treasurer to the related documentation in the City's files. The OSA identified the following irregularities:

1. The OSA discovered several City disbursements totaling \$37,366 written to the former Clerk/Treasurer, the documentation for which appears erroneous.

For example, City check no. 5914 dated September 3, 2018, written to the former Clerk/Treasurer was for September 2018 gross wages, vacation pay, an "incentive", and "other" items.

Other documentation presented, however, indicates the former Clerk/Treasurer had already been paid for September 2018 gross wages, vacation pay, an "incentive", and other items with City check no. 5904 dated August 9, 2018.

2. The OSA also found several City checks written to the former Clerk/Treasurer, totaling \$68,563, for which the supporting documents show that the payments were for non-business purposes. As noted previously, some of these payments were identified by the CPA Firm. The OSA discovered several additional payments to the former Clerk/Treasurer that appear to follow the same pattern.

Both the summary provided by the CPA Firm and some of the time reports reviewed by the OSA document representations that the former Clerk/Treasurer repaid the City for these expenses. The OSA found no evidence showing that the City actually was reimbursed for these payments.

3. In addition, based on the City files reviewed by the OSA, several payments to the former Clerk/Treasurer, totaling \$28,710, were not supported by any documented explanations or supporting receipts.

In total, the OSA found \$134,639 in apparently improper payments of City funds to the former Clerk/Treasurer.

### **Advances on the Former Clerk/Treasurer's Pay**

During the review of City checks from January 1, 2012, through March 31, 2019, written to the former Clerk/Treasurer, the OSA found that the former Clerk/Treasurer was consistently issued checks for future work hours, expenses, and benefits, in some cases 30 days or more in advance.

As noted previously, Minnesota Law prescribes the procedures a city must follow for payroll disbursements, including the requirement that "when any claim for wages listed on a payroll is paid, the employee shall sign a declaration . . . to the effect that the employee has received the wages **and done the work** for which wages have been paid."<sup>7</sup> Emphasis added. Advances on a clerk/treasurer's wages are not permissible under Minnesota Law applicable to statutory cities.

In addition, the recording of hours supposedly worked and expenses supposedly incurred before the relevant time period raises serious doubt about the legitimacy of the information recorded and the resulting payments. The OSA observed several instances where the time and expense reports supporting these advance payroll payments appeared questionable.

In total, the former Clerk/Treasurer received advance payments during the period of review of **\$347,863**.

### **Conclusion**

This report summarizes the OSA's findings and provides additional information about the apparently diverted City funds.

The OSA remains available to assist the Police Department and the Fillmore County Attorney's Office.

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<sup>7</sup> Minn. Stat. § 412.271, subd. 2.



**INVESTIGATIVE REPORT**

**City of Whalan**

**PUBLIC VERSION<sup>1</sup>**

Executive Summary

The Office of the State Auditor (OSA) received an audit request from the City of Whalan (City). City officials shared concerns regarding possible misuse of City funds. Specifically, City officials were concerned in part about City checks written to the now former City Clerk/Treasurer (former Clerk/Treasurer) that appeared questionable. The former Clerk/Treasurer faced criminal charges related to funds of a nearby city.<sup>2</sup>

In response, the OSA communicated with the City, the Fillmore County Sheriff's Office, and the Fillmore County Attorney's Office. The OSA reviewed certain financial records provided to it by the City for the period January 1, 2014, through December 31, 2019. In total, the OSA's review revealed at least **\$13,770** in apparently improper payments to or on behalf of the former Clerk/Treasurer as follows:<sup>3</sup>

- 1) City funds appear to have been paid to the former Clerk/Treasurer for which no legitimate purpose was documented or for which the supporting documentation is contradictory (\$10,469),
- 2) City funds were paid to the IRS, MNDOR, and PERA for the former Clerk/Treasurer's employee share of tax withholding, however these amounts were not withheld from the former Clerk/Treasurer's pay. It appears that the former Clerk/Treasurer was thereby overpaid (\$1,865),
- 3) City funds appear to have been paid to the former Clerk/Treasurer that were not approved by the City Council and that lacked sufficient documentation (\$779), and
- 4) City funds were paid to the former Clerk/Treasurer or on her behalf for what appear to be non-business purposes (\$657).

In addition, the OSA observed that the former Clerk/Treasurer was consistently paid for monthly wages in advance of the relevant pay period, a practice inconsistent with Minnesota law.

This report summarizes the OSA's findings and provides additional information about the apparently improper and unapproved payments of City funds.

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<sup>1</sup> A not public version of the Investigative Report was provided to law enforcement on March 11, 2021.

<sup>2</sup> See *State v. Melander*, Dist. Ct. Case No. 23-CR-19-671. This Investigative Report covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues, nor the approval of any act or transaction not mentioned. We understand that law enforcement is continuing its investigative work and that additional information may exist or arise.

<sup>3</sup> For purposes of this report, "improper" generally describes transactions for items, services, or purposes not authorized by law.

## Investigative Report

### **Background**

The City is a statutory city with a population of approximately 66. The City has a five-member City Council, consisting of the Mayor and four Council Members. The City Council appoints a combined Clerk/Treasurer for the City. It appears the former Clerk/Treasurer served as the City Clerk/Treasurer for approximately 18 years, ending November 12, 2019.<sup>4</sup>

The City reported two funds; a General Fund and a Proprietary Fund, for the year ended December 31, 2019. In its 2019 financial statements, the City reported General Fund receipts of \$40,335 and disbursements of \$46,487. It also reported Proprietary Fund receipts that totaled \$66,440 and disbursements that totaled \$55,376.<sup>5</sup>

According to the Mayor the City had two employees, including the former Clerk/Treasurer.

- **City Clerk/Treasurer Pay**

According to City documents, the former Clerk/Treasurer's established rate of pay was \$13.41 per hour in 2014, 2015, and 2016. The City's April 10, 2017, City Council meeting minutes document the approval by the Council of a "pay raise...from a rate of \$13.41 per hour to \$20.00 per hour, retroactive back to January 1, 2017."<sup>6</sup> November 2019, City Budget Meeting Workshop meeting minutes indicate that "Wages have remained unchanged and are as follows: . . . City Clerk/Treasurer \$20 per hour based upon workload up to 32 hours per month."<sup>7</sup> It does not appear that the former Clerk/Treasurer or any supervisor signed the appropriate payroll declarations as required by Minn. Stat. § 412.271, subd. 2.<sup>8</sup>

The City's annual financial statements document that City "orders issued" to the former Clerk/Treasurer grew significantly over time as shown in the following chart prepared by the OSA.<sup>9</sup>

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<sup>4</sup> See November 9, 2019, City Council Budget Meeting Workshop Minutes.

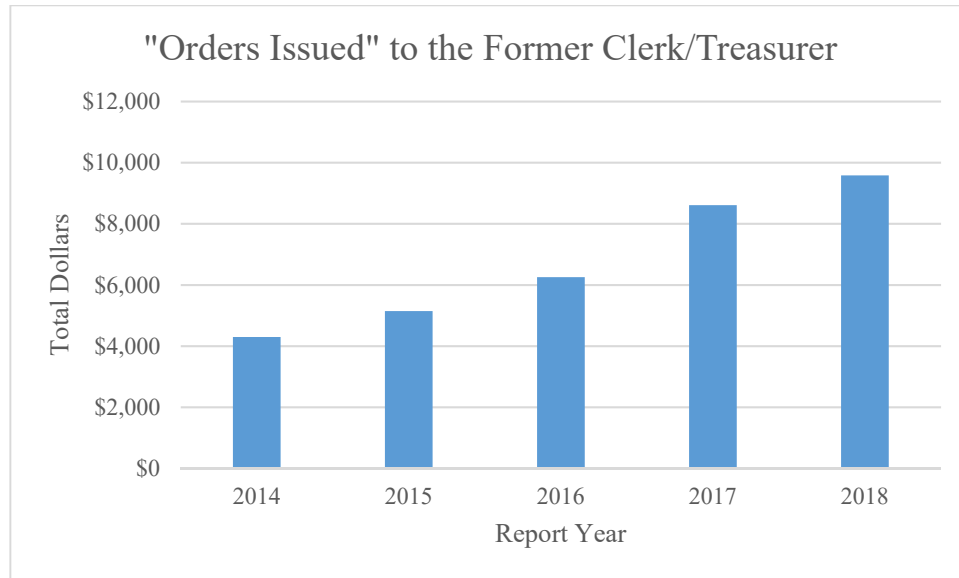
<sup>5</sup> See City of Whalan, Minnesota Financial Statements for the year ended December 31, 2019.

<sup>6</sup> See April 10, 2017, City Council Meeting Minutes.

<sup>7</sup> See November 9, 2019, City Budget Meeting Workshop Minutes.

<sup>8</sup> Minn. Stat. § 412.271, subd. 2 provides that the city clerk "shall keep a payroll giving the name of each employee and the number of hours or days worked by each and the timekeeper, supervisor, or other officers or employee having knowledge of the facts shall sign a declaration that the facts recited on the payroll are correct to the best of the declarant's information and belief; and when any claim for wages listed on a payroll is paid, the employee shall sign a declaration . . . to the effect that the employee has received the wages and done the work for which wages have been paid."

<sup>9</sup> The payments in this chart report those included in the City's annual financial statements. The OSA does not express an opinion on the City's annual financial statements or the amounts in this chart.



- **City Disbursements**

City Council Meeting Minutes document that the Council regularly received a treasurer’s report.<sup>10</sup> The City Council meeting minutes also show that the City Council regularly approved a list of claims called “Bills Due” that was prepared by the former Clerk/Treasurer.<sup>11</sup> The Mayor informed the OSA that no one from the City compared the Council approved claims list to the City’s bank statements to insure that only approved payments were made.<sup>12</sup> The OSA noted that the claims lists included claims for the former Clerk/Treasurer’s pay.

### **Minnesota Law**

Expenditure of public funds requires that there be both authority and a public purpose.<sup>13</sup> Authority may be specifically stated in a statute or implied as necessary to do something that is expressly authorized.<sup>14</sup> A public purpose has been defined by the Minnesota Supreme Court as “such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.”<sup>15</sup>

In addition, Minn. Stat. § 412.271, subd. 2, provides, in part:

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<sup>10</sup> It appears the treasurer’s reports were titled “Profit & Loss Statement.” The treasurer’s reports reported summaries of financial transactions by category.

<sup>11</sup> The Mayor reported to the OSA that the former Clerk/Treasurer prepared all of the City’s checks for issuance after each City Council meeting. The Mayor would sign the total number of checks approved at the meeting and the former Clerk/Treasurer would fill in payment information later.

<sup>12</sup> The City informed the OSA that all of the City’s mail was sent to the former Clerk/Treasurer’s home and that the City’s bank statements were not brought to the City Council meetings.

<sup>13</sup> See, e.g., Op. Att’y Gen. (Dec. 4, 1934); 63a-2 (May 6, 1965); 59a-22 (Nov.23, 1966).

<sup>14</sup> See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (1966).

<sup>15</sup> See *Visina v. Freeman*, 89 N.W.2d 635 (1958).



Except for wages paid on an hourly or daily basis, where a claim for money due on goods or services furnished can be itemized in the ordinary course of business the person claiming payment, or the claimant's agent, shall prepare the claim in written items . . . .

### **OSA Review and Findings**

The OSA reviewed City documents including itemized claims and invoices, payroll records, meeting minutes, and monthly approved claims lists from January 1, 2014, through November 12, 2019. The OSA also obtained City bank statements and check images directly from the bank for all City accounts.

The OSA compared certain City check images to the related documentation in the City's files. The OSA identified the following irregularities:

- **Apparently Improper Payments of City Funds**

- 1) City payments were issued to the former Clerk/Treasurer for which no legitimate purpose was documented or for which the supporting documentation is contradictory (\$10,469).

In certain instances, the additional payments were not explained. In other instances, the payments were explained with conflicting information about the reason for the payment in different City documents. None of these payments were included in the City's monthly treasurer's reports or the "Bills Due" lists approved by the City Council.

- 2) City funds were paid to the IRS, MNDOR, and PERA for the former Clerk/Treasurer's employee share of withholding, however these amounts were not withheld from the former Clerk/Treasurer's pay. It appears that the former Clerk/Treasurer was thereby overpaid (\$1,865).<sup>16</sup>

During its review the OSA noted irregularities in the frequency and amount of tax and PERA withholdings from the former Clerk/Treasurer's pay. Despite withholding minimal amounts from the former Clerk/Treasurer's pay, the City made payments to the IRS, the MNDOR, and PERA as if the proper withholding had occurred. The OSA accumulated total withholding from the former Clerk/Treasurer's pay and determined the amount of withholding paid by the City exceeded actual withholding by \$1,865.<sup>17</sup>

- 3) Four payments were made to the former Clerk/Treasurer for expenses (e.g. mileage, office expense, and park supplies) that were not approved by the City Council and lacked sufficient detail, totaling \$779.<sup>18</sup> Although notes in the City's records suggested potential legitimate business expenses, the City's files lacked receipts or supporting documents to support these payments.

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<sup>16</sup> The OSA has not completed an income tax audit.

<sup>17</sup> The City provided to the OSA records from PERA that reported the total amount of employee withholding paid to PERA for the former Clerk/Treasurer. The City also provided copies of the former Clerk/Treasurer's W2s.

<sup>18</sup> Reimbursements for mileage expense reimbursements should be paid as itemized claims approved by the City Council under Minn. Stat. § 412.271.

- 4) City checks were issued for what appear to be non-business purposes totaling \$657.

The OSA identified four City payments that appear to show the use of City Funds for non-business purchases. Receipts on file to support these payments documented that they were for a nonbusiness cell phone, a full tank of gas for a non-city vehicle, sparkling ice, ink, citrus slice, an AC charger, a printer, water, etc. The Mayor reported that the City does not have a printer. None of these payments were included in the City's treasurer's report or the "Bills Due" lists approved by the City Council.

In total, the OSA found **\$13,770** in apparently improper payments of City funds to or on behalf of the former Clerk/Treasurer.

- **Advances on the Former Clerk/Treasurer's Pay**

The OSA observed that the former Clerk/Treasurer was consistently paid for monthly wages before the relevant pay period.

As noted previously, Minnesota Law prescribes the procedures a city must follow for payroll disbursements, including the requirement that "when any claim for wages listed on a payroll is paid, the employee shall sign a declaration . . . to the effect that the employee has received the wages **and done the work** for which wages have been paid."<sup>19</sup> Emphasis added. Advances on a clerk/treasurer's wages are not permissible under Minnesota Law applicable to statutory cities.

The recording of hours supposedly worked before the relevant time period raises serious doubt about the legitimacy of the information recorded and the resulting payments. The City does not have a record of hours worked by the former Clerk/Treasurer so the OSA cannot determine whether the amounts paid are reasonable. The authority for and accuracy of all advance payments made to the former Clerk/Treasurer therefore appear questionable.

As a result, the OSA questions the legitimacy of the former Clerk/Treasurers pay.

## **Conclusion**

In total, the OSA observed at least **\$13,770** in apparently inappropriate City disbursements.

This report summarizes the OSA's findings and provides additional information about the apparently diverted City funds. The OSA remains available to assist the Police Department and the Fillmore County Attorney's Office.

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<sup>19</sup> Minn. Stat. § 412.271, subd. 2.