



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

August 29, 2008

Superintendent Gene Paulson
ISD 601, Fosston
301 East First Street
Fosston, MN 56542

Dear Mr. Paulson,

The Office of the State Auditor received concerns regarding a possible conflict of interest involving a Fosston Independent School District No. 601 ("District") School Board member. Specifically, the concerns alleged that School Board Member Alan Olsen performed work as an electrical subcontractor in an energy project commenced by the school in February of 2005. Based upon our review, it appears that Mr. Olsen's role as an electrical subcontractor for the district's energy project created a conflict of interest with his role as a member of the District's School Board.

Based on our review of the District's meeting minutes and conversations with Superintendent Gene Paulson and Finance Manager Joan Nelson, it appears that the District approved an energy renovation agreement with the engineering firm, Energy Services Group ("ESG") on February 22, 2005.¹ It is our understanding that this project was estimated to cost the District \$2,000,000.00.² Mr. Olsen voted both to approve the selection of the general contractor, as well as to approve payments to the general contractor.³ It is also our understanding that at some point in time during the execution of this agreement, ESG hired Alan Olsen as an electrical subcontractor for this project.⁴

The legislature has created a broad prohibition against public officers having an interest in contracts with their own community. Minnesota Statute § 471.87 provides that "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."

¹ See District's February 22, 2005 School Board Meeting Minutes (motion by Alan Olson carried unanimously authorizing the execution of the Energy Services Group Agreement).

² *Id.*

³ *Id.*; See also District's Meeting Minutes from March 23, 2006; April 20, 2005; May 18, 2005; June 15, 2005; and July 20, 2008.

⁴ Confirmed through telephone conversations with Superintendent Gene Paulson on August 14, 2008 and Finance Manager Joan Nelson on August 20, 2008.

Further, the Minnesota Attorney General has determined that a public official may not work as a sub-contractor for the municipality's general contractor without creating a conflict of interest⁵. The Attorney General's opinion cites the following:

It is well recognized principle of law that a person cannot serve two masters, one being a public trust by virtue of a public office, and the other a private interest by reason of a financial interest, either direct or indirect, in a contract with the municipality of which he is an officer.”⁶

The Office of the State Auditor recommends that the School Board take steps to avoid conflicts of interest in the future, including conflicts that arise from sub-contractor agreements. Please advise our Office of what steps you will be taking.

As required by Minn. Stat. § 6.51, a copy of this letter is being provided to the Polk County Auditor and the Polk County Attorney. If you have any questions, please feel free to contact me directly at 651-297-8290, or Nancy Bode at 651-297-5853.

Sincerely,

/s/ Heidi A. Holst

Heidi A. Holst
Office of the State Auditor

Enclosure

Cc: Gregory Widseth, Polk County Attorney
Gerald Amiot, Polk County Auditor/Treasurer

⁵ Op. Att’y Gen. 90-A-1 (May 16, 1952) (copy enclosed).

⁶ *Id.*