



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)

September 15, 2016

The Honorable Tina McKeever
Chair, Schroeder Town Board
124 Cramer Road
P. O. Box 60
Schroeder, Minnesota 55613

Dear Chair McKeever,

The Office of the State Auditor (OSA) received concerns about several donations made by the Town of Schroeder (Town), including donations made to the Birch Grove Community School, a charter school; the Schroeder Area Historical Society, a local historical society; West End Connect, formerly the Birch Grove Foundation and Community Center, a community center; and the Lutsen Junior Alpine Ski Club. In response to these concerns, the OSA reviewed relevant documents requested and received from the Town.

Based on the OSA's review, it appears that the Town lacked the authority to make donations to the charter school and to the local historical society. This letter will provide the Town with recommendations to comply with Minnesota law in the future.

General Background

The OSA reviewed specific donations made by the Town, which are summarized in Table 1 below.

TABLE 1

Town of Schroeder Donations by Recipient and Year				
Year	Birch Grove Community School	West End Connect	Schroeder Area Historical Society	Lutsen Junior Alpine Ski Club
2012	\$ -	\$ 3,500	\$ 10,000	\$ -
2013	\$ 4,500	\$ 3,150	\$ 9,000	\$ -
2014	\$ 8,000	\$ 3,500	\$ 9,000	\$ -
2015	\$ -	\$ -	\$ -	\$ 500
2016	\$ 20,000	\$ 2,500	\$ -	\$ -
Total	\$ 32,500	\$ 12,650	\$ 28,000	\$ 500

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The money used for Town donations comes from the Town's revenue, which, in turn, comes from various sources including but not limited to property taxes, Local Government Aid (LGA), Taconite Aid, transportation tax, highway user tax, gasoline tax, Town Road Allotment, Town Aid, investment earnings, etc. These revenues, no matter their source or origin, are considered public funds.

Expenditure of public funds requires that there be both authority and a public purpose.¹ Authority may be specifically stated in a statute or implied as necessary to do something that is expressly authorized.² A public purpose has been defined by the Minnesota Supreme Court as “[s]uch 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 governments.”³

Donations to Birch Grove Community School

Birch Grove Community School (BGCS) is a non-profit, charter elementary school in Tofte, Minnesota.⁴ Its enrollment during the 2015-2016 school years was approximately 26 students, coming, in part, from the towns of Tofte, Lutsen, and Schroeder (collectively referred to as the “West End” of Cook County).⁵

BGCS is both a public school and a nonprofit organization governed by Minnesota Statutes chapters 124E and 317A.⁶ State funding for schools generally and BGCS specifically is calculated on a per pupil basis. Fluctuating enrollment can result in a decrease in state funding, which BGCS has experienced.

¹ See, e.g., Ops. Att’y Gen. 59a-22 (Dec. 4, 1934); 59a-22 (Nov. 23, 1966).

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

³ See *Visina v. Freeman*, 89 N.W. 2d 635 (1958) (emphasis added).

⁴ According to the Minnesota Secretary of State’s website, BGCS first filed as a domestic nonprofit corporation in 2004.

⁵ These towns are located in the Cook County School District, Independent School District No. 166 (ISD 166). The nearest elementary school to BGCS is Sawtooth Mountain Elementary School in Grand Marais, Minnesota, approximately 30 miles away.

⁶ Minn. Stat. § 120A.20, subd. 1; Minn. Stat. § 124E.03, subd. 1. Charter schools are distinguishable from other public schools and school districts. Minn. Stat. § 124E.03, subd. 1, states “[a] charter school is exempt from all statutes and rules applicable to a school, school board, or school district unless a statute or rule is made specifically applicable to a charter school or is included in this chapter.” Under Minn. Stat. § 123A.55, charter schools are identified as “charter districts” for purposes of receiving state funds but are distinguishable from school districts, including “common districts,” “independent districts,” and “special districts,” which are designated “public corporations.” In 2014, the Minnesota Court of Appeals in *Minnesota Transitions Charter Sch. v. Commissioner of the Dep’t of Educ.*, 844 N.W.2d 223 (Minn. Ct. App. 2014) held that “under a plain reading of Minn. Stat. § 120A.05, subd. 8, a charter school is not a ‘school district’ and is therefore not a ‘district’ as defined in that section.”

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During the Town's 2013, 2014, and 2015 annual meetings, the Town reported that the electors voted in favor of the Town making donations to BGCS prior to the Town making the donations.⁷ The Town passed Resolution #2016-03 on June 14, 2016, to make a onetime transfer of \$10,000 to BGCS to be used for "operations at Birch Grove Community School."⁸

First, the OSA knows of no specific authority given to the Town to expend public funds to support schools. Minnesota law expressly assigns such authority to some public bodies, such as school districts and school boards, but it does not assign similar authority to towns.⁹

Second, although there is general statutory authority for a town to transfer personal property (including money) to another *public corporation* under certain circumstances,¹⁰ Minnesota courts have made it clear that charter schools are not public corporations.¹¹ Therefore, Minn. Stat. § 471.85 cannot be used as a basis for conveying funds from the Town to BGCS, because BGCS is not a public corporation.¹²

⁷ In 2015, BGCS solicited donations from the West End towns of \$20,000 per town, per year, for five years according to the March 10, 2015 Town Board Meeting Minutes. Even though the Town made no donations to BGCS in 2015, the electors still voted in favor of the Town donating \$20,000 to the BGCS.

⁸ See Town of Schroeder Res. 2016-03. This transfer appears to relate to a "Contract for Services" the Town signed on May 10, 2016 with BGCS for the 2015-2016 academic year. The "contract" arranged for the Town to pay \$20,000 to BGCS and, in exchange, BGCS would provide the same educational services the school was already providing before the "contract."

⁹ Contrast Minn. Stat. Chs. 365, 366, 367, 368, and 471 (Various provisions describe powers of towns) with Minn. Stat. §§ 123B.02, subd. 2 (Independent school district duty and function "to furnish school facilities to every child of school age residing in any part of the district."), and 123B.09, subd. 8 (School board "must superintend and manage the schools of the district . . .").

¹⁰ Minn. Stat. § 471.85 ("[a]ny county, city, town, or school district may transfer its personal property for a nominal or without consideration to another public corporation for public use when duly authorized by its governing body."). Emphasis added. The term "personal property" includes funds or money, according to Op. Atty. Gen. 1011 (Dec. 27, 1968).

¹¹ *Tipka v Lincoln Int'l Charter Sch.*, 864 N.W.2d 371 (Minn. Ct. App. 2015).

¹² Even prior to the Court's clarification in 2015 that charter schools are not public corporations, Minn. Stat. § 471.85 would not appear on its own to provide authority for a town's donation of funds to a charter school. The Attorney General has noted that Minn. Stat. § 471.85 "is not a license to transfer moneys between public bodies at will without regard for the purposes for which the particular moneys were originally obtained and without regard to other limitations of law on the transferor and transferee governing bodies. Further, the 'public use' to which the property is to be put must be one which is directly related to the public purposes of the transferring governing body." Op. Atty. Gen. 1011 (Dec. 27, 1968) (emphasis added). Since, as previously discussed, there does not appear to be anything assigning the Town the purpose of supporting or providing schools, it seems unlikely that a town's donation to a charter school are directly related to a town's public purposes.

Third, to make a donation to a private institution, a town generally needs statutory or constitutional authority: “Donations cannot be made to a mere private institution not under the control of the municipality, such as a private school or a public school in the absence of constitutional or statutory authority. Appropriations to charitable or nonprofit associations, without consideration, cannot be made.”¹³ Similarly, the Minnesota Attorney General has long held that absent statutory authorization, public entities cannot donate public funds to private organizations.¹⁴ The OSA is not aware of any statutory or constitutional authority under which the Town could donate to BGCS.

Finally, asking electors to vote on possible donations that the Town does not have the authority to make, does not legitimize or validate the expenditures.

Donations to Cross River Heritage Center/Schroeder Area Historical Society

The Town owns the Cross River Heritage Center (CRHC), a 1929 building that is on the National Registry of Historic Places.¹⁵ CRHC also houses the Schroeder Area Historical Society (SAHS). Pursuant to a 99-year lease agreement between the Town and the SAHS, the SAHS is responsible for maintaining, repairing and insuring the CRHC in exchange for use of the building to exhibit and store historical documents, photographs, and artifacts.

The Town reported that donations to SAHS in 2013 and 2014 were made following a vote by the electors at the annual meetings in favor of the donations. The Town also reported that in 2015, the electors voted at the annual meeting to approve a donation to SAHS, but the donation was not made, because the Town was advised that it could only donate to a *county* historical society.

Minn. Stat. § 138.053 creates a two prong test for a town to make a donation to a historical society: (1) the society must be the historical society of the town’s county, and (2) it must be affiliated with and approved by the Minnesota Historical Society.¹⁶ Cook County has a historical society located in Grand Marais, Minnesota. The SAHS is a local historical society in Schroeder, Minnesota. While the SAHS is affiliated with the Minnesota Historical Society, it is not the historical society of Cook County. Under Minn. Stat. § 138.053, the Town could donate to the Cook County historical society, but it does not have the authority under this statute to make donations to the SAHS.

¹³ McQuillin, *The Law of Municipal Corporations*, § 39.31(3rd).

¹⁴ See e.g., *Ops Atty Gen. 422a-17* (Jan. 17, 1938) (Red Cross), *59-A-3* (May 21, 1948) and (Sept. 28, 1933) (Boy Scouts). See also the OSA Statement of Position on Public Expenditures: Donations and Dues.

¹⁵ See *Town of Schroeder Bd. Meeting Minutes*, May 11, 2015.

¹⁶ Minn. Stat. § 138.053.

There also does not appear to be authority in any other statute for the Town to give public funds to a local historical society. Cities have been given the authority to “appropriate money for the purpose of collecting, preserving, storing, housing, printing, publishing, distributing, and exhibiting data and material pertaining to the history of the city.”¹⁷ Towns, however, have not been given similar authority. It appears there is no authority for towns to make contributions to local historical societies.¹⁸

Donations to Birch Grove Foundation/W.E. Connect

The Birch Grove Foundation and Community Center was established in 1985 but became known as West End Connect, Inc. (W.E. Connect) in 2015. W.E. Connect offers fitness facilities, senior programs, senior lunches, and space for health and senior services.

The donations, reported by the Town for 2012, were made following a vote by the electors in favor of the Town making donations to the Birch Grove Foundation. The “donations” reported by the Town for 2013 and 2014 appear to have been made under a service contract between the Town and the Birch Grove Foundation.¹⁹ In 2015, electors voted down a proposed \$10,000 service contract with the Birch Grove Foundation, but authorized the Town to make a \$2,500 donation pursuant to Minn. Stat. § 471.935 for the senior lunch program (part of the services provided by W.E. Connect).²⁰

All of these activities and expenditures appear consistent with Minnesota law. There is specific statutory authority under Minn. Stat. § 471.935, for the Town to appropriate money to support the facilities, programs, and services of a public or private, not-for-profit senior citizen center or youth center. In addition, under Minn. Stat. § 365.10, subd.14, electors may approve the Town expending not more than \$10,000 per year on health, social, and recreation services that are in the public interest and good for the Town.

¹⁷ Minn. Stat. § 471.93.

¹⁸ The Town received legal advice that under Minn. Stat. § 365.10, subd. 14, the Town could make a donation to the SAHS as a “social service.” The OSA is not aware of any authority interpreting “social service” as used in this statute, to extend to making a donation to a local historical society.

¹⁹ In 2013 and 2014, the Town signed a Contract for Health, Social, or Recreational Services with Birch Grove Foundation.

²⁰ Town of Schroeder Bd. Res. 2015-6, Dec. 8, 2015.

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Donations to Lutsen Junior Alpine Ski Club

In 2015, there were approximately 50 children, ages 5-13, participating in the Lutsen Junior Alpine Ski Club (Ski Club), 25 of whom were from the West End.²¹ The donation reported by the Town was made following a resolution passed by the Town Board that authorized a onetime payment of \$500 to support youth recreation programs.²²

In addition to the broad authority to expend funds for “recreation services” under Minn. Stat. § 365.10, subd. 14, Minn. Stat. § 471.15 permits the Town to expend funds to operate a program of public recreation. During the OSA’s review, a concern was expressed that some of the children using the recreation services may have been related to Town Board supervisors. The courts have stated that the “mere fact that some private interest may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public.”²³ Accordingly, the Town’s donation to the Ski Club appears consistent with Minnesota law.

Recommendation

Having found no authority for Town donations to a charter school or to a local, non-county historical society, the OSA recommends that the Town not make donations in the future to the BGCS or either the SAHS.

If you have any questions about the issues raised in this letter, please feel free to contact me at (651) 297-3673.

Sincerely,

/s/ Ramona I. Advani

Ramona I. Advani
General Counsel & Deputy State Auditor

Enclosure

cc:

The Honorable Bruce Martinson, Town Board Supervisor
The Honorable Roger McKeever, Town Board Supervisor
Mr. Doug Schwecke, Town Clerk
Ms. Alicia Kangas, Town Treasurer

²¹ See Town of Schroeder Bd. Meeting Minutes, April 15, 2015.

²² See Town of Schroeder Bd. Res. 2015-6, Dec. 8, 2015.

²³ *Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958), citing *Burns v. Essling*, 194 N.W. 404, 405 (1923).