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April 1, 2016

Superintendent Denise Pontrelli
Stillwater Area Public Schools
Independent School District 834
1875 Greeley Street South
Stillwater, Minnesota 55082

Dear Superintendent Pontrelli,

The Office of the State Auditor (OSA) received concerns regarding Independent School District 834 - Stillwater Area Public Schools (District). Specifically, there were concerns about a potential conflict of interest by a School Board Member arising from a vendor contract the District entered into for architectural and design services (Professional Service Contract #1), a potential conflict of interest by the District's Executive Director of Finance and Operations arising from a vendor contract the District entered into for financial services (Professional Service Contract #2), and representations made by the District during the 2013 levy referendum and the 2015 bond referendum indicating no schools would be closed. In response to these concerns, the OSA obtained certain documents and had telephone conversations with District officials and the District's legal counsel. The purpose of this letter is to inform you of our review and provide recommendations for the District going forward.

Background

The District's School Board is comprised of seven members (School Board Members). The District has policies in effect pertaining to the board governance process, including Policy Number 4, "Board Member Code of Conduct," and Policy Number 5, "Conflict of Interest." The policies contain the following relevant provisions:

- Avoid any conflict of interest or the appearance of impropriety which could result from the position, and shall not use Board membership for personal gain or publicity.¹
- Board members need to maintain and protect the public trust placed in them by the electorate of the school district. This is accomplished through policies that observe state

¹ District Policy Number 4, Paragraph 1.3.

statutes regarding conflicts of interests and conducting school district business in a manner designed to avoid any conflict of interest, or the appearance of impropriety.²

- The Board will contract for goods and services in conformance with statutory conflict of interest laws and in a manner that will avoid any conflict of interest or appearance thereof.³
- A Board member 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 there from.⁴

In addition to these policies, School Board Members, the Superintendent, and Administrators sign annual “District 834 Public Officers’ Interest in Contracts” statements (Conflict of Interest Statements) in which they are required to disclose potential conflicts and to certify whether they have a financial interest in the sale, lease, or contract of the District or have personally benefitted financially from such a contract.

Conflict of Interest

Under Minnesota law, “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.”⁵ In order for a statutory conflict of interest to exist, an individual must be a public officer, must have decision making authority, and must have a personal financial interest in the outcome of the decision.

Any School Board Member is considered a public officer with decision making authority.⁶ The determination of whether a School Board Member has a statutory conflict of interest is a question of fact for the School Board.⁷ In this case, the question is whether a School Board Member had a personal financial interest arising from Professional Service Contract #1.

To determine whether a School Board Member has a personal financial interest, the School Board should consider the four prong test established in an Attorney General’s Opinion. The four factors include: (1) whether an individual has an ownership interest in the contracting firm, (2) whether an individual is an officer or director of the contracting firm, (3) whether the individual is salaried, an hourly wage earner, eligible for a commission, bonus or other remuneration, and (4) whether the individual is involved in the supervising of the contract or has other interests in the contract.⁸

² District Policy Number 5, Paragraph 1.

³ District Policy Number 5, Paragraph 2.

⁴ District Policy Number 5, Paragraph 2.1.

⁵ Minn. Stat. § 471.87.

⁶ Minn. Stat. § 123B.02, subd. 1 (“The board must have the general charge of the business of the district.”)

⁷ See, e.g., Ops. Att’y Gen. 90a-1 (October 7, 1976), 90-E-5 (November 13, 1969), 90e-5 (May 25, 1966), and 90-E-5 (August 25, 1955).

⁸ See, e.g., Op. Att’y Gen.90a-1 (October 7, 1976).

Based on the facts, it does not appear that any School Board Member has a direct interest in Professional Service Contract #1, but there is the potential that a School Board Member could have an indirect personal financial interest, which would be considered a conflict of interest. Marriage alone to an interested person does not constitute a disqualifying interest.⁹ However, if a School Board Member had a spouse with a financial interest in Professional Service Contract #1 and the couple combined its finances, the School Board Member would also have a personal financial interest in Professional Service Contract #1, which would be a conflict of interest.¹⁰

If a governing body determines there is a conflict of interest, abstention from voting on the matter is not sufficient to address the conflict of interest.¹¹ There is an exception process for contracts that don't require bids, such as contract for professional services like Professional Service Contract #1.¹² For these types of contracts, the governing body and interested person would need to follow the resolution and affidavit procedure required in Minn. Stat. § 471.89. Specifically, a governing body would have to adopt a resolution setting out the essential facts and determine that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere. The interested person would need to complete an affidavit.¹³

With regard to the concern of the Executive Director of Finance and Operations having a potential conflict of interest, the District informed the OSA that this position has no decision making authority with regard to contracting with financial advisors. Absent decision making authority, there cannot be a statutory conflict of interest.

Recommendations

The OSA recommends the School Board analyze the facts involving Professional Service Contract #1 to determine whether a conflict of interest existed. If the conclusion is that a conflict of interest existed, the School Board should consider following the resolution and affidavit procedures set forth in Minn. Stat. § 471.89.

Fair Campaign Practices

Concerns were also raised that representations made by the District during the 2013 levy referendum and 2015 bond referendum may have violated the Fair Campaign Practices provisions

⁹ See, e.g., Op. Att'y Gen.90-E (March 29, 1951) and Op. Att'y Gen. (April 11, 1955).

¹⁰ See, e.g., Op. Att'y Gen.90-E (March 29, 1951) and Op. Att'y Gen. (April 11, 1955).

¹¹ See, e.g., Ops. Att'y Gen. 90e-6 (June 15, 1988), and 90-E-5 (November 13, 1969).

¹² Minn. Stat. § 471.88, subd. 5 establishes an exception for contracts where competitive bids are not required by law.

¹³ Minn. Stat. § 471.89, subd. 3 requires the affidavit to contain (a) the name and office of the interested officer, (b) a description of the services to be rendered, (c) the price of the services, (d) the reasonable value of the services, (e) the interested officer's interest in the contract, and (f) that to the best of the officer's knowledge and belief the contract price is as low as or lower than, the price at which the commodity or services could be obtained from other sources.

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of Minnesota Statutes Chapter 211B. These questions are more appropriately directed to the Office of Administrative Hearings, which is the state office with jurisdiction over complaints involving violations of the Fair Campaign Practices and Finance Acts. They can determine whether there were violations.

The OSA considers this matter closed and will not take further action. If you have any questions, or if we can provide the District with further assistance, please feel free to contact me at (651) 297-5853 or by email at jeff.reed@osa.state.mn.us.

Sincerely,

/s/ Jeff Reed

Jeff Reed, Supervisor Special Investigations
Office of the State Auditor

cc: School Board Chair, George Hoepfner
School Board Vice Chair, Mike Ptacek
School Board Member, Kathy Buchholz
School Board Member, Amy Burbach
School Board Member, Tom Lehmann
School Board Member, Paula O'Loughlin
School Board Member, Shelley Pearson
Maggie R. Wallner, District Attorney