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February 28, 2014

The Honorable Philip Osterhus
Chair, Linwood Town Board
22817 Typo Creek Drive, N.E.
Stacy, Minnesota 55079

Dear Chair Osterhus:

The Office of the State Auditor (“OSA”) received a number of concerns about Linwood Township (“Town”). This letter will provide the Town with guidance to better safeguard its financial resources and to comply with Minnesota law.

Background

The Town has a five-member Board of Supervisors, an elected Treasurer, and an elected Clerk.¹ For a number of years, the Clerk was also employed by the Town as the Office Manager and the Senior Center Coordinator.²

The Town sponsors an annual celebration known as Linwood Family Fun Day (“LFFD”). The Town receives donations from local businesses for LFFD.³ In addition, the Town holds garage sales and silent auctions to raise money for LFFD.⁴ The garage sales and silent auctions are held at the Town’s Senior Center and are run by the Senior Center Coordinator, with the help of volunteers. Items sold at the garage sales are donated to the Town, although the Town has not maintained an inventory of the donated items.

The Town owns the Senior Center building, funds various activities at the Senior Center, and hires the Senior Center Coordinator.⁵ The Senior Center is operated by the Town, with the

¹ The OSA received conflicting information on whether the Town is classified as an “urban town.” *See* Minn. Stat. § 368.01. An “urban town” classification would not change the recommendations contained in this letter.

² The Clerk retired from the Senior Center Coordinator position on December 31, 2013. *See* The Linwood Ledger (Feb. 2014).

³ *See, e.g.*, Town Board Meeting Minutes for July 9, 2013 (\$128 donation from Wyoming DQ). *See also* Town of Linwood website (Wyoming Dairy Queen will be donating 10% of total sales on various days in 2014 to assist with the production costs of LFFD).

⁴ *See, e.g.*, Town Board Meeting Minutes for June 11, 2013 (garage sale deposits of approximately \$1,200; silent auction held during the garage sale raised \$200); The Linwood Ledger (Feb. 2014) (ad for LFFD “Fundraiser Garage Sale”).

⁵ A town may appropriate money to support the facilities, programs, and services of a public or private, not-for-profit senior citizen center. *See* Minn. Stat. § 471.935. The Town uses a Special Revenue Fund to account for the

assistance of a Senior Advisory Board appointed by the Town Board.⁶ The OSA was informed that the Town took over financial control of the Senior Center approximately five years ago. Prior to that time, the Senior Center was apparently managed by the Senior Advisory Board. The OSA was also informed that the Senior Advisory Board has a separate checking account. One of the Town Board Supervisors has been designated by the Town Board to provide oversight for the Senior Center.⁷

Donation Acceptance

Towns are authorized to accept donations. However, Minnesota law requires town boards to accept a donation by a resolution adopted by a two-thirds majority vote.⁸ The OSA found that the Town Board did not adopt the resolutions required by Minnesota law when accepting donations made to the Town. During its review, the OSA also found that a donation check for an event held at the Senior Center was made payable to the Clerk, instead of to the Town.⁹

The OSA recommends that, in the future, all donations to the Town be accepted by resolution of the Town Board adopted by a two-thirds majority vote. A sample resolution for accepting donations, printed from the Minnesota Association of Townships' (MAT) website, is enclosed. The OSA also recommends that all check donations to the Town be made payable to the Town, not to individual Town employees or officers.

Fundraising

While a town may accept donations, the OSA knows of no general statutory authority for towns to hold fundraising events such as garage sales and silent auctions.¹⁰ These sorts of fundraising activities are more appropriately conducted by a separate group, such as a nonprofit organization.

expenses of the Senior Center. *See* Town's Annual Financial Report, Dec. 31, 2012. Among other things, the Town pays for insurance, utilities, supplies, and a Coordinator for the Senior Center.

⁶ *See, e.g.*, Town Board Meeting Minutes for Oct. 23, 2012 (appointment to Senior Advisory Board).

⁷ *See, e.g.*, Town Board Meeting Minutes for Jan. 8, 2013 (Supervisor designated to oversee the Senior Center).

⁸ *See* Minn. Stat. § 465.03. The statute provides: "Any city, county, school district or town may accept a grant or devise of real or personal property and maintain such property for the benefit of its citizens in accordance with the terms prescribed by the donor. Nothing herein shall authorize such acceptance or use for religious or sectarian purposes. Every such acceptance shall be by resolution of the governing body adopted by a two-thirds majority of its members, expressing such terms in full."

⁹ In 2012, the Forest Lake Lions Club issued a \$100 check in the Clerk's name for the "Linwood Halloween Pty." In addition, the Clerk told the OSA that the Town may have received a check made out in the Clerk's name from Green Door Consignment as payment for leftover garage sale items. *See also* LFFD 2013 Proceeds - Fundraisers (receipt of \$212.13 from Green Door Consignment on Aug. 20, 2013).

¹⁰ The Town reported to the OSA that during 2012 and 2013 volunteers also operated several weekend flea markets to benefit LFFD. The vendors paid the Town a fee to sell items at a flea market booth. The fee revenue was used for LFFD. An urban town has the authority to license and regulate transient commerce. *See* Minn. Stat. § 368.01, subd. 11.

Nonprofit organizations are separate legal entities created by concerned community members, not by a town. In fact, Minnesota law prohibits towns from creating nonprofit organizations, unless explicitly authorized to do so by law.¹¹ Nonprofit organizations are subject to state and federal nonprofit laws. They must control their own funds and activities. They should not control town funds. A nonprofit's board of directors and officers have a fiduciary obligation to the nonprofit organization. Therefore, the OSA generally recommends that local government officials and employees serve only in an *ex officio* capacity on the board of any nonprofit created to assist a local government.

An "advisory" board appointed by a town board is not a separate nonprofit organization. Instead, the function of an advisory group is to provide recommendations to the town board. The town board may adopt or reject the advisory group's advice. An advisory group appointed by a town board should not be operating fundraising efforts on the town's behalf. An advisory group should not have its own funds or have control over town funds.

A search of the Minnesota Secretary of State's website shows the existence of a nonprofit organization called the Linwood Senior Center, Inc., of Anoka County. The website lists the Senior Center's address as the nonprofit's registered office, and identifies as President the person who, until recently, had served as "President" of the Advisory Board. The Secretary of State's website does not have a listing for a Linwood Senior Advisory Board. The OSA does not have sufficient information to determine whether another nonprofit has been created to support LFFD or whether the mission of the Linwood Senior Center, Inc., of Anoka County would include raising funds for LFFD.

The OSA recommends that a separate nonprofit organization operate any garage sales or silent auctions held to raise funds for LFFD or any other cause. Any advertisements or solicitations for the fundraising events should clearly identify that the events are being conducted by the nonprofit organization. All donation checks should be made out to the nonprofit. The nonprofit could then donate fundraising profits to the Town for a particular Town function, as determined by the nonprofit's board.

The OSA recommends the Town work with the Town Attorney or MAT to determine the best way for the Town to work effectively with nonprofit organizations and other community groups to support Town activities.¹² It appears to the OSA that the "Senior Advisory Board" may actually be the nonprofit Linwood Senior Center. If so, the OSA questions the Town Board's authority to appoint members to the Advisory Board. If not, the OSA questions why the Advisory Board has its own checking account. The nonprofit may also want to consider consulting with an attorney knowledgeable in nonprofit law.

¹¹ See Minn. Stat. § 465.717, subd. 1.

¹² School districts and fire departments, for example, often work with supporting nonprofit organizations. The OSA's Statements of Position on 1) Outside Organizations Supporting Schools and 2) Fire Department and Fire Relief Association Fundraisers and Donations further explain the relationship that should exist between a local government and a nonprofit organization. The OSA's Statements of Position are available on the OSA's website, www.auditor.state.mn.us.

It also appears that both the Town and the nonprofit may benefit from reviewing the OSA's Avoiding Pitfall on Internal Controls for Special Events.¹³ In addition, the Town should review the Senior Center Hall & Rental Agreement available on the Town's website. In particular, the OSA questions whether the Agreement can make the user liable to the Senior Advisory Board for any damages to the facility.

Community Celebration

At the annual town meeting, electors may set an amount of money that the town board may spend to host or support a community celebration.¹⁴ For the years 2010, 2011, and 2012, the Town's audited annual financial reports contain a separate line item for LFFD revenues and expenditures.¹⁵ The financial reports show that the Town is spending Town funds on LFFD, as reflected in the following chart.

LFFD Revenues and Expenditures by Year			
	2012	2011	2010
Revenues	\$ 16,499	\$ 13,979	\$ 14,364
Expenditures	\$ 19,061	\$ 19,375	\$ 16,452
Difference	(\$ 2,562)	(\$ 5,396)	(\$ 2,088)

Source: Town's Annual Financial Reports

The Town's annual meeting minutes did not record that the electors set the amount of money the Town would spend on LFFD at the annual meeting. The OSA recommends that the Town electors, at the Town's annual meeting, set the amount of Town funds the Town Board is authorized to spend on a community celebration. The minutes from the annual meeting should document the amount set by the electors.

Issues Previously Raised by Town's Auditors

The Town is audited on an annual basis by a private auditing firm. As part of those audits, the Town received recommendations from its auditors. It appears the Town has adopted many of its auditors' recommendations. The OSA encourages the Town to continue to work with its auditors to improve its control over Town finances.

a. Public Purpose Expenditures

The Town's 2009 audit contained recommendations to help the Town comply with Minnesota's public purpose doctrine. More specifically, the Town's auditors found that the Town was

¹³ A copy of the Avoiding Pitfall is enclosed. Avoiding Pitfalls are part of the OSA's weekly E-Update and are available on the OSA's website.

¹⁴ See Minn. Stat. § 365.10, subd. 12.

¹⁵ The Town's 2009 Financial Report reports LFFD expenditures for 2009 and 2008, but not revenues.

purchasing flowers for funerals of family members of Town officers and employees. The Town's auditor noted that opinions from the Minnesota Attorney General's Office generally prohibit gifts or donations to people and entities unless specific statutory authority for the gift or donation exists.

To comply with the public purpose doctrine, a town must have statutory or implied authority for the expenditure of public funds. In addition, the expenditure must be for a public purpose.¹⁶ The public purpose doctrine applies to all town funds, not just to funds received from taxes.¹⁷

During its review, the OSA found that:

- The Town issued a \$500 check to a family who had suffered the loss of a loved one to cancer.¹⁸
- The Town purchased food for LFFD groups, including food for employees of LFFD vendors, and a post-LFFD "wrap-up" party attended by LFFD volunteers and Town Supervisors.¹⁹
- On occasion, personal purchases may have been made using Town funds, although the OSA was informed that any such purchases were promptly repaid.

The OSA knows of no authority for the Town to make a monetary donation to a family suffering the loss of a loved one. As discussed previously in this letter, when the Senior Center is used for fundraising events, the events should be handled by concerned community members or a nonprofit organization, not by the Town. Funds raised at the events should not be deposited in Town accounts or otherwise co-mingled with Town funds.

The OSA knows of no authority for a town to provide food to town vendors, unless the food is a provision in the town's contract with the vendor. Whether providing food to officials and invited guests during a public meeting is necessary depends upon the necessity for holding a particular meeting during meal time and upon the benefits derived from providing food during a meeting.²⁰ The OSA knows of no authority for using town funds for personal purchases, even if the town funds are promptly repaid.

¹⁶ Additional information on this topic is found in the OSA's Statement of Position on Public Expenditures: Donations and Dues, available on the OSA's website. Because a nonprofit does not control public funds, the restrictions imposed by the public purpose doctrine do not apply to a nonprofit's use of its funds.

¹⁷ See, e.g., Op. Att'y Gen. 107-a-3 (Jan. 22, 1980).

¹⁸ See LFFD list of 2012 Expenses (Nov. 13, 2012, "Garage Sale Benefit Donation").

¹⁹ See, e.g., LFFD list of 2013 Expenses ("Fireworkers' pizza"); LFFD list of 2012 Expenses (pizza for "firework people during setup"; LFFD committee meeting food); LFFD list of 2010 Expenses (food for workers building outdoor stage; food for garage sale workers; "Wrap-up Party" for LFFD Committee"). According to the Town, the "Wrap-up" party was open to the public and financial information about LFFD was provided at the party. The Town should consult with the Town Attorney to determine whether the Open Meeting Law's notice requirements apply to such events.

²⁰ See, e.g., Ops. Att'y Gen. 63a-2 (May 6, 1965) and 285a (Aug. 7, 1969).

The OSA recommends that the Town not make donations in the future unless specific statutory authority exists to do so. The OSA recommends that the Town consult with the Town Attorney or MAT prior to expending public funds to purchase food for employees of Town vendors, or for Town officials, employees, or volunteers. Finally, state law does not allow Town funds to be used for personal purchases even if the Town is promptly repaid for the purchase.

b. Petty Cash

The Town's 2012 audit contained a finding on the lack of documentation for payments made out of the Town's petty cash fund.²¹ In response, the Town changed its procedures to require receipts for all petty cash transactions.²²

During its review, the Clerk informed the OSA that the petty cash fund does not have a custodian and that multiple employees have access to the fund. Minnesota law requires the Town Board to designate a custodian for the petty cash fund.²³ The OSA recommends that the Town designate a custodian for the petty cash fund and limit the number of employees with access to the fund. To provide the Town with additional guidance on this topic, a copy of the OSA's Statement of Position on Petty Cash (Imprest) Funds is enclosed.

c. Timekeeping Procedures

The Town's 2012 audit contained a finding related to employee timekeeping procedures.²⁴ For additional guidance on this topic, the Town may want to review the OSA's Statement of Position on Employee Timekeeping Procedures for Employees Paid on an Hourly or Daily Basis, available on our website.

Receipt Books

The Town uses three receipt books to record revenues and to issue receipts. The OSA understands that the Town uses a "Building Department Receipt" book to record transactions regarding building permits; an "Office Receipt" book to record transactions such as chair rentals from the Town or the Senior Center, map purchases, faxes, copies, dog licenses, assessment searches, and LFFD-related transactions; and an "Unrecorded Receipts" book to record transactions where a customer requests a receipt for a donated item, a recycling fee, or attendance at a Senior Center movie event.²⁵

²¹ Town's Annual Financial Report, Dec. 31, 2012 (Finding 2012-2).

²² *Id.* See also Town Board Meeting Minutes for Mar. 26, 2013 (Town modified petty cash policy; receipts for petty cash expenditures are required). Town Board meeting minutes also reflect a monthly petty cash report. See, e.g., Town Board Meeting Minutes for Aug. 13, 2013.

²³ See Minn. Stat. § 366.01, subd. 12.

²⁴ Town's Annual Financial Report, Dec. 31, 2012 (Finding 2012-1).

²⁵ Until the procedure was changed about two years ago, the "Unrecorded Receipts" book was also used to record revenue from faxes, copies, maps and chair rentals.

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The OSA recommends that the Town issue pre-numbered receipts for all payments received.²⁶ Otherwise, it is much harder to determine whether all funds collected were turned in for deposit. The issuance of pre-numbered receipts for all funds collected will also facilitate daily reconciliation between payments received and deposits.

The OSA also recommends that the Town consider consolidating the number of receipt books. In particular, there appears to be no purpose served in maintaining the “Unreceipted Receipts” book. If there is a reason to maintain the separate receipt books, the purpose for each receipt book should be clearly documented and consistently implemented.

Conclusion

The Office of the State Auditor reviewed concerns it received about Linwood Township. This letter provides the Town with guidance to better safeguard its financial resources and to comply with Minnesota law. We recommend that the Town work with the Town Attorney, MAT, and its auditors to implement the recommendations contained in this letter.

If you have any questions, or if we can provide the Town with further assistance, please feel free to contact me at 651-297-7108 or Terrilyn.Diamond@osa.state.mn.us.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

Enclosures

²⁶ The OSA generally recommends that pre-numbered receipts include the following information:

- Date of the transaction;
- The amount received;
- From whom payment was received;
- The method of payment (cash, check, or credit card);
- The reason for the payment; and
- The signature or initials of the person preparing the receipt.

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cc: The Honorable Michael Halliday, Town Supervisor
The Honorable Ed Kramer, Town Supervisor
The Honorable Bob Millerbernd, Town Supervisor
The Honorable Carol Searing, Town Supervisor
Ms. Judy Hanna, Town Clerk
Ms. Vicki Erickson, Town Treasurer
Ms. Eileen Reinke, Senior Advisory Board President
Ms. Dawn Cash, Senior Center Coordinator
Ms. Peggy Moeller, HLB Tautges Redpath, Ltd., Town Auditor
Mr. Mike Haag, Town Attorney

RESOLUTION NO. _____

_____ TOWNSHIP

_____ COUNTY, MINNESOTA

RESOLUTION ACCEPTING DONATIONS

WHEREAS, _____ Township is authorized to accept and maintain donations of real and personal property pursuant to Minnesota Statutes Section 465.03 for the benefit of its citizens; and

WHEREAS, The following persons and entities have offered to contribute the donations set forth below to the township:

<u>Name of Donor</u>	<u>Donations</u>
1.	

WHEREAS, the terms or conditions of the donations, if any, are as follows:

<u>Donation Number</u>	<u>Terms or Conditions</u>

WHEREAS, All such donations have been contributed to the township for the benefit of its citizens, as allowed by law; and

WHEREAS, The Township Board finds that it is appropriate to accept the donations offered.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF _____ TOWNSHIP, _____ COUNTY, MINNESOTA, AS FOLLOWS:

1. The donations described above are accepted and shall be used in accordance with noted terms or conditions either alone or in cooperation with others, as allowed by law.
2. The town clerk is hereby directed to acknowledge to each donor the town's acceptance of the donor's donation.

Adopted by the Town Board of _____ Township on _____.

Approved:

Chairperson

Attested:

Clerk

Internal Controls for Special Events

Relief associations sometimes hold special events. When authorized by law, municipalities, including municipal liquor stores, counties and school districts, can also hold special events. For any entity hosting a special event, written policies and procedures documenting internal controls for the handling of funds at the event are important. Approval of the policies and procedures by the entity's governing body emphasizes their importance and authority.

Documentation of the policies and procedures will help people working at the event understand their role in the internal control system. Documentation will also improve the efficiency and consistency of transaction processing and support management's risk identification, evaluation, and mitigation. The documentation should:

- Describe procedures as they are intended to be performed;
- Indicate who is responsible for performing each procedure; and
- Explain the design and purpose of control-related procedures.

Date this Avoiding Pitfall was most recently published: 09/06/2013

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Statement of Position Petty Cash (Imprest) Funds

By law, school districts, towns, counties, and cities are allowed to establish petty cash (imprest) funds.¹ These funds are cash funds with currency in the form of coins and bills, not separate checking accounts. Using an “imprest system,” you can only spend what you have in the fund and can only be reimbursed if you have receipts. Petty cash funds are allowed for the payment of claims if “it is impractical” to pay the claims in any other manner. The law prohibits their use for salaries or personal expenses of an officer or employee.

Each petty cash fund must be established by the governing body, and a “custodian” of the fund must be appointed. Meeting minutes should document the creation and amount of any petty cash fund. Periodically, the governing body should review these funds to determine whether they are still necessary. The designated petty cash custodian is personally responsible for the cash entrusted to the fund.

Disbursements from Petty Cash

There are two permissible methods of disbursing petty cash funds: 1) the reimbursement method, and 2) the advance method.

When using the reimbursement method, an individual purchases an authorized item with personal funds, provides the original detailed vendor receipt to the petty cash custodian, and is then reimbursed from the petty cash fund. This method is less complicated than the advance method. There is no risk of loss of petty cash funds due to the purchaser failing to buy the item and/or failing to submit supporting documentation for the purchase. It also allows the petty cash fund to be replenished more quickly than with the advance method. For these reasons, the reimbursement method is generally preferred.

¹ Minnesota law on petty cash (imprest) funds is found at Minn. Stat. §§ 123B.11, subd. 1 (school districts), 366.01, subd. 12 (towns), 375.162, subd. 1 (counties), and 412.271, subd. 5 (cities). School districts and counties are also authorized to establish imprest funds for travel. Minn. Stat. §§ 123B.11, subd. 2 and 375.162, subd. 2. Money may be advanced to pay actual and necessary expenses for school district officers and employees traveling to attend school district meetings outside the school district, and for county officers and employees for travel related to the performance of their job duties or for attending meetings outside the county.

Reviewed: January 2014
Revised: NA

2008-1004

This Statement of Position is not legal advice and is subject to revision.

An Equal Opportunity Employer

When the advance method is used, the petty cash custodian advances petty cash funds to an individual for the purchase of a specific item. The custodian should document the date and the person to whom the funds were provided, the amount provided, and the purpose for the advance. The individual receiving the advance then purchases the authorized item, returning the original detailed vendor receipt and any remaining change to the petty cash custodian. Under the advance method, the custodian may need to follow-up if the individual does not return the receipt and change in a timely manner.

Replenishing the Petty Cash Fund

To replace the petty cash fund, a claim itemizing all disbursements from the petty cash fund must be presented to the governing body at its next meeting after the disbursements are made. If the governing body approves the claim, the fund's custodian should be given payment to replenish the fund. If the governing body fails to approve the claim in full, the fund's custodian is personally responsible for the difference. When replenishing petty cash funds, the total of the original receipts maintained by the custodian should match the amount of the replenishing check.

Controls over the Petty Cash Fund

Because these are cash funds, extra security precautions need to be taken to safeguard these funds. The petty cash custodian should properly secure petty cash funds in a metal lock box that is maintained in a locked desk, locked cabinet, or locked safe to which access is limited.

Reconciliations of the petty cash fund should be done by someone other than the person approving disbursements from the fund. At any time, the amount of cash on hand plus the receipts (plus any outstanding advances if the advance method of disbursement is used) should equal the amount of the approved petty cash fund. The original receipts should be maintained and filed as supporting documentation.

The governing body should consider adopting a petty cash policy. The policy could describe when petty cash funds may be used, items that may not be purchased with petty cash funds, proper petty cash documentation, and petty cash replenishing procedures.