

PETITION ENGAGEMENT

**CITY OF KENYON  
KENYON, MINNESOTA**

FOR THE THREE YEARS ENDED DECEMBER 31, 1996

**CITY OF KENYON  
KENYON, MINNESOTA**

**For the Three Years Ended  
December 31, 1996**



**Petition Engagement**

**Audit Practice Division  
Office of the State Auditor  
State of Minnesota**

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## **PETITION ENGAGEMENT**

Petitioners and Members of the City Council  
City of Kenyon

### **INTRODUCTION AND BACKGROUND**

Registered voters from the City of Kenyon petitioned the Office of the State Auditor (OSA) to examine the books, records, accounts, and affairs of the City in accordance with Minn. Stat. § 6.54 for the three years ended December 31, 1996.

The City of Kenyon operates as a Standard Plan Option A city as provided for in the statutes of the State of Minnesota. Under this plan, the City has a mayor-council form of government consisting of an elected mayor, four elected city councilors, and an appointed clerk-treasurer (city administrator). Other personnel responsible for the proper administration of all affairs relating to the City may also be employed. The City's financial statements are audited annually by an external auditor.

The OSA has completed its examination into the concerns identified by the petitioners of the City of Kenyon. The objectives of the engagement were to provide answers to the questions raised by, and to address the concerns of, the petitioners.

Prior to the start of this examination, the OSA received the document that was circulated among the residents of the City of Kenyon petitioning the examination that we conducted. The petition contained the following statements:

We the residents of the City of Kenyon are petitioning the State of Minnesota, State Auditors Office to conduct an examination of the City of Kenyon's records pursuant to Minnesota Statute 6.54. We would like to see this done in conjunction with the hiring of a new City Administrator, and in light of information concerning unlevied or uncollected assessments. The areas of interest include but are not limited to:

- C Tax assessments to property
- C City payroll
- C Deputy clerk records on money spent
- C Checking and savings accounts
- C Overtime money and comp time for city employees
- C Outside work done on city time
- C Verify that employees time books are accurate with money out
- C City bonds
- C City grants and where [where] money went.

Communications with the Chief Petitioner assisted us in developing an understanding of the petitioners' areas of interest or concern. We have established that some of the areas of interest or concern are interrelated and, accordingly, we have grouped them together. The areas of interest noted as City payroll, overtime money and comp time for City employees, outside work done on City time, and the verification that employees' time books are accurate with money out have been grouped together under a category we identify as payroll. Likewise, the two areas noted as deputy clerk records on money spent and City grants and where money went have been grouped together as library finances.

The procedures performed and associated findings are as follows:

## TAX ASSESSMENTS TO PROPERTY

As previously noted, the petition contained a statement, "We would like to see this done in conjunction with the hiring of a new City Administrator, and in light of information concerning unlevied or uncollected assessments. The areas of interest include but are not limited to: Tax assessments to property. . . ."

In communications with the Chief Petitioner, we were told that a property belonging to Alan Christensen was not assessed for trees that were removed from the property. The petitioners wanted to know:

- S how or why the assessment was missed, and
- S whether the City ever received payment from Mr. Christensen for the tree removal.

It is our belief that the petition for this examination was circulated among the residents of the City of Kenyon during the time when Mr. Christensen was the City's Interim City Administrator and perhaps was being considered by the Kenyon City Council for the City Administrator's position. Mr. Christensen later became a member of the Kenyon City Council and resigned from the City Council during late 1998.

The following are excerpts from correspondence and other documents that were provided to us, and which we relied on, while examining this area of interest. Dates of other significant events as they occurred have been added by us.

- S April 7, 1994, letter from the Goodhue County Soil and Water Conservation District, to Lorrie Wille [Superintendent, Kenyon Municipal Utilities Commission (KMU)]. "Results of an examination of the front yard of the home at 816 Home Street, Kenyon [Alan Christensen's property]. A safety issue of tree failure and the trees' proximity to power and telephone lines as well as a liability both public and private is cited."
- S July 1, 1994, letter from Duane Hebert, Kenyon City Administrator, to Alan Christensen [Florida address]. The City Administrator attaches a copy of the above April 7, 1994, letter. In this letter, the City Administrator cites potential dangers and the requirement of the City to take action on issues that pose potential threats to the health or safety of any individual or property in the City. The letter states, "In order to abate the problem, we must insist that you remove the trees form [sic] the property by July 29, 1994. Failure to remove the trees may result in the City removing the trees or hiring a third party to remove the trees and charging the cost to the property."

S July 25, 1994, memorandum to file [believed to have been prepared by Duane Hebert, Kenyon City Administrator]. This memorandum documents a telephone conversation with Alan Christensen at Christensen's home in Florida. The memorandum states: "I told Allen that KMU had received a bid for the tree removal and also explained the process if he did not remove the trees himself or pay for their removal upon receiving an invoice for the work. Alan stated that he would agree to KMU obtaining another quote and authorizing the work to be done. The City would then send the bill to him for payment."

S September 12, 1994, letter from Duane Hebert, Kenyon City Administrator, to Alan Christensen [Florida address]. The letter encloses a copy of a \$1,917 invoice for tree removal at 816 Home Street, Kenyon. The letter states:

Midwest Tree Service was the least expensive provider of this service and the amount was reduced even further by the assistance of the Kenyon Municipal Utilities and their personnel and equipment.

You could provide a check for the full amount to the City of Kenyon. The City will be paying this invoice within the required 30 days. If you do not pay the entire bill at this time, the City will ask Goodhue County to assess this cost to the property taxes of the property.

We will need to provide the assessment to the county by November 15, 1994. Prepayment prior to that date will prevent the amount from being assessed to your taxes.

S December 1, 1994, Duane Hebert resigned as the Kenyon City Administrator.

S Notes to regular City Council meeting of February 14, 1995 [believed to have been prepared by Julie Held-Dyrdahl, Acting City-Clerk].

We have a bill from Midwest Tree for \$1,917 for tree on Alan Christensen's property on Home Street. I have enclosed the info I have found on this. I was never made aware of this by Mr. Hebert nor told to certify. According to Kurt Fischer, our Attorney, we should do this at the end of this year. The questions now is who should pay this bill. The problem was brought to the attention of KMU. Mr. Hebert was in contact with Mr. Christensen, KMU authorized the work and if certified, the money would come to our department. It could be done either way.

- S Minutes of regular City Council meeting of February 14, 1995. "A bill for \$1,917 from Midwest Tree for removal of trees on Alan Christensen's property on Home Street was discussed. Motion was made by Councilman Fredrickson to have KMU pay this bill, to have the City certify it at the end of the year with the money going back to KMU. Seconded by Nesseth. Carried."
- S March 1995, Diane Anastos named Kenyon City Administrator.
- S August 1995, Diane Anastos resigned as the Kenyon City Administrator.
- S September 20, 1995, Alan Christensen named as Interim Kenyon City Administrator.
- S Partial transcript of minutes of regular City Council meeting of February 13, 1996. In response to a statement made by a Kenyon citizen, Alan Christensen made the following statements: ". . . I just want to say that that house was for sale for years, as you know. And when it was finally sold the assessments were checked, I assumed that those trees were on there . . ." and later on "But it was supposed to be put on the taxes." Further down the transcript, there are references made to the City Council action taken February 14, 1995, and further discussions that property could have been certified immediately after the February 1995 meeting but usually are certified at the end of the year. (See following letter from the Goodhue County Auditor/Treasurer.) Council Member Rumstick questions, "I wonder why that was not taken care of at the time the trees were taken down." Alan Christensen responds, "My understanding it was going to be put on the taxes." Discussion follows that the City Administrator would have put it on the taxes but, at that time, February 1995, the City did not have one. An inference is made that the City Deputy Clerk could or should have done so. Council Member Rumstick states, "I just think I have had assessments and taken care of them. I think that they should have been taken care of right away." Later on, Mayor Dyrdaahl questions, "When was the property sold?" Alan Christensen responds, "I believe it was August. That house had been for sale for three different summers, it was not that I put it on the market to not have to pay the trees. I assumed it was already assessed, I didn't know that it was not."
- S February 14, 1996, letter from the Goodhue County Auditor/Treasurer's Office to the City of Kenyon regarding certification of special assessments. This letter states:

Special Assessments are to be certified by December 2, of each year. This is the date specified because of time frame to put special assessments on the tax rolls. Theoretically, you could certify prior to December 2, of each year but the assessments could not be placed on the tax rolls until the following year. If assessments were to be certified at random during the year, there would be a much greater risk of errors occurring. And since the assessments could not be placed on the tax rolls until the following year, it would be a waste of time to certify at random.

- S March 1996, Alan Christensen no longer serves as Interim Kenyon City Administrator.
- S Minutes of regular City Council Meeting of April 9, 1996. "Councilman Fredrickson spoke about the trees of Alan Christensen's and said he wished to have this turned over to the City Attorney."
- S May 24, 1996, letter from Alan Christensen [Kenyon address] to the City of Kenyon Mayor. In this letter, Alan Christensen states, "I am in receipt of your letter dated May 23, 1996." (We were not provided a copy of this letter.) In his letter to the Kenyon Mayor, Alan Christensen states, "The last communication I had regarding trees was a letter from the then City Administrator Duane Hebert dated September 12, 1994, stating if I did not pay the September 4, 1994 bill from Midwest Tree Service in full that the amount would be assessed to the County by November 15, 1994 . . ." and that "I never heard another word about the trees until . . . the February 13, 1996 City Council meeting. . . ." In this letter, Alan Christensen adds:

When the home was sold in August of 1995 the attorney conducting the closing of the house contacted the City and the Kenyon Municipal Utilities for payment of the final water bill and to check the status of assessments and/or liens on the property. Why didn't the Kenyon Utilities inform the closing attorney of their concern regarding the trees at that time? Why wasn't I contacted at any time during the one and a half years of the Utilities' concern regarding the trees? On the contrary, the City provided the figures for the final water bill to the closing attorney with no further assessments of additions to the property and it was clear to be sold. At the closing of the house there were assessments on the property which were paid in full.



Later on, Alan Christensen cites the City of Kenyon Code Section 8..31, “. . . the City Administrator shall on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as charges for current services to be assessed under Minnesota Statutes, Section 429.101 against each separate lot or parcel to which the charges are attributable.” In closing, Alan Christensen states, “The trees were removed in the fall of 1994. I was not involved with the City in fall of 1994, I did not even live in Minnesota at that time. The home was finally sold in August of 1995, at which time the assessments were paid in full at closing with the blessing of the City. As far as I’m concerned this is a closed issue.”

**S** June 7, 1996, letter from Scott Riggs, City Attorney, to Kenyon City Council. In this letter, the City Attorney states:

I have received and reviewed the response of Mr. Alan Christensen to the City’s request to payment for the costs incurred to remove trees from his property in 1994.

. . . it is my understanding that the initial contact by letter to Mr. Christensen was one option for the City to pursue and constituted the first step in this matter in an attempt to secure payment for the costs incurred by the City. As Mr. Christensen’s response notes, he does not believe that he is obligated to pay for the trees removed from his property.

**S** Minutes of regular City Council meeting of June 18, 1996.

The Council went over a letter they received from Alan Christensen regarding the trees. Councilperson Rumstick asked about his “moral” obligation to pay for the tree removal. Councilman Homeier asked what their chances would be to pursue this. Attorney Riggs said they’d have a difficult time assessing the property as it is now with a new owner. He said they’d have a hard time getting the money and that it would cost the City. Councilperson Rumstick asked to make a personal plea, on record, to have Mr. Christensen look at this as a moral obligation on his part to pay the City back \$1,917. Harold Nielson asked if there were any safe guards for the future not to have this happen again. Mayor Dyrdaahl said the main thing would be to make the Council aware of any assessments that would need to be put on in November of that year.

- S January 1997, Alan Christensen becomes a member of the Kenyon City Council.
- S Late 1998, Alan Christensen resigns from the City Council and becomes the Elgin City Administrator.

### Findings

When Alan Christensen did not remit the \$1,917 to the City by the November 15, 1994, we believe the City should have commenced the process of assessing the cost of the tree removal to the property taxes of Mr. Christensen's property, as the failure of the City to receive that amount from Mr. Christensen (or, conversely, Mr. Christensen's failure to remit that amount to the City) should have made it clear that Mr. Christensen desired or intended to have had the costs assessed to the property at that time. The resignation of Mr. Hebert as the Kenyon City Administrator, especially at a time close to the deadline for certifying special assessments at Goodhue County, undoubtedly complicated the process of certifying the costs to the County. Had a system been in place at the City that would have assured timely and proper follow-through of this matter by the City Administrator's successor or other responsible City officials, the City likely could have been able to meet the County's deadline for certifying the costs. Later on, the City acts to pay the invoice and, following the advice of the City Attorney, certify the costs during fall 1995.

After the City Council took its actions of February 14, 1995, apparently no one from the City corresponded with Mr. Christensen to inform him that the tree removal costs were not certified to the County during 1994, so the costs would then be assessed to the property during the fall of 1995. Corresponding with Mr. Christensen would have put him on notice that this outstanding item existed and perhaps provided him another opportunity to remit the amount to the City prior to its stated intentions to certify the costs to the County during the fall of 1995. Mr. Christensen's property sold during the summer of 1995, prior to the City certifying the costs to the County.

According to present day City officials, Mr. Christensen has neither paid the costs for the tree removal to the City nor has the City assessed these costs to recover them. We concur with the City's Attorney that it would be difficult to assess to the property as there are new owners and that the costs to the City in pursuing other methods would most likely exceed the amounts to be recovered. We believe the most prudent use of City resources at this time is to establish procedures that prevent similar events from recurring.

## PAYROLL

Our understanding of the petitioners' concerns in these areas of interest are as follows:

- S The approval of raises given to the Deputy Clerk-Treasurer
- S The proper calculation of salaries and overtime paid to police officers
- S The usage of time sheets and maintenance of leave records
- S Whether overtime was being paid to "salaried" as well as "hourly" employees
- S Evidences of actual overtime worked by the Deputy Clerk-Treasurer and police officers
- S Evidence of the Deputy Clerk-Treasurer's work for outside entities during regular work hours and while a full-time City employee
- S Approval, documentation, and payment of overtime and comp time to the Deputy Clerk-Treasurer

We have addressed these concerns in either a general or specific manner.

### **City Payroll**

We reviewed payroll records for the period of 1994 through 1996. These records consisted mainly of a payroll register, payroll summary, time cards, and checks. Individual payroll ledger sheets accumulated the payroll activity by each year. During each of these years, there were 24 pay periods and the payrolls were prepared at the 15th and at the end of every month. We selected at least two payroll records from each of these years and tested the accuracy of these records. Access to employee personnel files was not sought because present day City officials informed us that such files contained no information relative to approved salaries or pay rates for the period of 1994 through 1996. Based on our review and testing of the available payroll records, some general and specific comments about the City's payroll follow:

- S The periodic salaries of "salaried employees" were based on one twenty-fourth of their annual salaries even though each pay period could have 72 to 96 work hours. The hourly rates for these employees was determined by dividing the annual salary into 2,080 hours.

- S Time cards were not kept for every employee. Generally, salaried employees did not keep cards, though for some of these employees, time cards were kept. The payroll registers for these employees indicated they were "salaried."
- S Time cards did not include an employee or supervisor signature.
- S No documented support (approval) for the overtime hours or the "on call" time was kept.
- S The hours worked in a pay period by the salaried employees, especially the police officers, did not correspond to minimum required hours for that pay period.
- S Overtime was paid to police officers without requiring them first to put in the minimum required number of hours after which overtime should normally commence.
- S The criteria or policy for payment of overtime at the regular hourly rate or at one and one-half of the hourly rate appears to not have been documented.
- S The payroll registers did not include sufficient information on the leave records.
- S The employee sick leave and vacation balances on the payroll registers were not always updated for the leave used. Instead, a manual system was maintained to account for these balances and present day City officials question the reliability of this system.
- S The payroll system did not include any information on the comp time earned or used.
- S Payroll ledgers for some pay periods were missing completely.
- S Payroll for some part-time hourly employees covered a period of even more than a month.
- S Some payroll checks had been written for an amount different from the net pay on the payroll register.

Many of our general and specific comments about the City's payroll system should be viewed as serious deficiencies in the system. Some of these deficiencies most likely occurred because the City's policies and procedures in effect at the time did not clearly address certain items, such as the maintenance of time cards. At least one

deficiency was a clear violation of a policy in effect at the time. The fact that payroll for some part-time hourly employees covered a period of more than a month was in violation of the City's Personnel Policy. Article VI (Compensation), Section D (Paydays) states, "Each employee shall be paid by check for the previous half month's work performed." It was unclear to us why such policies were not enforced.

### Wages of the Deputy Clerk-Treasurer

The petitioners asked us to review the wages of the Deputy Clerk-Treasurer for the period covering 1994, 1995, and 1996. However, during the course of examining other areas of payroll, we noted certain practices that warranted broadening the scope of the petition in this area. The additional information presented here is a result of the extension of our procedures. From the payroll records that were made available to us, our determination of the wages paid to the Deputy Clerk-Treasurer is as follows:

<u>Year</u>	<u>Gross Wages Paid</u>	<u>Notes</u>
1992	\$ 27,774.29	Hourly basis. Rates in effect for all pay dates during the year. Regular and overtime rates were \$10.38 and \$15.57, respectively. Gross wages paid for the year are per the individual payroll ledger sheet. Regular and overtime hours paid totaled 2,093 and 388.5, respectively. These hours were accumulated off time cards for the Deputy Clerk-Treasurer.
1993	\$ 32,189.93	Hourly basis. Due to missing records, the rates in effect for the January 15 pay date could not be determined. Regular and overtime rates in effect for the January 31 through May 15 pay dates were \$10.93 and \$16.40, respectively. Due to missing records, the rates in effect for the May 31 and June 15 pay dates could not be determined. Regular and overtime rates in effect for the June 30 through September 30 pay dates were \$14.04 and \$21.06, respectively. While the Deputy Clerk-Treasurer acted as Interim City Administrator, a wage adjustment was approved by the City Council during its May 10, 1993, meeting. An extension of this adjustment for two additional months was approved by the City Council during its July 20, 1993, meeting. Regular and overtime rates in effect for October 15 through December 31 pay dates were \$10.93 and \$16.40, respectively. Gross wages paid for the year are per the individual payroll ledger sheet. Because of missing records, including a time card for the Deputy Clerk-Treasurer, only 1,914 regular and 343.5 overtime hours could be accumulated off time cards or payroll registers.

Year	Gross Wages Paid	Notes
1994	\$ 28,999.92	Salaried basis. The gross wage paid for each pay date during the year was \$1,208.33. Gross wages paid for the year are per individual payroll ledger sheet. There were no time cards for the Deputy Clerk-Treasurer.
1995	\$ 30,160.08	Salaried basis. The gross wage paid for each pay date during the year was \$1,256.67. Due to missing records for the January 15 pay date, the wages for that pay date were determined by dividing the gross wages paid for the year by 24. The quotient was \$1,256.67. All 1995 individual payroll ledger sheets are missing. Gross wages paid for the year are per individual payroll register. There were no time cards for the Deputy Clerk-Treasurer.
1996	\$ 31,065.12	Salaried basis. The gross wage paid for each pay date during the year was \$1,294.38. Payroll for the entire year was computerized and no individual payroll ledgers were included in the records provided by the City. There were no time cards for the Deputy Clerk-Treasurer.
1997	\$ 31,966.08	Salaried basis. The gross wage paid for each pay date during the year was \$1,331.92. Gross wages paid for the year are per individual payroll ledger sheet. There were no time cards for the Deputy Clerk-Treasurer.

Again, access to employee personnel files was not sought by us because we were informed by present day City officials that such files contained no information relative to approved salaries or pay rates for the period of 1994 through 1996.

### **Authorization for Increases to Wages Paid Deputy Clerk-Treasurer**

#### **A. Wages from 1993 to 1994**

The minutes to 1993 meetings of the City Council contain only some general references to wages. Minutes of the regular meeting of the City Council held November 9, 1993, indicate that a motion was passed to “. . . approve the use of salary ranges only rather than salary ranges with structured step increases for employees.” Additionally, the minutes of the truth-in-taxation hearing held November 29, 1993, contain a reference to statements made that “. . . the percentage of the budget proposed for employee compensation is less than 1993” and “. . . the budget proposed a 5% increase over 1993. . . .” However, we are unsure if this reference is in regards to wages. Finally, the minutes to the continuation of the truth-in-taxation hearing held December 15, 1993, state, “. . . there were only a few minor changes in the budget from the last meeting.” Later on, a motion was made to “. . . approve resolution 93-18 adopting the budget for 1994.” This motion was passed unanimously.

We selected five employees who were on both the February 15, 1993, and February 15, 1994, payrolls for testing. One employee received no increase. Approximate increases for the four other employees ranged from .34 percent to 2.28 percent.

B. Four Percent Wage Increase from 1994 to 1995 for the Deputy Clerk-Treasurer

Minutes of the regular meeting of the City Council held December 14, 1994, state, "Questions were asked regarding the proposed 1995 budget" and that "A question was also addressed about the 4% wage increase." A motion was then made ". . . to adopt Resolution 94-23, adopting the 1995 budget." This motion passed on a unanimous roll call vote. Finally, a motion was made ". . . to make an adjustment in the budget for a 4% wage increase." This motion also passed unanimously.

For this time period, the Deputy Clerk-Treasurer received a four percent wage increase. We selected five other employees who were on both the November 15, 1994, and November 15, 1995, payrolls for testing. One employee received an increase of approximately 12.88 percent. Approximate increases for the four other employees ranged from 3.16 percent to 4.04 percent. We did not pursue determining why there were variances for the four employees. We did not note any specific City Council action that authorized the approximate 12.88 percent increase for the one employee.

C. Three Percent Wage Increase from 1995 to 1996 for the Deputy Clerk-Treasurer

The minutes to the continuation of the truth-in-taxation hearing held December 13, 1995, indicate a motion was made by Mayor Dyrdaahl which would set the wages for various named individuals ". . . with the balance of the employees getting a 3% raise all effective January 1, 1996 with the exception of Julie Dyrdaahl." We believe Mayor Dyrdaahl made the exception for Julie Dyrdaahl because of the appearance of a conflict of interest. After some discussion, this motion failed. Later, a City Council member made an amended motion deferring the setting of wages for some named individuals, setting the wages for other named individuals, and ". . . addressing the other employees later." This motion carried. Julie Dyrdaahl was neither one of the named individuals nor was she specifically excluded from "the other employees." Finally, a City Council member made a motion to ". . . set all other wages at 3%." This motion carried, with Mayor Dyrdaahl abstaining.

For this time period, the Deputy Clerk-Treasurer received a three percent wage increase. We selected five other employees who were on both the February 15, 1995, and February 15, 1996, payrolls for testing. One employee received an increase of 13.32 percent. Approximate increases for the four other employees ranged from 2.96 percent to 3.00 percent. We noted specific City Council action that authorized the approximate 13.32 percent increase for the one employee.

D. 2.9 Percent Wage Increase from 1996 to 1997 for the Deputy Clerk-Treasurer

The minutes to the truth-in-taxation hearing held December 4, 1996, indicate that comparisons from the 1996 budget were reviewed. During this time in the proceedings, a statement is made that “. . . salaries had increased 2.9%.”

For this time period, the Deputy Clerk-Treasurer received a 2.9 percent wage increase. We selected five other employees who were on both the August 31, 1996, and August 31, 1997, payrolls for testing. One employee received an increase of ten percent. Increases for the four other employees were 2.9 percent. We noted specific City Council action that authorized the ten percent increase for the one employee.

Findings

It appears that increases to the wages paid not only to the Deputy Clerk-Treasurer but to most of the other City employees we selected were discussed by the City Council either during the annual budget process or by specific City Council action.

We recommend that documentation be maintained in each employee's personnel file that would track the authorizations to the changes in the employee's wages.

**Outside Work Done on City Time**

The petitioners questioned whether there was any evidence of the Deputy Clerk-Treasurer's work for outside entities during regular work hours and while a full-time City employee.

Time cards for the Deputy Clerk-Treasurer were available for the years 1991, 1992, and 1993, though some of the 1993 time cards were missing. We were not provided specific information by the petitioners of the days and times the outside work was to have occurred.



Our review of the minutes to the meetings of the City Council indicates that there were several discussions that revolved around the question of the Deputy Clerk-Treasurer's time spent in and out of City offices. A City Council member reported to have personally witnessed the Deputy Clerk-Treasurer going to a part-time job, presumably during work hours. In addition, letters were sent to a member of the City Council questioning the Deputy Clerk-Treasurer's time, and the Special Investigations Division of the OSA was contacted by a party expressing similar concerns. The discussions during the meetings of the City Council, the statements of the City Council member, the letters to the City Council member, and the contact with the OSA all occurred during a period of time when there were no time cards for the Deputy Clerk-Treasurer. While we have no reason to doubt the legitimacy of the statements that were entered into the official records of the City, the letters received by the City Council member, or the complainant's statements to the OSA, proving what amounts to allegations of time sheet fraud would be difficult under circumstances where time sheets do not exist and no other corroborating documentation is available.

Statements made in a December 1, 1994, memorandum from Duane Hebert, Kenyon City Administrator, to the City's Personnel Committee could support an assertion that the Deputy Clerk-Treasurer made up time lost by taking City work home and doing it there. During a period of time, the Deputy Clerk-Treasurer's spouse held the position of Mayor of the City. This caused concern among the City Council and citizens regarding conflicts of interest. In this memorandum, Mr. Hebert reported the results of his inquiry into the matter with the City Attorney. Mr. Hebert states, "The current practice of [the Deputy Clerk-Treasurer] taking work home with her should also be terminated. All financial and accounting information and records should remain at City Hall and be worked on only during normal office hours." We are not able to note from the time sheets that are available for the Deputy Clerk-Treasurer that City time lost, if any, due to outside work was made up at home or if City work done at home simply resulted in additional overtime.

In his memorandum, Mr. Hebert added, "Working on financial information, especially at home, could raise concerns regarding conflict of interest. While not being clearly conflict of interest, working on this information when the offices are not open to the general public does reduce the oversight and checks and balances that are inherent in government." We believe that statutes require all public records, including account books, to be available for public inspection at all reasonable times under the supervision of the person responsible for them. We do not approve of the practice of keeping City records in a place other than the office of the official responsible for them.

## Failures of Wages Paid to Agree With Records

Although the period of the petition was for the years 1994, 1995, and 1996, we noted a number of instances in each of the above years where paychecks were typed out to City employees for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. Their frequency, combined with some of the patterns of occurrence we observed, fueled sufficient concern that we believed a broadening of the scope and an extension of our procedures was necessary. Therefore, after we examined the above-mentioned years, we extended our procedures in a limited manner to only certain payroll records for the Deputy Clerk-Treasurer, for the years 1993, 1992, and 1997.

### A. 1994 Payroll Records

There were five instances where paychecks were typed out for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. The available payroll records provided little or no indication as to reasons that would explain the discrepancies. Of these five instances, three were under \$16, but two were for exactly \$100 each. Also, there was one instance where a \$45.69 check was typed out to an individual not listed on either the payroll register or payroll summary. This activity appears on that individual's payroll ledger page.

Checks typed out to the Deputy Clerk-Treasurer were the two instances for \$100 each where the checks did not agree with amounts produced off computer. There were obvious alterations on the payroll registers, but not on the payroll summaries, for the amounts for federal withholding, total deductions, and net pay. The effect of the alteration was to decrease the amount of federal withholding by \$100 and increase the amount of the net pay by \$100. The altered amounts were then posted to the Deputy Clerk-Treasurer's payroll ledger. These instances occurred for the December 15 and December 31 pay dates.

### B. 1995 Payroll Records

There were five instances where paychecks were typed out for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. The checks payees were receiving were sometimes more and sometimes less than the amounts produced off computer. In only one instance, where the check was for

approximately \$178 less than what was produced off the computer, was the payroll register obviously adjusted to account for the difference, but we found the explanation as to the reason for the change to be vague. Of the remaining four instances, two were under \$3 and two were for exactly \$100 each.

Checks typed out to the Deputy Clerk-Treasurer were the two instances for \$100 each where the checks did not agree with amounts produced off computer. Because there were no obvious alterations on the payroll registers or payroll summaries, it was not possible to determine from these records alone what accounted for the change in net pay, but the result was the Deputy Clerk-Treasurer twice received checks for net pay for \$100 more than the amount produced off computer. For this year, neither payroll ledgers nor Wage and Tax Statements (W-2 Forms) were available which could have given an indication as to what changed or provided evidence that the change was posted to the payroll ledger. These instances occurred for the December 15 and December 31 pay dates.

C. 1996 Payroll Records

There were eight instances where paychecks were typed out for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. The checks payees received were sometimes more and sometimes less than the amounts produced off computer. At no time were the payroll summaries or payroll registers adjusted to account for the differences. In four of these instances, the checks for the payees were typed for amounts that differed from the payroll registers and payroll summaries by amounts of \$13 or less. The remaining differences resulted in the payees receiving checks for net pay that were from at least \$56 to approximately \$122 more than what the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. One of these checks was for exactly \$100 more than what was produced off the computer.

A check typed out to the Deputy Clerk-Treasurer was the instance where the check did not agree with the amount produced off the computer by \$100. Because there were no obvious alterations on the payroll register or payroll summary, it was not possible to determine from these records alone what accounted for the change in net pay, but the result was the Deputy Clerk-Treasurer received a check for net pay for \$100 more than the amount produced off computer. Since the entire year was on computer, the individual payroll ledgers were kept only as a backup record. The payroll

ledgers could have given an indication as to what changed, or provided evidence that the change was posted to the payroll ledger. This instance occurred for the December 15 pay date. Elsewhere, we were able to note that federal income tax withheld according to the 1996 W-2 was \$100 less than the cumulative amount of federal income tax withheld according to the payroll register for the last pay date of 1996.

D. 1993 Payroll Records

There were seven instances where paychecks were typed out for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer. The checks payees received were sometimes more and sometimes less than the amounts produced off computer. There were obvious alterations on the payroll registers or the payroll summaries for the amounts for deductions or benefits and net pay. Twice, the payroll records were adjusted to reduce net pay to one employee on account of PERA insurance, with the payee receiving checks for \$24 and \$12 less than the amount the computer generated. The remaining five differences resulted in the payees receiving checks for net pay that were from at least \$50 to \$100 (for a total of \$405) more than what the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer.

Checks typed out to the Deputy Clerk-Treasurer were the five instances totaling \$405 where the checks did not agree with the amounts produced off computer. There were obvious alterations on one or the other payroll records for the amounts for federal withholding, total deductions, and net pay. The effect of the alteration was to decrease the amount of federal withholding by a certain amount and increase the amount of net pay by the same amount. The altered amounts were then posted to the Deputy Clerk-Treasurer's payroll ledger. These instances occurred in five of the six pay dates of the last quarter of 1993.

E. 1992 Payroll Records

We noted no instances where paychecks typed out where the Deputy Clerk-Treasurer named as the payee did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer.

F. 1997 Payroll Records

We noted no instances where paychecks typed out where the Deputy Clerk-Treasurer named as the payee did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers produced off computer.

**Wage and Tax Statements (W-2 Forms)**

Upon noting the instances where paychecks were generated for amounts that did not agree with the net pay amounts printed out on the City's payroll summaries or payroll registers which are produced off computer, we became concerned that other payroll records may have been manipulated to cover the under-withholding of deductions from gross pay, such as federal income taxes, of one individual by over-withholding deductions from one or more other individuals. These irregularities could then be carried through to the amounts reported on Wage and Tax Statements (W-2 Forms) resulting in an individual receiving a larger federal tax refund than entitled to or a need to pay less in when income taxes are filed, at the expense of another person or persons. We eliminated this possibility upon examining summations of all the discrepancies noted each year. Furthermore, regardless of whether the City's payroll summaries or payroll registers produced off computer were deliberately altered, we found the amounts posted to the payroll ledgers for the Deputy Clerk-Treasurer captured the discrepancies we noted. The totals for federal taxes withheld (as well as all other totals for other withholdings) on the payroll ledgers for the Deputy Clerk-Treasurer were traceable to W-2 Forms for the years 1992, 1993, 1994, and 1997. Since none of the 1995 W-2 Forms and the 1995 payroll ledgers could be located by the City, this could not be done for 1995.

For 1996, we noted that the amount of federal income tax withheld according to the 1996 W-2 Form was \$100 less than the cumulative amount of federal income tax withheld according to the payroll register for the last pay date of 1996. The other totals for other withholdings were traceable. Since the amounts on the payroll ledgers appeared to reflect the amounts actually paid, and the amount of differences noted for all other employees were not sufficient to make up the difference in withholding, we determined that tracing every employees' amounts from their payroll registers and payroll summaries to their ledger pages was unnecessary. Sufficient coverage was obtained when the typed paychecks were traced to the payroll summaries.

Present day City officials were unable to locate documentation that would explain the other differences we noted where wages paid failed to agree with payroll records. They could not have been due to reimbursable employee expenses because the City does not reimburse employees for expenses through the payroll system. The City reimburses employees through accounts payable, and each claim is submitted for City Council approval.

### **Employee's Withholding Allowance Certificates (W-4 Forms)**

The City could not locate any Employee's Withholding Allowance Certificates (W-4 Forms) that would document the adjustments made to the federal income tax withholding for the Deputy Clerk-Treasurer. The manner in which the amounts were adjusted leads us to believe that the Deputy Clerk-Treasurer's federal income tax withholding was changed without submitting new W-4 Forms and that this was done for the purpose of providing larger net paychecks for the indicated pay dates.

The amount of income tax withholding must be based on marital status and withholding allowances. An employee may not base withholding amounts on a fixed dollar amount or percentage, but the employee may specify a dollar amount to be withheld in addition to the amount of withholding based on filing status and withholding allowances. An employee may claim fewer withholding allowances than he or she is entitled to claim. However, unless an employee claims over a certain number of withholding allowances, or claims exempt from withholding (no payroll taxes withheld) and wages would normally exceed a certain amount per week, there is no requirement that the City submit W-4 Forms to the Internal Revenue Service (IRS). Nonetheless, all payroll withholding changes should have been documented by the employee submitting a complete W-4 Form in accordance with IRS regulations. (See *Circular E, Employer's Tax Guide*.) Also, the City's Personnel Policy in effect at the time under Article XVIII (Employee Data) states, "It shall be the responsibility of the employee to provide the city with up to date information on . . . W-4 Employee's Withholding Allowance Certificate."

### **Payroll Policies and Procedures**

It appears the City had few written policies and procedures for the preparation of payroll and for the accounting of hours worked and vacation and sick time taken. If such policies and procedures did exist, they were not always consistently enforced. The procedures used in preparing payroll and recording sick and vacation time earned and taken were likely based on past practice. Without adequate written policies and procedures, there is no formal guidance on how to account for hours worked and vacation and sick time earned and taken. Establishing written policies and procedures would allow consistent treatment of employees and would provide the ability to hold individuals accountable.

We recommend the City develop and implement formal written policies and procedures addressing all aspects of payroll processing. These policies and procedures should be designed to guide personnel on how to process payroll and authorize them to carry out the policies and procedures as they were intended. If differences arise in the interpretation of the policies and procedures as they have been applied, formal methods should be established for resolving and documenting their resolution.

### **Payroll Documentation, Authorization, and Approval**

We determined that there was little evidence to indicate that supervisors reviewed and approved employee time cards.

We recommend that:

- S time cards be completed by every City employee.
- S the use of a time sheet with a modification to include a statement to be signed by the employee certifying the hours to be paid were worked and hours of leave taken are correct. For example, "I hereby certify that paid hours and leave taken are correct."
- S supervisors review and sign time sheets to indicate their approval of hours paid and leave taken.

We recommend that efforts be made to increase the reliability of leave records. To accomplish this, it may be necessary to perform an evaluation of this system and develop options that could be implemented to address the issues and problems identified. Furthermore, employees should be provided periodic information about their leave balances which would allow them to review the information for accuracy.

### **Segregation of Duties**

It appears that one person completed virtually all aspects of payroll processing and that little oversight of this person's activities was or could be exercised. To ensure that all transactions are processed consistently with management's intent, no one person should be charged with processing the entire transaction. The City's management should constantly be aware of this condition and realize that the concentration of duties and responsibilities in a limited number of individuals is not desirable from an internal accounting control point of view.

We recommend the City's management remain cognizant of the absence of segregation of duties. It should review the duties of the personnel who process payroll. The City should reallocate or reassign duties so that they are properly segregated. If the City is unable to reallocate or reassign duties sufficiently to properly segregate them, it should establish procedures to allow work to be reviewed by another person (oversight procedures) to ensure that internal control policies and procedures are being implemented by staff. Employees should also be cross-trained to perform other duties in the event of an employee's absence.

### **Bi-weekly Payroll Cycle**

We recommend the City consider going to a bi-weekly payroll cycle so that all payroll periods are of equal length. A hold-back period between the time card due date and the designated pay date allows time cards to be processed before paychecks are issued. Furthermore, each time sheet should be compared to its related paycheck to ensure that the correct amount was paid and any differences should be corrected in the employee's next paycheck. Documentation that accounts for the differences should be retained.

### **Summary**

In our findings, we have repeatedly noted the absence of formal written policies and procedures which allowed inconsistent application of procedures, limited accountability, and the ability to override controls. Establishing and implementing formal written policies and procedures would provide direction to employees on how to process transactions and authorize them to carry out the policies and procedures with management's intent. It is important to note that the development and implementation of policies and procedures is an ongoing process and requires follow-up in order for them to remain effective.

## **LIBRARY FINANCES**

### **Deputy Clerk Records on Money Spent**

The petitioners' interests in this area were:

- S       What happened to the funds in the Library budget
- S       What property the City purchased with the monies in the Library budget
- S       What property the City purchased with a donation



S A conflict of interest in relation to the lease or rental of the Library building from a City Council member

The City provided us copies of various documents on the Library's receipts/revenues and disbursements/expenditures for the years 1991 through 1998. For each of the years of the period of the petition, these documents were computer reports that provided information on the Library's receipts/revenues and disbursements/expenditures. We were also provided detailed expenditure budgets which had a significant amount of comparative information. The computer reports summarized by month the Library's receipts, which appear to consist primarily of monies (Library aids) received from the Southeastern Library Cooperative (SELCO) and Library fines. SELCO is an inter-library-loan and reference system located in southeast Minnesota. The difference between those revenues and its costs of operation is made up by taxes levied and collected in the City's General Fund.

The computer reports provided detailed information on the Library's disbursements/expenditures. In the City's audited annual financial statements, the Library's budgeted and actual expenditures were reported as a department within the City's General Fund. In 1998, a separate special revenue fund was established to account for and report the Library's activities. Either method of presentation in the City's financial statements is generally accepted. There are advantages to reporting the Library's activities as a separate fund in that the revenues it generates and the portion of the tax levy needed to operate it is prominently displayed. The level of detail of expenditure reporting remains the same, but operating transfers and capital outlays are now more closely tied to the individual fund. There are no reported comparisons of budget to actual in the City's financial statements beyond those for the City's General Fund. However, the City prepares a budget for the Library Special Revenue Fund as well as most of its other special revenue funds. Any differences we noted between the computer-generated detailed information for the Library's disbursements/expenditures, the expenditure information presented in the City's annual financial report, and detailed budget information were not significant, and most likely were due to accruals and reclassifications. We did not perform any tests on the Library's disbursements/expenditures.

A. Budgeted to Actual Expenditures for 1994

According to the City's budget documents and its audited financial statements for 1994, the Library's budgeted expenditures totaled \$40,185. Actual expenditures totaled \$37,623. Other than charges for personal services, which account for approximately one-half of the budgeted and actual expenditures, the largest line-items according to the detailed expenses report appear to be professional services related to the Library move of \$3,409;

rentals and buildings - rent of \$3,200; and books totaling \$9,399. The book purchases appear to have been classified as "capital outlay" in the City's financial statements.

B. Budgeted to Actual Expenditures for 1995

According to the City's budget documents and its audited financial statements for 1995, the Library's budgeted expenditures totaled \$42,495. Actual expenditures totaled \$39,688. Other than charges for personal services, which account for approximately one-half of the budgeted and actual expenditures, the largest line-items according to the detailed expenses run appear to be buildings - rent of \$4,800 and books totaling \$9,700. The book purchases appear to have been classified as "other services and charges" in the City's financial statements.

C. Budgeted to Actual Expenditures for 1996

According to the City's budget documents for 1996, the Library's budgeted expenditures totaled \$49,049. In the City's audited financial statements, this amount can be arrived at by adding the \$11,800 budgeted under capital outlay for culture and recreation to the total budget for the Library of \$37,249. Other than charges for personal services, which account for approximately one-half of the budgeted and actual expenditures, the largest line-items according to the detailed expenses run appear to be building rent of \$4,800 and book purchases of \$11,582. The book purchases appear to have been classified under capital outlay for culture and recreation.

**Property City Purchased with Donation**

The City provided to us a spreadsheet that details the December 31, 1997 and 1998, undesignated fund balance of the City's "Capital Outlay Special Revenue Fund." Among several columns, there is one column headed "Library," which from hereon we will refer to as the Library Activity. Accompanying this spreadsheet were notes that contained references to the "gift money" or a "donation" in the amount of \$21,101. It appears to us that, through allocations to the Library Activity of periodic transfers in from other City funds to the Capital Outlay Special Revenue Fund, and through allocations of interest earned on idle funds held in the Capital Outlay Fund, a balance of \$39,602 has been accumulated in the Library Activity as of December 31, 1998. Of the amount accumulated as of December 31, 1997, there were no expenditures charged against the Library Activity during 1998. Our review of City Council resolutions and minutes to the meetings of the City Council dating back to 1991 did not yield any additional information about the original donation, such as the donor's

identity, when it was received by the City, what restrictions may have been placed on its use, and what property, if any, was purchased with the donated money. Present day City officials have not been successful in providing us significant additional information beyond the above-mentioned spreadsheet and notes. They have indicated to us that no monies of the Library donation have been spent and that the donation was made anonymously to the City with the fund's sole use to be for a new Library building or the new building's furnishings.

State law allows cities to accept gifts of real or personal property, including money, and use them in accordance with the terms the donor prescribes (Minn. Stat. §§ 465.03 and 465.04). A resolution accepting the gift and the donor's terms must receive an affirmative vote of two-thirds of the members of the council. Minn. Stat. § 471.705 requires that the votes of city council members be recorded and made available to the public.

Either the City did not pass a resolution accepting this donation, or it did not record the vote in its minutes. We recommend the City officials review and comply with the requirements of Minn. Stat. §§ 465.03, 465.04, and 471.705 if gifts or donations are presented to it in the future.

### **Rental of Library Space from a City Council Member**

Starting with the beginning of 1993 and through the end of 1996, Earl Fredrickson served on the Kenyon City Council. During this period, according to information the City provided us, Mr. Fredrickson was an employee of McNeilus Truck Manufacturing in Dodge Center and the owner of commercial land in the City of Kenyon. For a period of time while he served on the City Council, Mr. Fredrickson received payments from the City for rental of space for the Library.

Documents provided by the City indicated that the old Library location was demolished due to the condition of the building and to make room for a new business. The current location is considered temporary.

Our review of the minutes of the City Council meetings identified the following motions and discussions relevant to the City's rental of the building for the Library. The following are excerpts from correspondence and other documents that were provided us, and which we relied on, in examining this area of interest:

**S** June 2, 1994, letter from Kurt Fischer, City Attorney, to Kenyon City Administrator, Duane Hebert. In this letter, the City Attorney states:

It is my opinion that the City of Kenyon cannot enter into a Lease of real property owned by a councilmember. M.S. §412.311 provides: "Except as provided in Section 471.87

to 471.89, no member of a council shall be directly or indirectly interested in any contract made by the council". M.S. §471.87 provides: "Except as authorized in Section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in his official capacity, shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor."

There are a number of exceptions to the Rule set forth in M.S. §471.88, which provide that a city, by unanimous vote, may contract for goods and services with an interested officer in a number of cases. The key word in this provision is "contract for goods and services". In my opinion, based on my reading of the past Attorney General Opinions, the exceptions would not cover the lease that is contemplated in the present circumstances. This would be so even if it were indisputable that this is the best deal for the city. While this is harsh, it appears to be a consistently applied prohibition in Minnesota with respect to real estate transactions.

**S** Regular City Council meeting of June 14, 1994:

Fredrickson removed himself from the Council for the discussion on the temporary library location.

Hebert noted that this issue has been brought back up due to the statute regarding conflict of interest on the part of city officials. He noted that he had heard of those that wanted to sue Fredrickson because of conflict of interest. He suggested that the statute itself is very ambiguous and various attorneys would give varying opinions. He asked for Council direction on the location of the library. Cole noted that Fredrickson had removed himself from all discussions on the matter and suggested that the Siting Committee reviewed the options for the library. Cole recommended that the library stay where it is. Several questions were raised regarding the decision making on the current location, the cost for the location and legal aspects and who it would affect. Council took no action on the issue.

S Regular City Council meeting of August 9, 1994:

Fredrickson noted that a rumor was going around town that the City was spending \$1,200 per month in rent for the Library. He wanted to clarify that the rent was only \$400 per month.

S Regular City Council meeting of November 9, 1994:

Fredrickson removed himself from the Council.

Fredrickson asked about the Library renting the space from him. He noted that he and Hebert had an informal agreement for renting the space. He said that with Hebert leaving, he wanted to know what would happen. Cole suggested that Fredrickson bring a one-year contract to the Council at the December meeting. Nesseth suggested that this should go through Buildings and Equipment.

Motion by Huseth, seconded by Homeier, to have Fredrickson present a contract to the Buildings and Equipment Committee. Motion passed 4-0.

Fredrickson returned to his seat on the Council.

S Regular City Council meeting of December 14, 1994:

Mayor Cole told the Council that he had a lease for the library that needed to be introduced into the minutes. Motion by Huseth to accept the agreement, seconded by Nesseth. Unanimous. (Fredrickson excused himself from the part of the meeting.)

Because the minutes to the City Council meeting of November 9, 1994, indicate the agreement between Mr. Fredrickson and Mr. Hebert was informal, we are presuming that no written agreement between City Council Member Fredrickson and City Administrator Hebert, acting for the City, existed. The City was unable to locate a copy of the lease that was referred to during the City Council meeting of December 14, 1994. According to the computer reports that provided us information on the Library's disbursements/expenditures, during 1994 there were eight disbursements of \$400 for the purposes of "rentals" and "buildings - rent." Of these, seven were to City Council Member Fredrickson, and one was to Robert Jensen.

During 1995, there were 12 disbursements of \$400 for the purpose of buildings - rent. Of these, three were to Fredrickson, and nine were to Chuck Siefert because Council Member Fredrickson sold the building to Mr. Siefert. During 1996, there were 11 disbursements of \$400 and one of \$800 for buildings - rent. All these disbursements were to Mr. Siefert.

During 1997, according to the minutes of the regular City Council meeting of August 12, 1997, the City received a letter from Chuck Siefert informing the City of a rent increase. The monthly rent starting September 1, 1997, was \$475. There was also an offer to sell the City the building for \$31,600. The City acknowledged the increase in rent and declined the offer of sale from Mr. Siefert.

### Findings

We have no knowledge about the circumstances that led up to the City Attorney's letter of June 2, 1994, advising the City Administrator that the City could not enter into a lease of real property that is owned by a City Council member. Nonetheless, we believe the City Attorney was correct in his analysis of this matter. We fail to understand why the City Administrator proceeded to apparently ignore the City Attorney's advice and enter into the agreement to lease property owned by City Council Member Fredrickson. This conflict of interest was clearly prohibited by Minnesota statutes. We have identified disbursements totaling \$4,000 for the purpose of rent for Library space that were made to Mr. Fredrickson while he served as a member of the City Council. No contract should have been made with any member of the City Council which is outside the City's statutory authority, and no payment should have been made under such a contract. However, since the contract has been performed, it is unlikely that the money could be recovered by the City.

The laws governing ethics in government must be strictly followed and promoted and any actual or perceived conflict of interest should be avoided. The contracts discussed above are invalid even though the benefiting City Council member did not participate in the discussion of the contract or vote on it and, even if the City Council member acted in good faith and the contract was fair and reasonable, the contract is void because it is prohibited by the conflict of interest in contracts law. A City Council member who benefits from a prohibited contract may be found guilty of a gross misdemeanor.

## CHECKING AND SAVINGS ACCOUNTS

The petitioners' areas of concern included the disposition of some checking and savings accounts. According to the chief petitioner, there were some Police Reserve checking accounts, probably four, that "disappeared." The chief petitioner told us that the Deputy Clerk-Treasurer closed-out the accounts with unknown balances and that her name was on the accounts as a check signer. The chief petitioner wanted to know what happened to the monies in those accounts. Since early 1998, the Goodhue County Sheriff's Department has provided policing to the City of Kenyon under a contract.

The City provided us information about two bank accounts for the Police Reserve. One account was a checking account, the other a savings account.

### **Checking Account**

For the checking account, the earliest bank balance information we were provided dates back to March 19, 1996. At that date, the bank balance of this account was \$93.11. On March 27, 1996, according to information on a reprinted bank statement, this account was debited \$90 for a cash withdrawal, paid out to Scott Metcalf. A copy of the bank's miscellaneous debit slip contains a signature that appears to be that of Scott Metcalf. A copy of the bank signature card that was current as of the date of the withdrawal included Mr. Metcalf's signature as an authorized signer.

After the activity that took place in the account on March 27, 1996, there were some gaps in the ensuing series of reprinted or original bank statements that we were provided. On March 2, 1998, this account was debited \$3.11 for a closing withdrawal. Neither the bank statement, which was an original, that included that date, nor the bank's miscellaneous debit slip, also an original, provided any additional information as to the form that this withdrawal took; for example, a pay out in cash or check or a transfer to another account. A signature that appears to be that of the Deputy Clerk-Treasurer signed the debit slip.

### **Savings Account**

For the savings account, the earliest bank balance information we were provided dates back to December 31, 1994. At that date, the bank balance of this account was \$773.23. According to the ensuing series of reprinted bank statements that we were provided, by the end of July 1995, three withdrawals occurred for a total of \$773. The reprinted bank statements provided no information as to the form these withdrawals took. No other information was available. A copy of the bank signature

card that was current as of the dates of the withdrawals included only the signature of Donald Skillestad. Though there was a nominal amount of interest credited to this account, the only other activity, debits for service charges, depleted the remaining balance in this account, and it was closed during December 1995.

### Conclusion

After we examined the information the City provided us relative to the two bank accounts for the Police Reserve, we indicated to City officials that the chief petitioner believed four bank accounts had existed. We sought confirmation from the City that its searches through its records and the inquiries it made about Police Reserve accounts yielded no indication that additional accounts existed. Present day City officials provided us this confirmation. We also sought an explanation of Mr. Skillestad's relationship with the Police Reserve, and it was indicated to us that present day City officials believe Mr. Skillestad was a member of the Police Reserve. The close-out of the checking account was deposited into the City's General Fund.

### CITY BONDS

The petitioners questioned the need for a second bond issue during the summer of 1995 for the sewer interceptor project, when a bond issue was sold earlier for the same project.

The City issued \$330,000 General Obligation Sewer Revenue Bonds, Series 1995, which were dated January 1, 1995. The bond proceeds were to be used to finance the construction of various improvements to the wastewater (sewer) system in the City. This has been commonly referred to as the sewer interceptor project. In addition, during August 1995, the City issued the \$210,000 General Obligation Sewer Revenue Bonds, Series 1995B. Both of these bond issues will be repaid from service charges of the City's sewer utility operation.

Our review of the minutes of the City Council meetings identified the following motions and discussions relevant to the City's sale of these two bond issues:

#### **S** Special City Council meeting on November 29, 1994:

Hebert mentioned the resolution for the sale of bonds. He noted that \$200,000 was for the replacement of the interceptor line, \$50,000 for street projects and \$50,000 for the purchase of the creamery lot.



R. Dyrdaahl noted his concern for the purchase of the creamery lot. He also questioned the \$200,000 being enough to cover the sewer line.

Hebert noted TIF money could be used to repay this bond and that the title of the bond as written is done only because the largest share of the bond sale would be re-paid by sewer revenue, but that other revenue sources could also be used.

Motion by Huseth, seconded by Homeier, to approve resolution 94-21 calling for a sale of the bonds. Motion passed 4-1 on a roll call vote. Fredrickson voting nay.

**S** Regular City Council meeting of December 14, 1994:

Tom Truzinski from Juran & Moody spoke to the Council regarding the Bond Sale held earlier in the day. The best bid was from Piper, Jaffray, Hopwood at 6.39%. Rick Dyrdaahl questioned the borings on the Streets that were being done and the study of the sewer interceptor line. He asked how often you sell bonds for something that you do not know how much you are going to need. Mayor Cole said that would work with what you have. Tom Truzinski stated that the rates would be higher in 6 months, and that he had talked to Marv Sorvala and that PVC is going up and that they had an 18% contingency built in. Motion by Councilman Huseth to adopt Resolution 94-24 accepting the bid on the sale of \$330,000 GO Sewer Revenue Bonds of 1995 from Piper Jaffray. Seconded by Homeier. [This motion passed on a unanimous roll call vote.]

**S** Regular City Council meeting of January 10, 1995:

Marv Sorvala also spoke to the Council on the televising of the interceptor line. He told them that there was a lot of fracture and that the estimated cost was \$160,000. He stated that they wanted to look at the report more carefully and make sure that the cost estimate is still in that range before they draw up plans and specs. Motion by Homeier to accept Mr. Sorvala's recommendation. Seconded by Rumstick.

S Regular City Council meeting of February 14, 1995:

[Marv Sorvala, City Engineer] The cost estimates for doing the roads for 1995 totaled \$228,000.

Mr. Sorvala told the Council that he did not know Mr. Hebert was going to sell bonds. He stated that the costs on the interceptor line were twice the amount that the first estimate was. He said if they had the I & I report they could look at the project in more detail. The estimated costs would be approx. \$320,300 and possibly less with a liner. Mr. Sorvala stated he was surprised Mr. Herbert [sic] went ahead with the bond sale without contacting them. He told the Council that they could do part of the project if they wished.

Mayor Dyrdaahl pointed out to the Council that they had \$325,000 from the bond sale and \$50,000 had already been earmarked for the Creamery. He said he felt it would be better to wait with the Streets and do the interceptor project first. Councilman Nesselth said he agreed and that they had been waiting too many years on this. He said they would not get in trouble with the PCA if their Streets were bad.

S Regular City Council meeting of March 14, 1995:

Dan Boyum from Bonestroo, Rosene, Anderlik and Assoc. spoke to the Council on the interceptor report. He went over the letter dated 3-8-95 from the Engineers on the sanitary sewer interceptor improvements. He pointed out that a lot of the cost would be going through the highway and trestle. Mayor Dyrdaahl told the Council with the bond sale money, after the \$50,000 is taken out for the creamery lot the City would come up \$16,000 short. He said he had questioned the Auditor and Tom Truzinski if the money left over from the sewer bond could also be used for this project and was told it could not be. Dan Boyum stated the costs would be more accurate after the plans and specs were drawn up. He said the next step would be to have a public hearing and then proceed with the plans and specs.

Dan Boyum pointed out that they may need additional easements and that this cost does not include that.

**S** Regular City Council meeting of April 11, 1995:

Mayor Dyrdaahl told the Council that the next step on the interceptor line was to get plans and specs drawn up. He said he felt the City should go forward at looking into this project as they've had problems with it for many years. Motion by Councilperson Rumstick, seconded by Nesseth.

**S** Regular City Council meeting of June 12, 1995:

Interceptor Line: Dan Boyum, of Bonestroo, Rosene, Anderlik & Assoc. asked the Council to approve the preliminary plans on the work on the interceptor line tonight so that they could go out for bids and be able to open them in 3 weeks. Motion by Councilman Homeier to direct Bonestroo to draw up specs with a bid opening for July 13th, 1995. Seconded by Councilperson Rumstick.

**S** Regular City Council meeting of July 11, 1995:

Interceptor Line. It was noted that the bid opening has been extended until July 18th and that 4 alternates are included.

**S** Special City Council meeting of July 18, 1995:

Dan Boyum of Bonestroo was present to discuss the bids for the Sewer Interceptor project. Three bids were received with Swenke of Kasson as the apparent low bidder. It was noted that the bids came in higher than the engineers estimate. The discussion of the Council centered in two concerns. One being if we could get a better bid if we were to rebid in Spring. With the other concern being if enough money was available to do the project because the bonds that were sold were not enough to cover the project. After considerable discussion a motion was made and seconded to award the project including Alternate #2 to Swenke. Motion passed unanimously.

S Regular City Council meeting of August 8, 1995:

Interceptor Bonding: Tom Truzinski informed the Council that the bond sale passed last fall for this project will only cover a portion of it. Discussion followed on the need for the project and ways to finance it back through sewer rates. Motion by Homeier to approve the sale of GO Obligation bonds. Seconded by Rumstick. Motion by Fredrickson to adopt Resolution 95-11 for the sale of a \$210,000 GO Bond. Second by Homeier. [This motion passed on a unanimous roll call vote.]

S Regular City Council meeting of October 4, 1995:

Gary Groen again pointed out that the new factor now facing the City is the 2 new bond issues. Mr. Sorvala told the Council of the \$540,000 in bonds, \$340,000 would be needed for the interceptor. Dyrdaahl mentioned that out of these funds, approx. \$50,000 had been spent for the creamery lot and also additional amount for the proposed 1995 Street work which did not take place. Brian Skok told the Council that Tom Truzinski presented that they go over in bonding for contingency reasons. Dyrdaahl pointed out that the excess amount could be used for paying the bonds, which could cut back somewhat on the rate increase needed.

Findings

Actual project costs required the issuance of a second bond issue, \$210,000 General Obligation Sewer Revenue Bonds, after the original issuance of the \$330,000 General Obligation Sewer Revenue Bonds. It is obvious that the first bond issue was sold well before the City engineer's estimate of the cost of the project was completed, and several months before the bid opening on the project. Ordinarily, we would expect an engineer's estimate of a project's cost to have been completed prior to a sale of bonds meant to finance the project. It is not uncommon to observe instances where an entity may have started a project, or even has completed it, before issuing the bonds to reimburse itself for the project's costs already incurred. Such entities, in effect, are "cash-flowing" the projects with their own resources until the bonds are sold.

A comparison of the sources of funding, namely the two bond sales, to where those funds were disbursed indicates that the proceeds of these two bond issues have been spent. Our determination of amounts disbursed during the years 1995, 1996, and 1997 indicates that \$262,553 was paid to the contractor, \$59,141 was paid to the engineer, \$50,000 was paid for the purchase of the creamery lot, and \$145,095 was paid on principal and interest on the debt incurred. Other professional services, related primarily to the bond sales, and some miscellaneous items, account for the remainder of disbursements not otherwise classified above.

In every instance when an entity issues debt, certain direct and indirect costs associated with issuing the debt are incurred. Direct costs would include bond counsel, financial advisors, bond printing, and registrars and paying agents. There are too many variables which prevent us from determining with accuracy the additional cost the City most likely incurred because two bond series were issued for the project. We can only assume that it would have been cost effective to issue one larger series of bonds instead of two smaller ones.

It is unclear why the creamery lot was purchased with proceeds from these bond issues. The documents related to these bond issues that the City provided us indicated that the bond proceeds were to be used to finance the construction of various improvements to the wastewater system in the City. The bond documents contained no indication that a planned use, even temporarily, of \$50,000 of the bond proceeds was for the purchase of the creamery lot, which was proposed to be used for a new City Hall or Library. Only the minutes to the City Council meetings provide an indication that bond proceeds were being earmarked for this purpose. There was an acknowledgment found in the minutes of a City Council meeting that ". . . the bond fund needed to be paid back for the \$50,000."

Present day City officials have been unable to explain why \$50,000 of the bond proceeds were used for the purchase of the creamery lot. They believe that the then incoming City Council would not have approved the creamery lot acquisition for future municipal building needs or planning.

## OTHER FINDINGS AND RECOMMENDATIONS

### **Minutes to City Council Meetings**

During the course of our audit, we reviewed the minutes to the proceedings of the City Council meetings for the years under audit and for other years. In many instances, the minutes provide an inadequate history of the meetings involved.

Various statutes that refer to taking or publishing minutes use the term “proceedings” or “official proceedings.” The Minnesota Attorney General has used the definition of “proceedings” found at Minn. Stat. § 331A.01, subd. 6, in analyzing the clerk’s duties to take minutes. This statute states, in part:

“Proceedings” means the substance of all official actions taken by the governing body of a local public corporation at any regular or special meeting, and at minimum includes the subject matter of a motion, the persons making and seconding a motion, the roll call vote on a motion, the character of resolutions or ordinances offered, including a brief description of their subject matter, and whether defeated or adopted.

At a minimum, the minutes must include the information required by Minn. Stat. § 471.705 [Open Meeting Law]. This provision requires that the individual votes of each member of the governing body on “an action” be specifically recorded, except for votes on “payments of judgments, claims and amounts fixed by statute.”

If the minimum requirements are satisfied, the question of how elaborate and extensive the minutes should be is largely a policy matter for determination by the particular body in the exercise of reasonable judgment and discretion. The Attorney General has explained:

. . . there may be circumstances in which it would be advisable for the town board to provide for the minutes to include information over and above what is necessary to satisfy minimum statutory requirements for a record of its official actions.

Op. Atty. Gen. 851 March 5, 1992. Such circumstances may include meetings where the City Council is acting in a judicial capacity, such as when it reviews requests for variances or special use permits. At such times, the minutes may include the City Council’s reasons for reaching a particular decision. Such minutes could be crucial in defending a court challenge to the decision.

While the following is not an exhaustive list, some specific items that should be included in the minutes to the proceedings of City Council meetings are:

- S** type of meeting (regular, special, adjourned regular, adjourned special, recessed, and emergency)
- S** date and place meeting was held

- S the time meeting was called to order
- S a list of City Council members present and absent
- S approval of minutes to previous meeting, with any corrections noted
- S appointments of representatives to committees and outside organizations
- S authorizations and directions to invest excess funds; information on investment redemptions and maturities
- S list of all sealed bids received or price quotations obtained
- S identity of parties to whom contracts were awarded
- S abstentions from voting due to a conflict, and the City Council member's name and reason for the abstention
- S reasons the City Council determines to award a particular contract to a bidder other than the lowest bidder
- S granting of variances or special use permits
- S listing of all bills allowed or approved for payment, noting the order-check number, claimant, purpose, and amount
- S transfers of funds
- S reason the meeting was concluded and the time the meeting concluded.

The minutes should be signed by the City Clerk and attested to by the Mayor, at the time the minutes are adopted by the City Council, usually at the next meeting.

We believe by following the above guidance, the City will provide a more adequate history of its meetings. We are noting that minutes to the proceedings of the City Council meetings for the years 1998 and later are providing a more adequate history of the meetings.

## Records Retention

Throughout this report, we have identified instances where City records were unavailable for us to examine. These records were either unretrievable, destroyed, or otherwise lost.

Minn. Stat. § 412.151, subd. 1, makes the city clerk responsible for preserving various city records including the minutes, the ordinance book, and account book. Minn. Stat. § 412.141 provides that when leaving office, the treasurer must deliver all city papers, books, and money to a successor. These requirements are consistent with those of Minn. Stat. § 15.17 which provides that Minnesota governmental units and their public officers “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.” This duty not only prohibits destruction, but requires the City and its chief administrative officer to take necessary steps to protect public records from loss and to keep them from deteriorating. This statute also requires that all records be delivered to the legal custodians’s successor upon expiration of the term of office or appointment. Finally, Minn. Stat. § 138.225 prohibits the unauthorized disposal of government records.

We recommend that City officers take immediate precautions to safeguard all City books, records, papers, and property. If it has not already done so, the City Council should consider adopting the *General Records Retention Schedule for Cities*, issued by the Minnesota Department of Administration. No City records should be disposed of until an approved schedule is adopted.

## Questionable Disbursements and Payment of Bonus to Employee

In the State of Minnesota, public funds may be expended if “the purpose is a public one for which tax money may be used, and there is authority to make the expenditure, and the use is genuine. . . .” Tousley v. Leach, 230 N.W. 788, 789 (Minn. 1930). Minnesota courts generally construe “public purpose” to mean “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.” Visina v. Freeman, 89 N.W. 2d 635, 643 (Minn. 1958). The public purpose requirement applies to all funds expended by a public entity, not just revenues derived from taxation (Op. Atty. Gen. 107a-3, January 22, 1980).

The minutes to the City Council meeting held June 18, 1996, lead us to believe that the City may have paid for costs related to a retirement party and for a “going away party.” The Minnesota Attorney General has ruled that expenditures for events that are primarily social in nature and for the primary benefit of a particular group lack public purpose. See Op. Atty. Gen. 59a-22, November 23, 1966.



The Attorney General has also held that there is no public purpose in giving gifts or retroactive bonuses to employees or third parties. Op. Atty. Gen. 107a-3, January 22, 1980; Op. Atty. Gen. July 10, 1946; Op. Atty. Gen. 59a-22, December 4, 1934; Op. Atty. Gen. 442a-17, January 17, 1938; see *also* McQuillan on Municipal Corporations § 39.19. The minutes to the meeting of the City Council held December 11, 1996, lead us to believe the City may have paid an employee a \$1,000 bonus for “. . . the extra duties that he took on this year.”

In summary, cities may spend money only for authorized purposes. Generally, an expenditure is for a public purpose if it benefits the inhabitants of the community as a whole, and if it is directly connected with the government of the city.

The City must follow state law and not expend public funds unless there is a public purpose. The City must not incur costs for events that are primarily social in nature and benefit certain employees or other individuals.

### REMEDIAL ACTION TAKEN

Since the time when the document that was circulated among the residents of Kenyon petitioning the examination that we conducted, the City has acted to address many of the concerns raised in this report. First, from time to time, the City Council has adopted a number of administrative policies, a number of which are highlighted below. The first administrative policy covers utility billings. The City Council also adopted a new personnel policy that became effective September 8, 1998. The City's new personnel policy rescinds the previous personnel policy adopted January 1990. During the course of the years 1998 and 1999, several changes took place in the way in which City payroll is processed. Finally, the City of Kenyon completed an update of its City Code.

#### **Administrative Policies**

The City's administrative policies address:

- S Due dates and penalty provisions for utility billings (adopted by the City Council April 14, 1998).
- S Hiring (adopted by the City Council June 9, 1998).
- S Annual job evaluations of all regular employees, that the City Administrator is responsible for keeping completed evaluation forms, and that the City Administrator controls access to the evaluation forms (adopted by the City Council October 13, 1998).

- S Conflicts of interest on the part of any City Council member, the call for annual reviews of the policy by City Council members, and that new City Council members are advised of the policy upon starting their term of office (adopted by the City Council January 7, 1999).
- S Rules of procedure and decorum for the City Council and its meetings (adopted by the City Council January 7, 1999).

Regarding the City's practice of calling for annual reviews by City Council members of the conflict of interest policy, we recommend the City Council members sign a statement to the effect that they have received the policy and that they understand it.

### **Personnel Policy**

The new policy contains a number of articles that address such items as:

- S purpose
- S personnel covered
- S working hours, hours of work, attendance, vacation, and holidays
- S leaves of absence
- S employee performance appraisals.

Among other things, the various articles of the personnel policy prescribe:

- S a clear definition of lines of responsibility and authority within Kenyon City government
- S the normal working time per week to be 40 hours
- S City office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday
- S the maintenance of employee daily attendance records
- S the normal payment of employee wages to be by check, on a bi-weekly basis
- S standards for compensatory time/overtime

- S a system for annual employee performance appraisals
- S maintenance of records of position titles, compensation by position and/or class, and job descriptions
- S the assignment of work duties and scheduling work is the responsibility of department heads
- S the administration of disciplinary procedures.

We believe the City's new policy is a significant improvement over the previous one because, in some instances, the City's old policy either did not address certain issues and situations or the old policy was not entirely clear. Some examples of how the new policy now either addresses certain issues or is more clear include:

- S The expectation that all employees will report to work on time, use their available hours to the best advantage, and leave only after the regular working hours are completed. The City's old policy did not address these expectations.
- S The requirement of the maintenance of employee daily attendance records. The City's old policy did not contain this requirement.
- S That overtime, which according to the new policy should be avoided, but when it is necessary, must have specific approval by the immediate supervisor prior to its being earned.
- S That the use of vacation and compensatory time will not count as time worked for purposes of computing the normal working time of 40 hours per week.
- S The definition and usage of sick leave.

Furthermore, as compared to the previous personnel policy, there appears to be a greater awareness of the existence of the new policy, which makes it a more useful and effective document.

### **Payroll Processing**

Changes in the manner in which the City processes its payroll include:

- S a conversion, during March 1998, to a bi-weekly payroll system from a system where payrolls were at the 15th and at the end of the month;

- S the maintenance of time sheets by all employees, which require the signatures of both the employee and his or her supervisor, commenced March 1998; and
- S a conversion, during March 1998, to where paychecks are generated by computer and are no longer typed manually.

### **Update of City Code**

The City has completed a revision, rearrangement, re-codification and reenactment of all existing ordinances of the City. It can be referred to and cited as *The Kenyon City Code of 1999*, or *The Kenyon City Code*. It has been arranged under functional headings and organized under a decimal numbering system. This allows a system whereby new ordinances can be integrated in a manner that provides for continuous updating.

### CONCLUSION

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters may have come to our attention that we would have reported to you.

This report has been prepared for the information of the petitioners and members of the City Council of the City of Kenyon and is not intended to be, and should not be, used by anyone other than those specified parties.

*/s/ Judith H. Dutcher*

*/s/ Greg Hierlinger*

JUDITH H. DUTCHER  
STATE AUDITOR

GREG HIERLINGER, CPA  
DEPUTY STATE AUDITOR

March 20, 2000