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July 25, 2013

The Honorable Stephen Hallan
Chair, Pine County Board of Commissioners
21007 St. Croix Road SE
Pine City, Minnesota 55063

Dear Commissioner Hallan:

The Office of the State Auditor (“OSA”) received concerns about Pine County (“County”). Specifically, concerns were raised about: 1) payments to the former County Coordinator/Engineer; 2) forfeiture funds; 3) emergency management grants; 4) E-911 grant funds; and 5) the Gun Permit Fund. The OSA has completed its review of the concerns. This letter summarizes the findings from the OSA’s review and, where warranted, provides the County with recommendations.

Payments to the Former County Coordinator/Engineer

The OSA received concerns that the salary for the combined position of County Coordinator and County Engineer may have been paid entirely with “State Highway Grant” funds, thereby using “Highway funds to supplant the salary of the County Coordinator.”

During the time period of approximately March 2008 through June 2012, the County’s former County Engineer/Public Works Director held the combined positions of County Coordinator/Administrator and County Engineer and/or Public Works Director.¹ For the combined positions, the person was paid an additional \$1,200 per month, or \$14,400 per year.²

While the positions were combined, the County Coordinator/County Engineer’s salary was paid through the County’s Road and Bridge Fund.³ The Road and Bridge Fund, reported as a special revenue fund in the County’s Financial Statements, is “used to account for restricted

¹ The positions are no longer combined. The County Coordinator position was changed to a County Administrator position in October 2011. *See* County Board Meeting Minutes for October 4, 2011. At times, some of the positions were “Interim” positions. For convenience, the combined positions in this letter will be referred to as “County Coordinator/County Engineer.” From approximately May 2010 through May 2011, another person held the position of County Engineer, although the County Coordinator maintained the Public Works Director position. The County also had an Assistant County Engineer from approximately March through July 2012. *See, e.g.,* County Board Meeting Minutes for March 18, 2008, April 21, 2009, April 20, 2010, and July 3, 2012.

² *See* County Board Meeting Minutes for March 18, 2008.

³ The OSA reviewed reports from the County’s payroll system.

intergovernmental revenues and other revenues and expenditures of the County Highway Department which is responsible for the construction and maintenance of roads, bridges, and other projects affecting County roadways.”⁴ Revenues in the Fund consist primarily of restricted intergovernmental revenues, taxes, and charges for services.⁵

The majority of the restricted intergovernmental revenue in the Road and Bridge Fund consisted of Highway State Aid. More specifically, the County received Minnesota State Aid Construction and Maintenance Funds for highways and State Aid Town Bridge funds during 2008 through 2012.⁶ Highway State Aid funds may be used to reimburse the County for engineering costs.⁷ However, the OSA found no evidence that the County Coordinator/County Engineer’s salary was paid with Highway State Aid funds for 2009 through 2011.⁸ Therefore, while the County could have allocated portions of the County Coordinator/County Engineer salary, as appropriate, to projects funded with Highway State Aid funds, it did not.

Generally, a county board determines how tax revenues will be allocated among funds and budget items. For transparency purposes, a transfer from the County’s General Fund to the Road and Bridge Fund could have been made for the additional \$14,400 per year, plus benefits, the County Coordinator/County Engineer received for his County Coordinator/Administrator functions.⁹ While this was apparently not done, it was not required. Therefore, the OSA will not be pursuing this issue further.

⁴ See, e.g., County’s Financial Statements and Supplementary Information for Year Ended December 31, 2011, at page 27.

⁵ For example, Road and Bridge Fund revenues for 2011 reported in the County’s 2011 Financial Statements are reflected in the following chart:

2011 Statement of Revenues for County Road and Bridge Fund	
Intergovernmental	\$ 11,945,875
Taxes	\$ 1,368,474
Charges for Services	\$ 283,473
Investment Earnings	\$ 2,312
Miscellaneous	\$ 72,235
TOTAL:	\$ 13,672,369

⁶ The OSA reviewed reports from the State Aid Accounting System available on the Minnesota Department of Transportation (“MnDOT”) website, www.dot.state.mn.us, and reports from the County’s financial system.

⁷ See, e.g., Minn. Rules 8820.1500, subp. 6. Additional information on Highway State Aid is available on MnDOT’s website.

⁸ The OSA reviewed County Highway Department Project Expense Detail for 2009 through 2011.

⁹ The County’s Financial Statements for 2008 through 2010 report fund transfers of interest earnings/revenue from the County’s General Fund to the Road and Bridge Fund: \$59,395 in 2010, \$25,139 in 2009, and \$146,222 in 2008. In 2011, there was no transfer, but \$19,592 was reported as due to the Road and Bridge Fund from the General Fund, primarily consisting of payments for fuel for the Sheriff’s Department.

Forfeiture Funds

The OSA received concerns that the Sheriff's Department purchased two vehicles in 2008 for approximately \$70,000. "To account or conceal this unbudgeted expenditure," it was alleged that the expenditure was "removed from the general budget" and assigned to the drug forfeiture account, placing the account in a \$60,000 deficit position. It was alleged that, at the end of 2012, the drug forfeiture account still had a deficit of \$40,000.¹⁰

Under Minnesota law, property associated with designated criminal offenses may be forfeited.¹¹ The disposition of forfeited property and the use of forfeiture proceeds are governed by statute.¹² Generally, forfeited property retained by law enforcement agencies may be used for law enforcement purposes.¹³ Proceeds distributed to law enforcement from the sale of vehicles forfeited under the DWI law must be used "as a supplement to the state or local agency's operating fund or similar fund for use in DWI-related enforcement, training, and education."¹⁴

The County maintains a Sheriff's Department forfeiture account for DWI forfeitures and a Sheriff's Department forfeiture account for drug forfeitures. The attached charts show the beginning and ending balances, receipts, and disbursements/transfers for the two accounts for the years 2007 through 2012. The DWI forfeiture account has had a year-end negative balance for that entire time period.¹⁵ The drug forfeiture account has had a year-end negative balance since 2010.¹⁶

The OSA reviewed sales documents related to the Sheriff's Department purchase of two GMC Acadia vehicles in 2008, each costing over \$25,000. It is the OSA's understanding that the vehicles were used by the Sheriff and the Chief Deputy. The purchase of one of the vehicles in April was predominantly coded to the drug forfeiture account.¹⁷ The purchase of the second

¹⁰ A concern was also raised about the handling of pre-forfeiture funds prior to 2011. In its 2011 audit of the County, the OSA recommended that the Sheriff's Department develop and document policies and procedures for the proper handling and disposition of property and evidence in its control. See OSA's Management and Compliance Report for the County for the year ended December 31, 2011, Finding 11-1. In response, the County stated that, in 2011, the Sheriff's Department adopted the OSA's Best Practices Review: Property and Evidence Room Policies and Procedures Manuals, and made a number of changes, including the deposit of pending forfeiture funds into a pending forfeiture account maintained by the County Auditor.

¹¹ See, e.g., Minn. Stat. §§ 169A.63 (DWI forfeitures) and 609.531-609.5318 (general criminal forfeitures, primarily drug-related).

¹² See, e.g., Minn. Stat. §§ 169A.63, subd. 10, and 609.5315.

¹³ See, e.g., Minn. Stat. § 609.5315.

¹⁴ See Minn. Stat. § 169A.63, subd. 10(b)(1).

¹⁵ Due to the negative balance, the account was not separately reported in the County's Financial Statements.

¹⁶ The drug forfeiture account was separately reported as a reserved fund balance in the County's Financial Statements until the balance of the account became negative.

¹⁷ The coding of expenses for accounting purposes is generally handled by the individual County departments. A small portion of the purchase price was coded to the DWI forfeiture account.

vehicle in July was coded entirely to the DWI forfeiture account.¹⁸ In addition, the OSA found that transactions totaling \$39,917.13 were moved from the Sheriff's Department vehicle purchases/equipment account code to the DWI forfeiture account code on July 31, 2008. The transactions, primarily related to the purchase of two Chevy Impalas, put the DWI forfeiture account into a negative balance.¹⁹ It is the OSA's understanding that the Chevy Impalas were used as patrol vehicles.

As reported in the County's audited financial statements for 2005 through 2011, Sheriff's Department expenditures have consistently exceeded the budgeted amount. As a general matter, we recommend that departmental expenditures stay within budgeted amounts. Similarly, the transfer of transactions to the DWI forfeiture account should not exceed the balance in the account. In addition, proceeds from the sale of vehicles forfeited under the DWI law should only be used for DWI-related enforcement, training, and education. We recommend that, in the future, the County comply with Minnesota law in the handling of the DWI forfeiture account.

Emergency Management Grants

The OSA received concerns about staffing for emergency management functions. More specifically, it was alleged that the employee funded by an Emergency Management Grant was discharged, and the grant funds were used to pay the County Sheriff and Chief Deputy, thereby "supplanting the funds for Board approved wage increases." It was alleged that, beginning in 2008, there was "collusion" in the rearrangement of the County's Emergency Management Department. Concerns were also expressed that the required emergency management administrative and functional duties had been assigned to a clerical staff member.

Based on our review of County meeting minutes, there were various discussions in 2009 regarding emergency management duties. County Board meeting minutes for April 21, 2009, show that the County Board approved the elimination of the Emergency Management Coordinator position and appointed the County Sheriff and Chief Deputy as Homeland Security Emergency Management Director and Deputy Director, respectively. The OSA was also provided with County documents showing that the County Sheriff and Chief Deputy were given hourly wage increases of \$3.85 effective June 1, 2009, for the additional duties. According to the April 21, 2009, meeting minutes, the Chief Deputy stated that additional emergency management duties would be divided among the Sheriff's staff.

As a general matter, personnel and staffing decisions are a County function. Because the rearrangement of the Emergency Management functions is documented in public meeting minutes, allegations of "collusion" appear unwarranted.

¹⁸ The second Acadia vehicle purchase was made on July 28, 2008, and the check for payment appears to have been dated August 1, 2008.

¹⁹ The description for this portion of journal entry 903 is "CORR ACCT-SHERIFF." At this late date, the only journal entry supporting documentation is a hand written post-it note. The \$39,917.13 consisted of the two Chevy Impala purchases (totaling \$36,885.30), other vehicle equipment purchases, and a receipt for seized property.

Over the years, the County received federal emergency management performance grants (“EMPG”). The grants are passed through the Minnesota Department of Public Safety Division of Homeland Security and Emergency Management (“DPS”). The grants are paid only after DPS accepts invoices from the County for services actually performed in accordance with the Grant Program Guidelines.²⁰

Generally, Federal EMPG funds must not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources.²¹ That is, the grants are meant to increase the overall amount of resources available for the program. Recently, DPS has been notifying grant recipients about prohibitions on “supplanting” and comingling of grant funds as they relate to the management and reporting of EMPG expenditures.²² According to DPS, the supplanting monitoring procedures DPS now applies to EMPG awards were not applied consistently to all EMPG awards in the past.

Because DPS did not require the documentation it currently requires, DPS was unable to determine from its records whether the County’s 2009 – 2011 EMPG expenditures would meet current DPS supplanting requirements. DPS explained to the OSA that the County’s 2012 grant, however, does not present similar concerns because it is being used for equipment purchases that have received prior approval from DPS.

During our review of this issue, we noted that several of the County’s Grant Agreements were submitted late in the year. For example, the County’s signatures on the 2011 Grant Agreement for \$6,000 are dated December 13, 2011; and the County’s signatures on the 2012 Grant Agreement for \$19,095 are dated November 20, 2012. DPS confirmed that the County’s grant information is often late.

Granting agencies are in the best position to determine whether grant expenditures comply with grant program guidelines. We recommend that the County work with DPS to comply with grant requirements in the future. In addition, we encourage the County to submit grant documents to the granting agency in a timely fashion, thereby providing the granting agency with ample time to review the relevant documents and to resolve any questions about the grant.

E-911 Grant Funds

The OSA received concerns about the tracking of E-911 grant funds prior to 2010. After the OSA began its review, these concerns were withdrawn.

²⁰ See, e.g., County’s EMPG 2009 Grant Agreement (Payment); County’s EMPG 2011 Grant Agreement (Payment).

²¹ See, e.g., DPS Bulletin 13-001; EMPG 2013 Grant Program Guidelines.

²² See DPS Bulletins 12-003 and 13-001.

Under Minnesota law, qualified counties receive a portion of fees paid by customers with 911 emergency call services.²³ The counties must deposit the money “in an interest-bearing fund or account separate from the [county’s] general fund.”²⁴ The money may be used for specified purposes related to enhanced 911 services.²⁵ Counties receiving this money must file an annual “audit” with the Commissioner of Public Safety.²⁶

The E-911 grant revenues are recorded in a separate account code in the County’s general ledger. The revenues are reported as intergovernmental revenue in the County’s audited financial statements.²⁷ The OSA received from the County Auditor-Treasurer copies of the “audits” the County submitted to the Commissioner of Public Safety for the years 2008 through 2011, which provide details about each year’s expenditures.

It appears that the County has been tracking the E-911 funds.

Gun Permit Fund

The OSA also received allegations that, in violation of Minnesota law, surplus revenues from the County’s Gun Permit Fund were removed at the end of each fiscal year and used for unauthorized purposes. It was alleged that the amount of funds involved may amount to more than \$40,000. After the OSA began its review, these allegations were withdrawn.

Under Minnesota law, fees collected by a sheriff under Minnesota’s permit to carry law must be “used only to pay the direct costs of administering” the permit to carry law.²⁸ The permit to carry law also provides, in relevant part, that: “[t]he revenues must be maintained in a segregated fund. Fund balances must be carried over from year to year and do not revert to any other fund.”²⁹

The OSA obtained and reviewed an Account Activity Report for gun permit activity generated from the County’s financial system for the time period of January 2005 through November 30, 2012. The gun permit account had a balance of \$48,651.16 as of November 30, 2012. Receipts into the account primarily consisted of gun permit fees, and disbursements from the account included wages and payments to the Minnesota Department of Public Safety’s Bureau of Criminal Apprehension (“BCA”).³⁰

²³ See Minn. Stat. §§ 403.11 and 403.113.

²⁴ See Minn. Stat. § 403.113, subd. 2(b).

²⁵ See Minn. Stat. § 403.113, subd. 3.

²⁶ See Minn. Stat. § 403.113, subd. 4.

²⁷ See Schedule 13 in the County’s 2008 and 2009 Financial Statements; Exhibit E-1 in the County’s 2010 Financial Statements; and Schedule of Intergovernmental Revenue in the County’s 2011 Financial Statements.

²⁸ See Minn. Stat. § 624.714, subd. 21.

²⁹ *Id.*

³⁰ Annual permit to carry reports are required by Minn. Stat. § 624.714, subd. 20. The reports are available on-line at: <https://dps.mn.gov/divisions/bca/bca-divisions/administrative/Pages/firearms.aspx>.

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The OSA received no evidence that funds were removed from the Gun Permit Fund at the end of each fiscal year.

Conclusion

The Office of the State Auditor reviewed concerns it received about: 1) payments to the former County Coordinator/Engineer; 2) forfeiture funds; 3) emergency management grants; 4) E-911 grant funds; and 5) the Gun Permit Fund.

The Office of the State Auditor is not taking any further action on these concerns at this time. If you have any questions about this letter, please feel free to contact me at 651-297-5853 or Nancy.Bode@osa.state.mn.us.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel

Attachment

cc. The Honorable Steve Chaffee, County Commissioner
The Honorable Mitch Pangerl, County Commissioner
The Honorable Curt Rossow, County Commissioner
The Honorable Cathy J. Clemmer, County Auditor-Treasurer
The Honorable John K. Carlson, County Attorney
The Honorable Robin Cole, County Sheriff
Mr. Mark LeBrun, County Engineer
Mr. David Minke, Pine County Administrator