



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

January 6, 2011

The Honorable Joe Lightowler
Chair, Lake Eunice Township Board of Supervisors
12708 Townhall Road
Audubon, Minnesota 56511

Dear Chair Lightowler:

The Office of the State Auditor is aware of concerns about a possible conflict of interest involving the Town of Lake Eunice ("Town") and Town Board Supervisor Lloyd Kohler. We understand that the matter was reviewed by the Clay County Attorney's Office, and the County Attorney declined to prosecute. However, in a letter dated September 20, 2010, the County Attorney indicated that the Town and Supervisor Kohler failed to follow statutory requirements when contracting with an interested supervisor.

We recommend that the Town and any interested supervisor comply with Minnesota conflict of interest law in the future. This letter will provide the Town with guidance for compliance.

Under the general conflict of interest provisions of Minnesota Statute § 471.87, "a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom."¹

Because the general rule is so strict, the legislature has created a number of exceptions, which are found in Minn. Stat. § 471.88. Under one exception to this statute, the town board of a town with a population of 1,000 or less according to the last federal census, "by unanimous vote, may contract for goods or services with an interested officer" to provide construction materials or services, or both, "when the sealed bid process is used."²

Under another exception, a town board, "by unanimous vote, may contract for goods or services with an interested officer" if the contract is one "for which competitive bids are not required by law."³ To use this broad exception, however, a town and the interested

¹ See also Minn. Stat. § 365.37, subd. 1. ("Except as provided in sections 471.87 to 471.89, a supervisor or town board must not be a party to, or be directly or indirectly interested in, a contract made or payment voted by the town board.")

² See Minn. Stat. § 471.88, subds. 1 and 12.

³ See Minn. Stat. § 471.88, subds. 1 and 5. Generally, under Minn. Stat. § 471.345, competitive (sealed) bids are not required unless the amount of the contract is estimated to be over \$100,000. For contracts estimated to cost over \$25,000 but not more than \$100,000, the contract may be made either upon sealed bids or by direct negotiations (by obtaining two or more quotations when possible).

The Honorable Joe Lightowler
Chair, Lake Eunice Township Board of Supervisors
January 6, 2011
Page 2

supervisor must follow the procedures set forth in Minn. Stat. § 471.89. This section requires the town board to "authorize the contract in advance of its performance by adopting a **resolution** setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere."⁴

In addition, before claims are paid on the contract, the interested officer must file with the town clerk "an **affidavit** stating:

- (a) the name of the officer and the office held by the officer;
- (b) an itemization of the commodity or services furnished;
- (c) the contract price;
- (d) the reasonable value;
- (e) the interest of the officer in the contract; and
- (f) that to the best of the officer's knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources."⁵

Sample resolutions and affidavits may be found on the Minnesota Association of Townships' ("MAT") website at:

<http://www.mntownships.org/vertical/Sites/%7BD45B3299-B0BE-4D08-8A42-B7053B4AE74F%7D/uploads/%7B5E972A11-B5E7-45D8-9B1F-465F90F082C9%7D.PDF> (see pages 9-11). Additional information about contracting with a town supervisor may be found in the MAT Township Manual at: http://www.mntownships.org/index.asp?Type=B_BASIC&SEC={DC3E6BC4-7A05-4193-83BC-ECD5681411BE}&DE={64FDF7B6-D5FD-47CE-AA3C-6AFCD1E8BBEF} (see Chapter 9).

If the Town has any questions about contracting with a supervisor, we strongly urge the Town Board to consult with the Town attorney for additional guidance.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor
(651) 297-7108

cc: The Honorable Brian Melton, Clay County Attorney
The Honorable Michael Fritz, Becker County Attorney

⁴ See Minn. Stat. § 471.89, subd. 2 (emphasis added).

⁵ See Minn. Stat. § 471.89, subd. 3 (emphasis added).