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March 4, 2011

The Honorable Richard Lawrence
Mayor, City of East Bethel
2241 - 221st Avenue, NE
East Bethel, Minnesota 55011-9790

Dear Mayor Lawrence:

The Office of the State Auditor (“OSA”) received a number of concerns regarding the City of East Bethel (“City”). In this letter, we are providing the City with guidance on three of those concerns. Specifically, this letter will address concerns that were raised about a staff luncheon meeting, an expenditure for new locks, and the Acting City Administrator’s use of an outdoor City electrical outlet.¹ We hope the City finds this information to be helpful.

Staff Meeting Luncheon

The Acting City Administrator informed the OSA that he organized a mandatory staff meeting held at noon on January 6, 2011, and spent approximately \$300 to cater a meal for the meeting. The Acting City Administrator stated that the purpose of the meeting was to inform City staff about employment decisions made at a City Council meeting held the previous evening. The Acting City Administrator said that three City Council members participated in the meeting by serving food for the staff and answering the City’s telephone; two City Council members were not invited to the meeting and did not attend.² The entire Council was notified of the luncheon expense at the next Council meeting.³ According to the meeting minutes, the City Attorney discussed employee recognition programs in response to questions about the luncheon expenditure.⁴

¹ The OSA is using the term “Acting City Administrator” to be consistent with the designation the City has used.

² Open Meeting Law issues are generally outside the Office of the State Auditor’s scope of review. However, we recommend that the City obtain training regarding Open Meeting Law requirements, if that has not already been done. Information about Open Meeting Law requirements, including training videos and a PowerPoint presentation, may be found on the Information Policy Analysis Division of the Minnesota Department of Administration’s website at:
<http://www.ipad.state.mn.us/docs/publicmeetmain.html>.

³ See City of East Bethel Council Meeting Minutes, January 19, 2011, and City’s Payment Summary, January 19, 2011 (Council approved a list of claims including a \$319.50 claim from Fatboys Bar & Grill).

⁴ See City of East Bethel Council Meeting Minutes, January 19, 2011.

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An expenditure of public funds may only be made when there is authority for the expenditure, and the expenditure is made for a public purpose.⁵ Generally, purchasing food for staff meetings does not qualify as a public purpose.⁶ According to the Minnesota Attorney General's Office, whether a meal is necessary for a meeting depends upon the necessity for holding the meeting during mealtime, rather than at some other time, and upon the benefits derived from providing the food during the meeting.⁷

Cities have statutory authority to provide a wellness and employee recognition program.⁸ The OSA has taken the position that a properly established wellness and employee recognition program should be in writing and approved by the city council.⁹

The OSA does not believe the mandatory staff meeting was part of a wellness and employee recognition program because the purpose of the meeting was to notify City staff of recent City Council decisions. The OSA also questions the necessity of holding the staff meeting over the lunch hour. In the future, we recommend that, prior to expending public funds for meals for City staff during staff meetings, the City Council decide whether holding the staff meeting during mealtime is necessary.

City Expenditures (Locks)

The OSA received a concern that the Acting City Administrator authorized the purchase of new locks for City Hall prior to obtaining authorization from the City Council for the expenditure. The Acting City Administrator informed the OSA that he authorized the expenditure pursuant to his authority as purchasing agent for the City. At the January 19, 2011, City Council meeting, a \$1,395.99 claim from Blaine Lock & Safe, Inc. was listed on the bill summary. The City Council discussed the Blaine Lock & Safe, Inc. claim and approved the list of bills.¹⁰

The City Code grants the City Administrator the authority "to sign purchase orders for routine services, equipment, and supplies for which the cost does not exceed

⁵ Additional information about Public Purpose is available on the League of Minnesota Cities ("LMC") website: www.lmc.org. Specifically, the LMC has a publication entitled "Public Purpose Expenditures" (October 2010) that may be helpful to the City.

⁶ See, e.g., Att'y Gen. Op. 63a-2 (May 6, 1965).

⁷ Id. See also Att'y Gen. Op. 285a (August 7, 1969).

⁸ See Minn. Stat. § 15.46.

⁹ See Office of the State Auditor Statement of Position No. 2007-1006, entitled "Employee Recognition Programs and Events," available on our website at:

www.auditor.state.mn.us/other/Statements/employeerecogprogevents_0705_statement.pdf.

¹⁰ According to the February 2, 2011, meeting minutes, the City Council has not yet approved a Blaine Lock & Safe, Inc. claim in the amount of \$111.41.

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\$5,000.00.”¹¹ The City Code also requires that “[a]ll claims resulting from orders placed by the city administrator shall be audited for payment by the city council.”¹²

It appears the City Council was made aware of the purchase of the new locks at the next regularly scheduled City Council meeting, and approved the claim for payment, as permitted under the City Code.

Use of Utility Outlet

The OSA received a concern about the Acting City Administrator’s use of the City’s electricity for his personal recreational vehicle. During our recent telephone conversation, you acknowledged that the Acting City Administrator plugs a recreational vehicle into an electrical outlet located on a light pole in the City Hall’s parking lot to keep the vehicle from freezing during cold weather. You stated that the light pole is equipped with 2-4 electrical outlets, and the outlets appear to be available for anyone’s use.

The OSA recommends that the City review the use of the City’s outdoor electrical outlets. Assuming the City pays for the electrical power, the City may want to consider such issues as:

- Is access to the outlets limited to City employees during work hours?
- Will year-round access to the outlets be permitted?
- Under what circumstances will the City permit members of the public to use the outlets (e.g., during City-sponsored meetings and special events)?
- Under what circumstances should law enforcement be contacted for the unauthorized use of the City’s electrical power?

¹¹ See East Bethel Code of Ordinances, Section 2-265(a)(9).

¹² *Id.*

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Conclusion

The Office of the State Auditor hopes that the City finds this information to be helpful. This Office will not be taking further action on these matters at this time. If you have any questions, please feel free to contact me at (651) 297-7108.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

cc: The Honorable Bill Boyer, City Council Member
The Honorable Bob DeRoche, City Council Member
The Honorable Heidi Moegerle, City Council Member
The Honorable Steve Voss, City Council Member
Mr. David Schaaf, Acting City Administrator
Mr. Mark Vierling, City Attorney