



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](mailto:state.auditor@state.mn.us) (E-mail)  
1-800-627-3529 (Relay Service)

September 12, 2008

The Honorable Darrell Olson  
Mayor, City of Winger  
10 East Minnesota Avenue  
P.O. Box 70  
Winger, Minnesota 56592-0070

Dear Mayor Olson:

The Office of the State Auditor received concerns involving the City of Winger ("City"). Specifically, a question was raised about the City's 2007 purchase of a lawn mower. A concern was also raised about the City's claims approval procedure for Fire Department claims.

Based on our review, Council Member Steve Massmann had a conflict of interest when he voted to approve the City's purchase of the lawn mower and received a commission from his employer for the sale of the mower. In addition, the City should have obtained quotations for the mower purchase because the estimated cost, prior to the trade-in, was over \$10,000. Finally, the City's Guidelines for City Council members who also hold the position of Fire Chief were violated when Council Member Massmann, who also serves as the City's Fire Chief, voted on City claims lists that contained bills related to the Fire Department.

### **I. 2007 Lawn Mower Purchase**

Council Member Massmann has been on the City Council for many years. It is our understanding that Council Member Massmann is employed on the sales staff of Winger Implement, Inc. ("Winger Implement"), and worked in that capacity in 2006 and 2007.

In November 2006, the City Council voted to trade-in its lawn mower for a new model with a larger mowing deck.<sup>1</sup> All City Council members were present at the November 2006 meeting, and it appears the vote was unanimous. The meeting minutes do not state who was authorized to negotiate the purchase of the new mower or the estimated cost of

---

<sup>1</sup> City of Winger, City Council Meeting Minutes (November 13, 2006). According to the meeting minutes, the City wanted to upgrade from a mower with a 61-inch deck to a mower with a 72-inch deck.

the new mower.<sup>2</sup> The meeting minutes are also silent regarding any potential conflicts of interest that might arise during the City's purchase of the new mower.

On or about February 13, 2007, the City entered into negotiations with Winger Implement for the purchase of a new mower and deck and the trade-in of the City's older mower.<sup>3</sup> The City informed our Office that no other quotations were obtained from any other implement dealers for this purchase.

On May 10, 2007, the purchase order was signed by Mayor Darrell Olson. The mower with a 72-inch deck cost \$10,600. After a trade-in allowance of \$4,500 for the City's older mower, plus sales tax, the City paid Winger Implement \$6,496.50 on May 11, 2007. According to the May 14, 2007 meeting minutes, Council Member Massmann seconded the motion to approve the monthly list of claims that included this payment.<sup>4</sup>

Council Member Massmann handled the mower sale for Winger Implement.<sup>5</sup> Winger Implement informed our Office that Council Member Massmann is paid on a salary and commission basis, and that his commission for that month was based, in part, on the sale of the lawn mower and deck to the City.

#### A. Municipal Contracting Law

In 2006 and 2007, Minnesota's Municipal Contracting Law gave cities the option to use the sealed bid process or direct negotiations when purchasing equipment that was estimated to cost between \$10,000 and \$50,000.<sup>6</sup> If the city used direct negotiations, the city was required to obtain at least two quotes, and keep the quotes on file for at least one year.<sup>7</sup>

Because the cost of the contract prior to the trade-in of the City's mower exceeded \$10,000, the City should have obtained two or more quotations for the purchase. While

---

<sup>2</sup> In April 2007, there was only a brief reference that the "new lawn mower should be here in the next month or so." City of Winger, City Council Meeting Minutes (April 9, 2007).

<sup>3</sup> General Retail Purchase Order and Security Agreement - Winger Implement, Inc., dated February 13, 2007.

<sup>4</sup> City of Winger, City Council Meeting Minutes (May 14, 2007).

<sup>5</sup> The City later received a note from Winger Implement signed by "Steve," thanking the City for the purchase. The thank you note included the Council Member's business card and referenced the new mower.

<sup>6</sup> See Minn. Stat. § 471.345 (2006). Effective August 1, 2008, the estimated contract amounts for the use of either sealed bidding or direct negotiations with two quotations was increased to cover contracts estimated to exceed \$25,000, but not to exceed \$100,000. See 2008 Minn. Laws ch. 207.

<sup>7</sup> For additional guidance on contracting procedures, we recommend that the City review the following League of Minnesota Cities documents:

- *Competitive Bidding Requirements in Cities*, found at <http://www.lmnc.org/media/document/1/competitivebidding.pdf>; and
- *Handbook for Minnesota Cities*, Chapter 23, found at <http://www.lmnc.org/media/document/1/chapter23.pdf>.

the Mayor signed the purchase agreement on the City's behalf, the minutes do not reflect whether the responsibility for negotiating the transaction was ever delegated to the Mayor.

We recommend that the City comply with the Municipal Contracting Law for future City purchases. In addition, we recommend that the City include in City Council discussions, and in the City Council meeting minutes, the estimated cost of approved purchases. By recording the estimated cost in the City Council meeting minutes, the City's compliance with the Municipal Contracting Law will be documented. Finally, we recommend that the City Council formally designate the City official or employee who is authorized to negotiate a contract on the City's behalf.<sup>8</sup> This designation should be recorded in the City Council meeting minutes.<sup>9</sup>

#### B. Conflict of Interest

No member of a city council may be directly or indirectly interested in any contract made by the city council.<sup>10</sup> The Minnesota Attorney General has long interpreted the general conflict of interest prohibition to include a sale to a city made by a city council member who works as a salesperson and receives a commission for the sale.<sup>11</sup> The Attorney General has consistently noted that the determination regarding whether a council member has a personal financial interest in a city contract should be made by the city council.<sup>12</sup>

Because this general rule is so strict, the legislature has created a number of exceptions.<sup>13</sup> One of the exceptions allows a city council, by unanimous vote, to contract for goods or services with an interested officer if the contract is one for which competitive bids are not required by law.<sup>14</sup> However, to use this exception, the city and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89. First, the city council must "authorize the contract in advance of its performance by adopting a resolution setting out

---

<sup>8</sup> In July 2005, our Office wrote a letter to the City regarding negotiations Council Member Massmann entered into without the knowledge of the City Council for the purchase of a sewage treatment chemical. We understand that the City Council voted not to approve payment of the chemical bill and required the chemical be returned. The letter from our Office reminded the City that the City Council has authority over the financial affairs of the City, and that it was not appropriate for an individual council member to financially obligate the city without City Council authorization. See Letter from the Office of the State Auditor to City of Winger Mayor Darrell Olson, dated July 18, 2005.

<sup>9</sup> Additional guidance on what should be included in the City Council meeting minutes is contained in our Statement of Position on Meeting Minutes, found on our website at:

[http://www.auditor.state.mn.us/other/Statements/meetingMinutes\\_0710\\_statement.pdf](http://www.auditor.state.mn.us/other/Statements/meetingMinutes_0710_statement.pdf).

<sup>10</sup> See Minn. Stat. §§ 412.311 and 471.87.

<sup>11</sup> See, e.g., Ops. Atty. Gen. 90a-1 (October 7, 1976), 59a-29 (April 21, 1967). In contrast, working on a salary or hourly basis generally does not create a conflict of interest when a city contracts with a council member's employer.

<sup>12</sup> See, e.g., Op. Atty. Gen. 90-E-5 (November 13, 1969).

<sup>13</sup> See Minn. Stat. § 471.88.

<sup>14</sup> See Minn. Stat. § 471.88, subd. 5.

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.**"<sup>15</sup>

Second, before claims are paid on the contract, the interested officer must file with the city 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.**<sup>16</sup>

The resolution and affidavit help to assure taxpayers that the City's contracting process is honest, open and in the City's best interests.

We found no evidence that the City Council discussed the conflict of interest that arose when the City decided to purchase a mower from the Council Member's employer. In addition, the City did not follow the resolution and affidavit requirements of Minn. Stat. § 471.89.

We recommend that, in the future, the City adopt the required resolution and obtain the required affidavit before entering into a contract in which a Council member has a financial interest.<sup>17</sup> We also recommend that an interested Council member abstain from voting on payments in which the Council member has an interest.

## II. Fire Department Claims

According to Guidelines adopted by the City in 2006, a City Council member who also serves as Fire Chief must abstain from voting on the payment of bills for the City's Fire Department.<sup>18</sup> It is our understanding that Council Member Massmann serves as the City's Fire Chief.

---

<sup>15</sup> See Minn. Stat. § 471.89, subd. 2 (emphasis added).

<sup>16</sup> See Minn. Stat. § 471.89, subd. 3 (emphasis added).

<sup>17</sup> For more detailed guidance, please consult the League of Minnesota Cities (LMC) informational memorandum *Official Conflict of Interest*, found on the LMC's website at: <http://www.lmnc.org/media/document/1/officialconflictinterest.pdf>. A model resolution is provided on page 39, and a model affidavit is provided on page 41 of the LMC's memorandum.

<sup>18</sup> City of Winger, Approved and Adopted Guidelines for Council Member Also Holding the Position of Fire Chief (April 10, 2006). In 2007, the City informed our Office that the Guidelines were adopted in response to a Minnesota Attorney General's opinion concluding that the position of Fire Chief and City Council Member were not automatically incompatible. See also Letter from the Minnesota Attorney General's Office to Wayne Swanson, attorney for the City of Winger, dated February 28, 2006.

The Honorable Darrell Olson, City of Winger

September 12, 2008

Page 5

Currently, claims for Fire Department expenditures are listed on a monthly claims list with all other claims submitted to the City Council. Each month, a different City Council member reviews the supporting documentation for the claims.

We were informed that Council Member Massmann votes on the monthly claims submitted to the City Council, including Fire Department expenditures. In addition, Council Member Massmann reviews the supporting documentation for the monthly claims according to the City Council rotation schedule.

Due to his position as Fire Chief, and in compliance with the City's 2006 Guidelines, Council Member Massmann should not be voting on Fire Department expenditures. We recommend that the City review its claims procedures and comply with the restrictions set forth in the City's 2006 Guidelines. For example, the City could compile a separate list of Fire Department claims, and Council Member Massmann could then abstain from voting on the claims contained on the Fire Department list. The City Council meeting minutes should note when Council Member Massmann abstains from voting on Fire Department claims.

### **III. Conclusion**

The Office of the State Auditor recommends that the City take steps to avoid conflicts of interest in the future. As required by Minn. Stat. § 6.51, a copy of this letter is being provided to the Polk County Attorney to institute such proceedings as the law and the public interest require and to the Polk County Auditor.

If you have any questions, please feel free to contact me directly at (651) 297-7108.

Sincerely,

*/s/ Terrilyn Diamond*

Terrilyn Diamond, Attorney  
Office of the State Auditor

cc: Jon Aasen, City Council Member  
Dean Johnson, City Council Member  
Steve Massmann, City Council Member  
Richard Prudhomme, City Council Member  
Shannon Polley, City Clerk/Treasurer  
Gordon Dale, Hoffman, Dale, & Swenson, PLLC, City's Audit Firm  
Wayne Swanson, City Attorney  
Gregory Widseth, Polk County Attorney  
Gerald Amiot, Polk County Auditor/Treasurer