



Julie Blaha
State Auditor

Suite 500
525 Park Street
Saint Paul, MN 55103

June 1, 2022

The Honorable Mike Baustian
Mayor, City of Jasper
105 Wall Street East
Jasper, Minnesota 56144

TRANSMITTED VIA ELECTRONIC MAIL

Dear Mayor Baustian,

The Office of the State Auditor (OSA) received concerns about certain payments by the City of Jasper (City) to the Jasper Development Corp. (Nonprofit Corporation). In response to the concerns, the OSA contacted the City Clerk/Treasurer and reviewed copies of relevant City financial documents and meeting minutes.¹

Based upon its review, the OSA found that the City did not follow Minnesota Law when it (1) paid the legal fees of the Nonprofit Corporation, (2) allowed the Nonprofit Corporation to use the City's address for its business filings and mailing address, and (3) paid \$30,000 to the Nonprofit Corporation without receiving anything in return.²

This letter contains the OSA's findings and recommendations to help the City comply with Minnesota law.

Background

The City is a statutory city with a population of 671. Under Minnesota law, the city council has "full authority over the financial affairs of the city, and shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public money."³ The City's Independent Auditor's Report for the Year Ended December 31, 2020, recognizes that the elected City Council, which includes the Mayor and four City Council Members, "has control over all activities related to the City..."⁴

The City reported economic development expenditures from its General Fund totaling \$1,890 for fiscal year 2019 and \$1,888 for fiscal year 2020. The City also reported an EDA Housing Proprietary Fund that is used by the City to "account for the operation, maintenance, and capital improvements of the City's housing complex."⁵

¹ This letter covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues or approval of any other act or transaction.

² This money was recently returned to the City.

³ Minn. Stat. § 412.241.

⁴ See Independent Auditor's Report, City of Jasper, for the Year Ended December 31, 2020, n. 1.

⁵ *Id.*

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It appears the City established an economic development authority (JEDA).⁶ The JEDA was governed by a five-member board.⁷ According to the City, the City Mayor serves on the JEDA's board.

The Jasper Development Corp. (Nonprofit Corporation) is a Minnesota Nonprofit Corporation.⁸ Its filings with the Secretary of State's Office list the City's Mayor as the Nonprofit Corporation's "President," and a City address (105 E. Wall St., Jasper, MN) as the President's address.⁹ It appears an Involuntary Dissolution of the Nonprofit Corporation occurred on January 23, 2008; and an Annual Reinstatement subsequently was filed on August 3, 2016.¹⁰ According to the City, the former City Attorney, the City Clerk/Treasurer, and the City Mayor worked to file the reinstatement of the Nonprofit Corporation.

Minnesota Law

Minnesota law expressly prohibits cities from creating nonprofit corporations, absent explicit legal authority to do so.¹¹

Even before this statutory prohibition was enacted by the Legislature, it was recognized that local governments had no authority to create nonprofit corporations absent specific statutory authority. In this regard, the Attorney General stated in 1986 that local units of government had no express statutory authority to create nonprofit corporations and that such authority could not properly be implied from existing grants of power.¹²

⁶ See Independent Auditor's Report, City of Jasper, for the Year Ended December 31, 2020.

⁷ According to the City's August 10, 2021, City Council meeting minutes, the City approved a change to the JEDA's bylaws to decrease its board from seven to five members "due to the closure of Sunrise Village."

⁸ See the Minnesota Secretary of State's Business Record Details for the "Jasper Development Corp."

⁹ See City of Jasper website, <https://www.cityofjaspermn.com/>, and Pipestone County Parcel Search, Parcel 17.200.0090, 105 Wall St. E., "JASPER/CITY OF/CITY OFFICE."

¹⁰ See the Minnesota Secretary of State's Business Record Details for the "Jasper Development Corp."

¹¹ See Minn. Stat. § 465.717, subd. 1 (2000), ("A county, home rule charter city, statutory city, town, school district, or other political subdivision, including a joint powers entity operating under section 471.59, may not create a corporation, whether for profit or not for profit, unless explicitly authorized to do so by law.").

¹² Op. Att'y Gen. 92a-30, (Jan. 29, 1986) ("[T]here appears to be no express statutory authority for local units of government to form nonprofit corporations, either directly or indirectly, for the purpose of carrying out general governmental or other functions. Nor, in our opinion, can such authority be properly implied from existing grants of power to such units."); see also, *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347,357, 143 N.W.2d 813, 820 (1966). The League of Minnesota Cities (LMC) provides guidance to cities on economic development matters in its Handbook for Minnesota Cities, Chapter 14, Community Development and Redevelopment (<https://www.lmc.org/wp-content/uploads/documents/Community-Development-and-Redevelopment.pdf>). The LMC states, "Cities must not create nonprofit corporations unless authorized to do so by special legislation."

Expenditure of public funds requires that there be both authority and a public purpose.¹³ Authority maybe specifically stated in a statute or implied as necessary to do something that is expressly authorized.¹⁴ A public purpose has been defined by the Minnesota Supreme Court as “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.”¹⁵

OSA Review

\$30,000 Payment to the Nonprofit Corporation

As noted above, filings with the Secretary of State’s Office list the Mayor as the Nonprofit Corporation’s President, and the City’s address (105 E. Wall St., Jasper, MN) as the President’s address.

The OSA reviewed the City Council’s meeting minutes and found that the May 8, 2018, meeting minutes document that the Mayor “updated the council on the Jasper Development Corporations (sic)” and “the former bowling alley.” The Mayor reported that he “purchased the bowling alley at auction and sold it to the JDC as an individual wanted to use the building strictly for storage...The JDC then plans to sell the vacant lot to the city to find a developer to use the area in a proper manner.”¹⁶

The City’s September 12, 2018, meeting minutes report that the City passed a motion “to purchase the former bowling alley property located at 116 Wall Street West from the Jasper Development Corporation for \$30,000.00 come January 1, 2019.” The meeting minutes document that the City Mayor abstained from voting on this purchase.

The City sent the OSA documentation that shows City check number 062421 for \$30,000 was issued to the Nonprofit Corporation on January 9, 2019. This check was signed by the Mayor and the City Clerk/Treasurer and endorsed by the City Clerk/Treasurer as the “Clerk-Treasurer” of the Nonprofit Corporation.

The OSA reviewed relevant bank statements for the Nonprofit Corporation, which were provided by the City. The December 10, 2018, bank statement reports that the Nonprofit Corporation had a total of \$1,999.30 in its bank accounts. The January 14, 2019, bank statement reports that the Nonprofit Corporation had a total of \$42,988.95 in its bank accounts, which included a deposit made on January 9, 2019, for \$30,030. It appears the City payment to the Nonprofit Corporation substantially supported the Nonprofit Corporation’s financial activity from January of 2019 through July of 2021.¹⁷

¹³ See, e.g., Op. Att’y Gen. (Dec. 4, 1934); 63a-2 (May 6, 1965); 59a-22 (Nov.23, 1966).

¹⁴ See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (1966).

¹⁵ See *Visina v. Freeman*, 89 N.W.2d 635 (1958).

¹⁶ See May 8, 2018, City Council meeting minutes.

¹⁷ The OSA reviewed deposits made to the Nonprofit Corporation’s bank accounts for this time period. The only other deposits made into the Nonprofit Corporation’s accounts after January 9, 2019, totaled \$8,958.03 on January 25, 2019; \$6,513.32 in July and August of 2020; and \$248.97 in December of 2020.

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Almost three years after the City made the \$30,000 payment to the Nonprofit Corporation, the City Council's October 12, 2021, meeting minutes document that the former City Attorney recognized "there was a contract for sale/purchase of this bowling alley property ... between the Jasper Development Corporation and the city of Jasper for \$30,000" that was "not valid under the law" and "void."¹⁸ The former City Attorney went on to report that "There was never a deed."¹⁹ Public records for the property do not show any evidence that the property was ever titled in the City's name. In addition, the City reported to the OSA that the parties to the supposed sale had never even entered into a purchase agreement. The City provided documentation to the OSA showing that it deposited a check from the Nonprofit Corporation on October 14, 2021, for \$30,000.

Based on the OSA's review, it appears that in 2019, the City paid \$30,000 to the Nonprofit Corporation without receiving anything in return. Although the payment was ostensibly to purchase property, the property never changed hands. Based on information provided by the City, it appears that no purchase agreement was ever signed, no deed was obtained by the City, and the property records reflect that the property's ownership did not change. It appears therefore that the city, in effect, loaned \$30,000 in public funds on an interest free basis to the Nonprofit Corporation for close to three years.

Recommendation

The City should only pay itemized claims for amounts actually owed and supported by adequate supporting documentation.

Legal Fees of the Nonprofit Corporation and City's Address for Its Business Filings and Mailing Address

As noted above, an Annual Reinstatement was filed for the Nonprofit Corporation on August 3, 2016. In addition, Secretary of State records list the City's Mayor as the Nonprofit Corporation's President and the City's address (105 E. Wall St., Jasper, MN) as the President's address.

The OSA reviewed the City Council's meeting minutes and found that the November 8, 2016, meeting minutes document "Receipts noted: Jasper Development Corporation, Reimburse Legal Fees, \$921.86...." The City provided the OSA a copy of an invoice from the former City Attorney billed to the JDC on August 6, 2015, for \$921.86. The invoice describes legal services and communication to the

¹⁸ See October 12, 2021, City Council meeting minutes. Minnesota Statutes, section 471.88, subd. 5, allows contracts for which bidding is not required to be entered into with an interested officer if the provisions of Minn. Stat. § 471.89 (providing an affidavit and resolution procedure) are followed. Minnesota Statutes, section 471.89, subd. 1 states, "[a] contract made pursuant to section [471.88, subdivision 5](#), is void unless the procedure prescribed by [Minn. Stat. § 471.89] subdivisions 2 and 3 is followed."

¹⁹ See October 12, 2021, City Council meeting minutes.

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Mayor and the City Clerk/Treasurer regarding “steps needed to fully bring JDC back in a legally thorough manner.” See **Attachment A** to this letter for a copy of this invoice. It appears the City paid this invoice on August 18, 2015, with City check number 59549.²⁰ It appears therefore that the City paid for the expenses of the JDC and did not receive reimbursement from the JDC until over a year later.

The OSA knows of no authority for a city to pay the legal fees to create a nonprofit corporation or to operate a nonprofit corporation on city property.

Recommendation

In this case, as noted above, the City was involved in the creation of the Nonprofit Corporation, the registered address is City Hall, and the Mayor is listed in the Secretary of State business filing as its President. It also appears the City Clerk/Treasurer is the Clerk/Treasurer of the Nonprofit Corporation.

We recommend that the City separate its operations from those of the Nonprofit Corporation. City officials and employees should serve only in a non-voting capacity on the board of any nonprofit corporation created to assist a local government. The City should not permit the Nonprofit Corporation to use its address or resources. The OSA recommends the City consult with its current legal counsel to consider whether the Nonprofit Corporation should be dissolved due to conflicts of interest and the absence of any authority for a city to create or operate a nonprofit corporation. If the City needs to engage in development activities, it should consider doing so as permitted by Minnesota law.

* * *

Should you have questions about this letter or would like additional guidance, you can contact me at (651) 296-4717, or mark.kerr@osa.state.mn.us. If you are unable to reach me, feel free to contact Nichole Bjornrud, CPA, CFE, CFF, at (651) 282-2750. As required by Minn. Stat. § 6.50, we will file a copy of this letter with the Pipestone County Attorney.²¹

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr, JD, CFE
Special Investigations Director
Office of the State Auditor
(651) 296-4717

²⁰ See August 6, 2015, Invoice from the former City Attorney to the JDC.

²¹ See Minn. Stat. § 6.50 (“[I]n case of any violation of law, such report shall be filed with the city attorney thereof and with the county attorney of the county in which the administrative offices of such city are located, and these officials of the law shall institute such proceedings as the law and the public interest require.”).

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cc: The Honorable Kim Lape, City Council Member
The Honorable Dee Arp, City Council Member
The Honorable Brian Sievert, City Council Member
The Honorable Jeff Leslie, City Council Member
Cortney Kounkel, City Clerk/Treasurer
Jennifer Reinke, City Attorney
The Honorable Damain Sandy, Pipestone County Attorney

ATTACHMENT A
Benjamin Denton, Attorney PLLC

320 E. Main St. - P.O. Box 261
 Pipestone, MN 56164

Invoice

Date	Invoice #
8/6/2015	204

Bill To
Jasper Development Corp. Jasper, MN 56144

Serviced	Qty	Description	Rate	Amount
7/22/2015	3.5	legal research, review materials provided by Jasper Development Corp., draft ltr M Baustian and C Kounkel re: steps needed to fully bring JDC back in a legally thorough manner	115.00	402.50
7/23/2015	0.5	review, make changes to memo to M Baustian and C Kounkel	115.00	57.50
7/23/2015	0.03333	expense - \$ 1.86 - postage	55.80558	1.86
3/26/2013	4	legal research, draft ltr of 3/26/2013	115.00	460.00

It was actually much more than four hours. But I've lost the invoice from back then. JDC was pretty much nonexistent back then. It did not pay me for this work back then - but I had not submitted an invoice either.

59549 ---
 PAID AUG 18 2015

My intent is to charge fees at amounts that are fair for the value of the services I provide.

Total \$921.86

Payments/Credits

Benjamin Denton

Customer Total Balance