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September 8, 2008

The Honorable Ken Paulson
Mayor, City of Becker
12060 Sherburne Avenue
P.O. Box 250
Becker, Minnesota 55308-0250

Dear Mayor Paulson;

The Office of the State Auditor received a concern that City of Becker (City) employees and officials were provided with free green fees at the municipal golf course and free City community center admissions. We confirmed with the City Administrator that the City does provide green fee and community center benefits to officials and employees, and we received the City's Golf Course/Community Center Privilege personnel policy outlining the specifics of these benefits.¹ The City does not have a written City Health and Wellness policy.

Health club memberships and golf memberships are considered "in-kind" benefits. Governmental units may provide benefits to employees only if otherwise authorized by statute or charter.² The Attorney General has ruled that "in-kind" benefits to officers and employees of statutory cities must be expressly authorized by statute.³

Prior to August 1, 2007, the OSA was not aware of any statutory authority for cities to provide preventative health type services (which arguably might include free green fees and free community center admissions) to its employees and officials. Effective August 1, 2007, Minnesota law allowed statutory cities to ". . . establish and operate a program of preventive health and employee recognition services for its employees and [to] provide

¹ The City's Golf Course/Community Center Privilege policy requires a \$1.00 fee for certain registrations. Season passes are available for half the non-resident rate. For the Community Center, City employees and officials receive an individual annual pass through the term of employment with the City. Employees upgrading to a Family Annual Pass at the Community Center receive 40% off the Family Annual pass rate. The Mayor and Council members are provided the same privileges as employees known as 'The Golf Course/Community Center Privilege' as described in the City personnel policy. *See* City Code, Chapter 2, Sec. 2.15, subd. 3.D.

² Op. Atty. Gen. 359b, October 24, 1989.

³ *Id.* The City is a statutory city (A).

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necessary staff, equipment, and facilities and [to] expend funds as necessary to achieve the objectives of the program.”⁴

We recommend that the City review the City’s personnel policy with the City attorney and, if necessary, seek an opinion from the Minnesota Attorney General’s Office regarding the City’s authority to offer these benefits to City employees and officials. Please provide us with a copy of any opinion received from the Attorney General’s Office. In addition, please provide us with the changes, if any, that will be made to conform the City’s practices to Minnesota law. If the City determines that no changes are warranted, please explain why the City believes its current personnel policy is in compliance with Minnesota law. Finally, please inform us of the City’s position on the income tax implications of providing such benefits to City employees and officials.

Thank you in advance for your cooperation. If you have any questions, please feel free to contact me at 651-282-2388 or via email at Kathy.Docter@state.mn.us.

Sincerely,

/s/ Kathy Docter

Kathy Docter, CPA, CFE
Senior Investigative Specialist
Legal/Special Investigations
Office of the State Auditor

cc: Mr. Joe Rudberg, City Administrator

⁴ Minn. Stat. § 15.46 (2008).