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January 23, 2013

The Honorable Sarah Strommen
Mayor, City of Ramsey
7550 Sunwood Drive NW
Ramsey, Minnesota 55303-5137

Dear Mayor Strommen:

The Office of the State Auditor (“OSA”) was asked by the City of Ramsey (“City”) to review four matters that raised potential conflict of interest concerns.¹ During its review, the OSA noted matters that raised additional potential conflict of interest concerns.

The OSA is not able to provide the City with legal advice or issue advisory opinions to the City. However, none of the matters reviewed by the OSA appear to violate Minnesota’s conflict of interest laws. The OSA hopes the following information will provide the City and its residents with guidance to resolve similar concerns in the future.

Background

The City is a Home Rule Charter city. In 2009, the City purchased property in an area now known as The COR (Center of Ramsey).² As of December 31, 2011, the City held a significant amount of land for resale.³ The City’s “development vision” for the property is to have The COR become a regional center for retail, restaurants, service and office space, outdoor entertainment and parks, community amenities, and housing.⁴

The City has both an Economic Development Authority (“EDA”) and a Housing and Redevelopment Authority (“HRA”). The City Code states that the EDA and the HRA are created for the purpose of advising the City Council.⁵ The EDA has broad economic development powers, as set forth in Minn. Stat. §§ 469.090 – 469.108.⁶ The EDA’s Board

¹ See City Council Meeting Minutes (August 28, 2012).

² Issues surrounding the property, formerly known as Ramsey Town Center, included federal bank fraud prosecutions. The City acquired the property through its HRA.

³ See, e.g., MMKR Management Report for the year ended December 31, 2011 (May 31, 2012), page 1.

⁴ See City’s Comprehensive Annual Financial Report for the fiscal year ending December 31, 2011, page 16.

⁵ See City Code § 2-155 (b). The City Council meeting minutes for March 22, 2011, state that the City Attorney explained that a decision by the EDA has to come to the City Council for final approval, but HRA decisions do not have to go through the City Council. See City Council Meeting Minutes Item 7.02 (March 22, 2011).

⁶ See City Code § 2-190.

consists of seven members, two of which are City Council members.⁷ The HRA also has broad powers.⁸ The HRA's Board consists of the seven members of the City Council.⁹ The HRA acts as the "Master Developer" of The COR project.¹⁰ For assistance in the development, the HRA hired Landform Professional Services to provide professional development management services.¹¹

The City asked the OSA to review whether a conflict of interest existed in the following situations:

- A City Council Member/HRA Commissioner and/or his spouse were potential candidates for employment with an entity that received a loan from the HRA;
- A City Council Member/HRA Commissioner may have approached the entity receiving the loan from the HRA for potential subcontract work;
- An EDA Commissioner had a client who was the subject of a Business Subsidy Agreement with the City; and
- An EDA Commissioner rents office space from the entity involved in the Business Subsidy Agreement.

The OSA also reviewed the City's potential purchase of land from and sale of land to a City Council Member/HRA Commissioner, City contracts in 2009 with a City Council Member's business, and general allegations of "corruption" that the OSA received in 2011 related to the City's development decisions.

Based upon the OSA's review, it appears that none of these matters violated Minnesota's conflict of interest laws. To understand the OSA's conclusion, this letter presents an overview of Minnesota's conflict of interest laws and a discussion of the matters reviewed. This letter also contains recommendations for the City.

Minnesota's Conflict of Interest Laws

Minnesota's conflict of interest laws are designed to insure that actions by public officials are not arbitrary reflections of their own selfish interests.¹² Conflict of interest requirements are found in statutes, case law, city charter provisions, and individual contracts. In addition to concerns about potential violations of law, public officials should consider ways to avoid even the appearance of impropriety. Or, as stated by the Minnesota Court of Appeals, "[w]here there is a

⁷ See City Code § 2-189. See also City's Comprehensive Annual Financial Report for the fiscal year ending December 31, 2011, page 61, note 1.

⁸ See City Code § 2-223. See also Minn. Stat. § 469.012.

⁹ See City Code § 2-221.

¹⁰ See City website at <http://coratramsey.com>. See also The COR publication (June 14, 2011).

¹¹ See City website at <http://coratramsey.com>. See also Purchase of Services Agreement between HRA and Landform Professional Services, LLC (April 21, 2010).

¹² See *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 15, 153 N.W.2d 209, 219 (1967).

choice, city officials should avoid actions which may appear tainted of impropriety, even though they are legal.”¹³

A. General Conflict of Interest Statutes

Minnesota’s general conflict of interest statutes only apply to public officers who are “authorized to take part in any manner in making any sale, lease, or contract in official capacity.”¹⁴ Under the statutes, these public officers must not “voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.”¹⁵

Because the general rule is so strict, the legislature created a number of exceptions for the purchase of goods and services.¹⁶ For example, one exception generally allows public officers to apply for a loan or grant program that is administered by an EDA, HRA, or private consultant, as long as the public officer discloses as part of the official minutes that the officer has applied for the loan or grant.¹⁷ Another exception allows an entity to contract with an interested officer for goods or services as long as competitive bidding was not required and certain procedural steps were taken.¹⁸

Additional guidance on the application of these statutes may be obtained from opinions released by the Minnesota Attorney General’s Office (“AG”).¹⁹ For example:

- A public entity’s contract with the spouse of one of its public officers generally constitutes a financial interest to the public officer if the public officer and spouse share their finances.²⁰
- Mere employment of a public officer by a firm contracting with a city does not constitute a violation of the general conflict of interest statutes provided the public officer:
 - Has no ownership interest in the firm;
 - Is neither an officer nor director of the firm;
 - Is compensated on a salary or hourly wage basis and receives no commission, bonus or other remuneration; and
 - Is not involved in supervising the performance of the contract with the public entity on behalf of the firm and has no other interest in the contract.²¹

¹³ *1989 Street Imp. Program (117th Street) v. Denmark Twp., Washington Co. MN*, 483 N.W. 2d 508, 510 (Minn. Ct. App. 1992).

¹⁴ *See* Minn. Stat. § 471.87.

¹⁵ *Id.* Violation of the statute is a gross misdemeanor. *Id.*

¹⁶ *See, e.g.*, Minn. Stat. § 471.88.

¹⁷ *See* Minn. Stat. § 471.88, subd. 14. This exception is consistent with the disclosure and non-participation requirements found in the EDA and HRA conflict of interest statutes. *See* Minn. Stat. §§ 469.009 (HRA) and 469.098 (EDA).

¹⁸ *See* Minn. Stat. §§ 471.88, subd. 5, and 471.89.

¹⁹ The Minnesota Attorney General’s Office is authorized to give opinions to cities on questions of public importance. *See* Minn. Stat. § 8.07.

²⁰ *See, e.g.*, Ops. Att’y Gen. (May 25, 1966, and August 25, 1955).

- A conflict under the general conflict of interest statutes may not be avoided by having the public officer voluntarily abstain from participation on the matter creating the conflict of interest.²² Instead, the contract is void, regardless of the interested officer's participation in the transaction.²³
- Whether a conflict of interest exists is a question of fact for the governing body to resolve in the first instance.²⁴ The resolution of the question should include, among other things, consideration of the nature as well as the terms and conditions of any employment a public officer may have with a firm contracting with the public entity.²⁵

B. Case Law

In non-contract situations, such as zoning or licensing, court decisions rather than statutes generally govern conflict of interest situations. The Minnesota Supreme Court has identified several factors that courts consider in determining whether a conflict of interest exists.²⁶ The factors include: 1) the nature of the decision being made; 2) the nature of the financial interest; 3) the number of interested officials; 4) the need to have the interested person make the decision; and 5) other means available, if any, to insure against arbitrary acts to further selfish interests.²⁷ As the Supreme Court has acknowledged: "There is no settled general rule as to whether [a selfish] interest will disqualify an official. Each case must be decided on the basis of the particular facts present."²⁸ In non-contract conflict of interest situations, the official action may validly be taken if the disqualified official does not participate in the decision.

C. EDA and HRA Conflict of Interest Statutes

The legislature adopted specific conflict of interest statutes for EDAs and HRAs.²⁹ The EDA and HRA conflict of interest statutes require written disclosure of potential conflicts of interest and non-participation by the interested EDA or HRA commissioner or employee. As a result, under these statutes, an EDA or HRA commissioner may enter into contracts in his or her private capacity for EDA or HRA projects, if the disclosure and non-participation requirements are met.³⁰ The statutes forbid the interested commissioner from: 1) attempting to influence an

²¹ See Op. Att'y Gen. 90a-1 (October 7, 1976). See also Ops. Att'y Gen. (March 28, 1989)(informal opinion); 90a-1 (September 21, 1955).

²² See, e.g., Ops. Att'y Gen. 90 (June 9, 1994); 90e-6 (June 15, 1988).

²³ See, e.g., *Singewald v. Minneapolis Gas Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966); *Stone v. Bevans*, 88 Minn. 127, 92 N.W. 520 (1902).

²⁴ See, e.g., Ops. Att'y Gen. 90a-1 (October 7, 1976, August 25, 1955, and January 22, 1953).

²⁵ See Op. Att'y Gen. 90a-1 (October 7, 1976).

²⁶ See *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 15, 153 N.W.2d 209, 219 (1967).

²⁷ *Id.*

²⁸ *Id.* (footnote omitted).

²⁹ See Minn. Stat. §§ 469.009 (HRA) and 469.098 (EDA). Additional statutes deal with other specific conflict of interest situations not involved in the situations presented in this matter. See, e.g., Minn. Stat. § 238.15 (cable communications franchises).

³⁰ See Op. Att'y Gen. 90 (June 9, 1994) (discussing HRA statute).

employee in any matter related to the action or decision in question; 2) taking part in the action or decision; or 3) being counted toward a quorum during the portion of any meeting in which the action or decision is to be considered.³¹

Under the statutes, the written disclosure must be made before an action is taken or a decision is made that “could substantially affect the commissioner’s or an employee’s financial interests or those of an organization with which the commissioner or employee is associated.”³² A potential conflict of interest is present if the EDA or HRA commissioner or employee “knows or has reason to know that the organization with which the commissioner or employee is affiliated is, or is reasonably likely to become, a participant in a project or development which will be affected by the action or decision.”³³ No disclosure statement is required if “the effect on the commissioner or employee of the decision or act will be no greater than on other members of the business, profession, or occupation or if the effect on the organization with which the commissioner or employee is affiliated is indirect, remote, and insubstantial.”³⁴

Where the EDA or HRA commissioners are also city council members, the Attorney General’s Office appears to have determined that the special EDA or HRA conflict of interest statutes apply, not the more general conflict of interest statutes applicable to public officers.³⁵

D. Minnesota Law on the Sale of City Land to City Officers or the City Purchase of Land from City Officers

The legislature also adopted a specific statute that generally prohibits the sale of property or materials owned by a political subdivision to its officers or employees.³⁶ The statute contains a number of exceptions, particularly for employees of political subdivisions. However, together with the general conflict of interest statutes, a city’s purchase of land owned by a city council member or the sale of city land to a city council member is generally prohibited.³⁷

E. City Charter and Contractual Conflict of Interest Provisions

The City of Ramsey operates under the Home Rule Charter City form of government. City charters may contain conflict of interest provisions, although the exceptions to the general conflict of interest statute apply notwithstanding any provisions in a city charter.³⁸ The AG has

³¹ See Minn. Stat. §§ 469.009, subd. 2, and 469.098, subd. 2(b).

³² See Minn. Stat. §§ 469.009, subd. 1, and 469.098, subd. 1(a). The disclosure must be entered into the minutes at the next meeting. See Minn. Stat. §§ 469.009, subd. 1, and 469.098, subd. 1(b).

³³ See Minn. Stat. §§ 469.009, subd. 1, and 469.098, subd. 1(c).

³⁴ See Minn. Stat. §§ 469.009, subd. 1, and 469.098, subd. 1(b).

³⁵ See Ops. Atty. Gen. 90a-1 (August 25, 1997) and 90 (June 9, 1994).

³⁶ See Minn. Stat. § 15.054.

³⁷ See, e.g., Ops. Atty. Gen. 90a (December 29, 1958). See also League of Minnesota Cities (LMC) Information Memo: Purchase and Sale of Real Property (July 10, 2010), page 19, available on LMC’s website, www.lmc.org.

³⁸ See Minn. Stat. § 471.881. The City’s conflict of interest provision is found in Section 12.3 of the City Charter. It provides: “Except as otherwise permitted by state statutes, no officer of the city, who is authorized to take part in

determined that local officials rather than state officials are in the best position to determine whether there are violations of city charter or code provisions.³⁹ According to the AG, the city attorney is the appropriate official to analyze questions that depend upon the construction of a city charter or code.⁴⁰

Cities may also enter into contracts that contain conflict of interest provisions. Remedies for violations of contractual provisions are generally found in the contract. The parties to a contract are generally in the best position to determine the meaning and intent of contract provisions.

City's Potential Conflicts of Interest

The City asked the OSA to review four matters that raised potential conflict of interest concerns.⁴¹ During its review, the OSA noted additional matters that raised potential conflict of interest concerns.

A. City Council Member/HRA Commissioner and/or Spouse Potential Candidates for Employment With HRA Loan Recipient

The City and the HRA have made a number of decisions about and entered into agreements with Flaherty and Collins or its affiliates ("F&C") related to F&C's development of an apartment complex at The COR.⁴² On April 24, 2012, the City sold \$7,320,000 in Taxable General Obligation Tax Increment Bonds Series 2012B to provide financing for the apartment complex, and the HRA entered into a loan agreement with F&C.⁴³

any manner in any contract with the city, shall voluntarily have a personal financial interest in such contract or personally benefit financially therefrom." The City Code defines an "officer" as follows: "References to officers, departments, boards, commissions or employees are to city officers, city departments, city boards, city commissions and city employees." *See* Ramsey City Code § 1-2.

In addition, Section 2-4 of the City Charter provides: "No member of the council shall hold any paid municipal office or employment through the city other than that to which elected. Further, until one year after the expiration of his/her term, no mayor or councilmember shall be appointed or employed by the city in a compensated position which was created, or the compensation for which was increased, during his/her term as mayor or councilmember."

³⁹ *See, e.g.*, Op. Atty. Gen. 90e-6 (June 15, 1988), at footnote 1.

⁴⁰ *See, e.g.*, Op. Atty. Gen. 629-a (May 9, 1975).

⁴¹ *See* City Council Meeting Minutes (August 28, 2012).

⁴² The apartment complex is known as The Residence at The COR. Examples of decisions about and agreements with F&C include Loan Agreement Between HRA and F&C (April 30, 2012); Purchase Agreement (HRA as Seller and F&C as Buyer) and Development Agreement By and Between HRA (owner of Development Property), City and F&C (January 31, 2011). *See also* City Council Meeting Minutes Item 7.04 (March 27, 2012); City Council Special Meeting Minutes (March 20, 2012); City Council Meeting Minutes Item 7.04 (March 13, 2012); City Council Special Meeting Minutes Item 4.01 (September 27, 2011).

⁴³ *See* Loan Agreement between HRA and F&C (April 30, 2012); City Council Meeting Minutes Item 7.01 (April 24, 2012); HRA Meeting Minutes Case #3 (February 28, 2012) (sale of up to \$7,450,000 Taxable General Obligation Tax Increment Bonds, Series 2012, approved by a 4:3 vote).

Subsequently, a City Council Member/HRA Commissioner advised the City Attorney that he and/or his spouse were potential candidates for employment with F&C. The Council Member/HRA Commissioner asked the City Attorney if the potential employment situation violated Minnesota's general conflict of interest statutes.⁴⁴

The Council Member/HRA Commissioner informed the City Attorney that neither the Council Member/HRA Commissioner nor his wife had any contact of any nature with regard to future employment with F&C prior to his votes on the City Council or HRA relating to the approval of the F&C loan. In addition, the Council Member/HRA Commissioner advised the City Attorney that the potential employment would not be an officer or director position; would not create an ownership interest in F&C; would provide compensation on a salary or hourly wage basis with no commission, bonus or other remuneration; and would not involve supervision of F&C's performance of the City's contract on F&C's behalf.

Based upon these facts, the City Attorney advised the Council Member/HRA Commissioner that employment with F&C by the Council Member/HRA Commissioner or his spouse would not create a prohibited conflict of interest.⁴⁵ Prior to rendering his advice, the City Attorney consulted with an attorney from the League of Minnesota Cities ("LMC"). The LMC attorney also concluded there was no conflict of interest when the votes were taken before any employment opportunity was available to the Council Member/HRA Commissioner or his spouse.⁴⁶

In providing his advice, the City Attorney clarified that he was expressing no opinion on the issue of an appearance of a conflict of interest and any potentially damaging effect on the public image of the Council Member/HRA Commissioner or the City. Similarly, the LMC Attorney noted that the facts may not technically involve a prohibited conflict of interest, but they raise an appearance that something improper occurred. Because this appearance of impropriety could be damaging to the image of the Council Member/HRA Commissioner and the City, the LMC Attorney suggested there were "prudential reasons" for the Council Member/HRA Commissioner to pass on the employment opportunity.

Based on the facts presented, the OSA agrees with the conclusion of the City and LMC Attorneys. However, whether a conflict of interest existed was a question of fact that should have been resolved in the first instance by the governing body.⁴⁷ The resolution of the question should have included, among other things, consideration of the nature as well as the terms and conditions of the employment with F&C. The resolution of the question in a public forum would have provided members of the public with some assurance that a potential conflict of interest was taken seriously by the City and the HRA, and resolved appropriately.

⁴⁴ See Memo from City Attorney William K. Goodrich to City Council Member (May 18, 2012). It is the OSA's understanding that the Council Member/HRA Commissioner's spouse was subsequently employed by F&C.

⁴⁵ *Id.*

⁴⁶ See Email from LMC Attorney James Monge to City Attorney (May 16, 2012).

⁴⁷ See, e.g., Op. Atty. Gen. 90a-1 (October 7, 1976); Ops. Atty. Gen. (August 25, 1955; and January 22, 1953).

B. City Council Member/HRA Commissioner's Possible Subcontracting Work with HRA Loan Recipient

Another City Council Member/HRA Commissioner reportedly approached F&C before, during or after the loan approval process to discuss the possibility of obtaining cabinetry work on the F&C apartment project for the cabinet firm by whom he was employed. To the best of the City Attorney's knowledge, no contractual relationship between the cabinet firm and F&C resulted from the discussions.

On the facts presented, there does not appear to have been a prohibited conflict of interest at the time the loan was approved. Mere employment or the possibility of future employment by a Council Member/HRA Commissioner by a recipient of a City/HRA loan is not prohibited under Minnesota's conflict of interest laws.⁴⁸ But once again, the determination of whether a prohibited conflict of interest was present should have been resolved in a public forum.

C. EDA Commissioners' Connections with Business Subsidy Recipient

The EDA unanimously approved a business subsidy to a local building owner in September 2010.⁴⁹ The City Council approved the subsidy at its March 8, 2011, meeting. Under the Business Subsidy Agreement, the City agreed to reimburse the building owner \$35,579 for Sewer and Water Access Charges (SAC and WAC) associated with a full-service restaurant build-out.⁵⁰

One of the EDA Commissioners is an accountant. Among his clients is the restaurant involved in the Business Subsidy Agreement. Another EDA Commissioner rents office space in the building where the restaurant is located. In other words, the landlord of one of the EDA Commissioners received the subsidy. Neither EDA Commissioner filed a written disclosure of a possible conflict of interest. Both EDA Commissioners voted to approve the business subsidy.

It is doubtful that the business subsidy "substantially affected" the Commissioners' financial interests or those of an organization with which the Commissioners were associated.⁵¹

⁴⁸ See, e.g., Op. Atty. Gen. 90 (June 9, 1994) (no conflict of interest where an HRA commissioner who owned and operated a cabinet manufacturing business stated his intent to bid on cabinet work for developments that were the subject of HRA contracts).

⁴⁹ See EDA Meeting Minutes Case #2 (Sept. 9, 2010). The City Administrator informed the OSA that PSD, LLC, referenced in the EDA meeting minutes, is the same as Ramsey Retail Rental, LLC, referenced in the City Council meeting minutes. Filings with the Minnesota Secretary of State confirm that the two LLCs have the same office address and manager.

⁵⁰ The date of the Business Subsidy Agreement was June 28, 2011.

⁵¹ As discussed previously in this letter, the EDA conflict of interest statute requires written disclosure of an interest before an action is taken or a decision is made that "could substantially affect the commissioner's or an employee's financial interests or those of an organization with which the commissioner or employee is associated." See Minn. Stat. § 469.098, subd. 1(a).

Therefore, there does not appear to have been a violation of the EDA-specific conflict of interest statute. This issue may have been avoided if the matter had been resolved in the first instance by the EDA Commission, and a public discussion of the disclosure and non-participation requirements had taken place.

D. City Purchase of Council Member/HRA Commissioner's Land/Business and Transfer of HRA Land to Council Member/HRA Commissioner

During its review of the matters the City submitted to the OSA, the OSA noted that the City Council authorized the purchase of a liquor store parcel for \$1,110,160 as part of a right-of-way improvement project.⁵² The land was apparently owned by a limited liability company, of which a Council Member/HRA Commissioner was the majority owner or sole member.⁵³ To offset the acquisition cost of the liquor store parcel, the HRA also considered transferring a parcel of land in The COR to the Council Member/HRA Commissioner.⁵⁴ The meeting minutes recorded that the Council Member/HRA Commissioner left the meetings during discussions of these matters.⁵⁵

On October 9, 2012, the City Council was advised that Minnesota law prohibited the City from purchasing land from a Council Member.⁵⁶ The City Council decided to transfer funds to the HRA so it could potentially purchase the property, after being advised that no similar prohibition existed for the HRA.⁵⁷ However, when the City Council, sitting as the HRA, met a short time later, the motion to approve the purchase failed in a 3 to 2 vote.⁵⁸ The City Administrator informed the OSA that it was anticipated that the land sale/transfer would be reconsidered in 2013, when the Council Member was no longer on the City Council.

The AG has repeatedly stated that a city may not purchase land owned by a council member.⁵⁹ For example, the AG was specifically asked whether a village could buy the lot for a new liquor store if the lot was owned by a council member who did not vote on the purchase.⁶⁰ The AG said the purchase contract was prohibited regardless of whether the interested council member voted on the question. Similarly, in another opinion, the AG determined that a village could not

⁵² See City Council Meeting Minutes Item 7.05 (August 28, 2012). See also HRA Meeting Minutes (February 6, 2012).

⁵³ See HRA Meeting Minutes Item 5.01 (October 9, 2012); Information Memorandum by Darren Lazan for February 6, 2012, HRA Work Session; HRA Meeting Minutes Case #3 (February 6, 2012).

⁵⁴ See Information Memorandum by Darren Lazan for June 26, 2012, HRA Meeting; HRA Meeting Minutes Item 5.02 (October 9, 2012); HRA Meeting Minutes Case #3 (February 6, 2012).

⁵⁵ See, e.g., City Council Meeting Minutes Item 7.01 (October 9, 2012), Item 7.05 (August 28, 2012), Item 7.05 (March 27, 2012), Item 7.08 (March 13, 2012); HRA Meeting Minutes Case #3 (February 6, 2012).

⁵⁶ See City Council Meeting Minutes Item 7.01 (October 9, 2012). The City Attorney advised the HRA that, on about September 15, staff became aware of a statute that prohibits a city from purchasing land from a sitting city council member. See HRA Meeting Minutes Item 5.01 (October 9, 2012).

⁵⁷ See City Council Meeting Minutes Item 7.01.a (October 9, 2012).

⁵⁸ See HRA Meeting Minutes Item 5.01 (October 9, 2012).

⁵⁹ See, e.g., Ops. Atty. Gen. 469a-12 (August 30, 1961), 90a (December 29, 1958).

⁶⁰ See Op. Atty. Gen. 90a (December 29, 1958).

purchase land owned by the mayor for a sewage treatment plant.⁶¹ The AG concluded that the only way the village could acquire the land, as long as it was owned by the mayor, was through condemnation.⁶²

In addition to reviewing a city's purchase of land from a council member, the AG has reviewed the sale of city land to a council member. When asked whether a village could sell a village-owned lot to a council member, the AG said that a council member was prohibited from purchasing the lot even where the village had called for bids, and the council member's bid was the highest and best bid received.⁶³

E. City Contract with Council Member's Business

During its review of HRA meeting minutes, the OSA noticed that a Council Member/HRA Commissioner stated he had been hired to do abatement and roof work.⁶⁴ The OSA reviewed City Council meeting minutes from 2009 where the Council Member was awarded contracts with the City. In those matters, the potential conflict of interest was publicly discussed, and the resolution of the potential conflict of interest was reflected in the meeting minutes. In each of the 2009 matters reviewed by the OSA, the City used the exception to the general conflict of interest statute that allows a city to contract with an interested council member for goods or services as long as competitive bidding was not required and certain procedural steps were taken.⁶⁵

F. General "Corruption" Allegations

In 2011, the OSA received concerns from a number of City residents, and the OSA was asked to investigate alleged "corruption" related to the City's development decisions. Primarily, it appeared that some people disagreed with the City's decisions to purchase The COR land, to hire a private development company, and to proceed with the apartment complex. Allegations were also made that some of the principals for the private development company and the developers of the apartment complex were overlapping. In response, the City created a "Fact Sheet" that refuted the overlapping principal allegations.

Minnesota's laws provide the City with broad economic development powers. Ultimately, it is up to the voters to determine whether the decisions of elected officials best served the interests of the City's residents.

⁶¹ See Op. Atty. Gen. 469a-12 (July 21, 1965).

⁶² *Id.*

⁶³ See Op. Atty. Gen. 90a-1 (April 14, 1960).

⁶⁴ See HRA Meeting Minutes (February 6, 2012).

⁶⁵ See Minn. Stat. §§ 471.88, subd. 5, and 471.89. The procedural steps include passing a specific resolution and obtaining a specific affidavit when claims are submitted.

As discussed previously in this letter, Minnesota's conflict of interest provisions generally apply to public officers, not to those contracting with a city. "Organizational conflicts of interest" occur when, because of existing or planned activities, or because of relationships with other persons: (1) a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice; (2) the contractor or consultant's objectivity in performing the work is or might be otherwise impaired; or 3) the contractor or consultant has an unfair competitive advantage.⁶⁶ State agencies must take reasonable efforts to avoid, mitigate or neutralize "organizational conflicts of interest" when contracting for goods or services or awarding grants.⁶⁷ However, this statutory requirement does not apply to cities. In short, Minnesota's conflict of interest laws do not prohibit all relationships among public officers, public employees, and those working with a city.

OSA's Recommendations

In the future, when a City officer may have a personal financial interest in a City contract or in a decision the officer is authorized to make, the OSA recommends that the City determine whether a conflict of interest exists before the contract is awarded or the decision is made. If the City determines that a conflict of interest may exist, the City should determine whether an exception would allow the City to proceed with the contract. When these issues arise, City officers and staff should consult with the City Attorney or the League of Minnesota Cities ("LMC"), or submit a request for an opinion to the Minnesota Attorney General's Office.⁶⁸ To provide transparency to the public, the discussions about these issues should be memorialized in meeting minutes.

More importantly, the City should consider ways to avoid even the appearance of impropriety. The OSA recommends the City take steps to identify and to avoid, mitigate or neutralize potential organizational conflicts of interest. The OSA also recommends that City officials follow the advice offered by the Minnesota Court of Appeals: "Where there is a choice, city officials should avoid actions which may appear tainted of impropriety, even though they are legal."⁶⁹

⁶⁶ See, e.g., State of Minnesota Materials Management Division, Purchasing Policies and Procedures, Policy 9, Organizational Conflict of Interest Policy (Admin 01-13), available at: <http://www.mmd.admin.state.mn.us/alpappendices.htm>.

⁶⁷ See Minn. Stat. § 16C.04.

⁶⁸ See also LMC Information Memo: Official Conflict of Interest (October 4, 2012), available on LMC's website, www.lmc.org.

⁶⁹ *1989 Street Imp. Program (117th Street) v. Denmark Twp., Washington Co. MN*, 483 N.W. 2d 508, 510 (Minn. Ct. App. 1991).

The Honorable Sarah Strommen
Mayor, City of Ramsey
January 23, 2013
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Conclusion

The Office of the State Auditor (“OSA”) reviewed certain matters in the City of Ramsey (“City”) that raised potential conflict of interest concerns. None of the matters reviewed by the OSA appear to violate Minnesota’s conflict of interest laws. The OSA hopes the information contained in this letter will provide the City and its residents with guidance to resolve similar concerns in the future.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel

cc. The Honorable Randy Backous, City Council Member
The Honorable David Elvig, City Council Member
The Honorable Mark Kuzma, City Council Member
The Honorable John Letourneau, City Council Member
The Honorable Chris Riley, City Council Member
The Honorable Jason Tossey, City Council Member
Mr. Kurtis Ulrich, City Administrator
Mr. William Goodrich, City Attorney
Mr. Bob Ramsey, Former City Mayor
Mr. Colin McGlone, Former City Council Member
Mr. Jeff Wise, former City Council Member