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July 10, 2012

The Honorable Sue Reitmeier
Chair, Crookston Town Board of Supervisors
20750 US Highway 2 SW
Crookston, Minnesota 56716

Dear Chair Reitmeier:

The Office of the State Auditor (“OSA”) received concerns about the Town of Crookston (“Town”). Based on those concerns, the OSA conducted a review of possible conflicts of interest, and the grading and mowing of private property. During the review, the OSA contacted the Town Clerk and reviewed copies of Town documents.

The OSA found that the Town did not follow the proper procedures when entering into contracts with businesses owned by a Town Board Supervisor and the spouse of the Town Board Chair, or when employing the spouse of the Town Board Chair. The OSA also knows of no authority for the Town to grade or mow private property. As required by Minn. Stat. § 6.51, a copy of this letter is being filed with the Polk County Auditor and the Polk County Attorney.

This letter contains the OSA’s recommendations to bring the Town into compliance with Minnesota law. In addition, this letter will provide the Town with guidance on meeting minutes.

Conflicts of Interest

On occasion, the Town contracts with a welding business known as DeBoer Industries, owned by Town Board Supervisor Gerald DeBoer, and with J&J Performance Auto, owned by Mr. Jerry Reitmeier, the spouse of Town Board Chair Sue Reitmeier.¹ Mr. Reitmeier has also been employed by the Town since July 1, 1990, and is the Town’s maintenance employee.²

¹ See, e.g., Payments to DeBoer Industries and J&J Performance reported on Financial Statement approved at November 8, 2011, Town Board meeting.

² See 2012 Minn. Laws ch. 286, art. 13, sec. 5 (related to retirement).

Relying upon legal advice the Town received, it appears the Town Board Chair abstains from voting on matters related to her spouse.³ The Town Clerk reported, however, that the Town did not adopt resolutions and affidavits required by law prior to contracting with businesses owned by the Town Board Supervisor or the spouse of the Town Board Chair, and no resolutions or affidavits were used in connection with the employment of the spouse of the Town Board Chair.⁴

Under the general conflict of interest provisions of Minnesota Statute § 471.87, “a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.”⁵ Abstaining from voting on the contract does not negate the conflict.⁶

Because the general rule is so strict, the legislature has created a number of exceptions, found in Minn. Stat. § 471.88. Under this statute, a town board, “by unanimous vote, may contract for goods or services with an interested officer” if the contract is one “for which competitive bids are not required by law.”⁷

To use this broad exception, however, the town board and the interested town board supervisor must follow the procedures set forth in Minn. Stat. § 471.89.⁸ This section requires the town board to “authorize the contract in advance of its performance by adopting a **resolution** setting out 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.”⁹

³ See, e.g., Town Board Minutes of March 14, 2011 (Chair abstained during discussion of “stipend amounts” for maintenance); Jerry Reitmeier’s Claim Form approved on March 14, 2011 (showing initials of two other Supervisors approving payment).

⁴ OSA conversation with the Town Clerk.

⁵ A public officer who violates this provision is guilty of a gross misdemeanor. See Minn. Stat. § 471.87. See also Minn. Stat. 365.37, subd. 1 (“a supervisor or town board must not be a party to, or be directly or indirectly interested in, a contract made or payment voted by the town board”).

⁶ See, e.g., Ops. Att’y Gen. 90e-6 (June 15, 1988), and 90-E-5 (November 13, 1969).

⁷ See Minn. Stat. § 471.88, subs. 1 and 5. Generally, competitive (sealed) bids are not required unless the amount of a contract for the sale or purchase of supplies, materials, equipment, or the construction, alteration, repair or maintenance of real or personal property is estimated to be over \$100,000. See Minn. Stat. § 471.345, subs. 2 and 3. For such contracts estimated to be more than \$25,000 but not more than \$100,000, the contract may be made either upon sealed bids or by direct negotiations (by obtaining two or more quotations when possible). *Id.* at subd. 4. Such contracts estimated to cost \$25,000 or less may be made upon quotations or on the open market. *Id.* at subd. 5. An employment contract does not require bids. See Minn. Stat. § 471.345, subd. 2.

⁸ The contract is considered void unless the proper procedures are followed. See Minn. Stat. § 471.89, subd. 1.

⁹ See Minn. Stat. § 471.89, subd. 2 (emphasis added).

In addition, before claims are paid on the contract, the interested officer must file with the town 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.”¹⁰

Additionally, a town board supervisor might have a personal financial interest in a contract between the town and the supervisor’s spouse or a business owned by the spouse. The Minnesota Attorney General’s Office has taken the position that whether an officer has a conflict of interest in a contract is a matter that involves questions of fact that are appropriately determined by the governing body.¹¹ Therefore, when contracting with the spouse of a town officer, the town board should determine from all the circumstances in each transaction whether the conflict of interest exists.¹² If a conflict is found to exist, then the town board must follow the resolution and affidavit procedures found in Minn. Stat. § 471.89.

Finally, if a conflict of interest exists, the conflicted town board supervisor may not supervise or oversee the work that creates the conflict.¹³ These safeguards assure the taxpayers that the town’s contracting process is open and in the town’s best interests.

We recommend that, in the future, the Town Board adopt the required resolution and obtain the required affidavits when contracting with a Town Board Supervisor or a business owned by a Town Board Supervisor. The resolutions should be referenced in the Town Board meeting minutes, and claims should not be approved without the required affidavits. Samples of the required resolution and affidavit are available on the Minnesota Association of Townships’ (MAT) website, www.mntownships.org.¹⁴

Because the Town Board Chair abstains on matters related to her spouse, it appears the Town Board has already determined there is a conflict of interest. When contracting with

¹⁰ *Id.* at subd. 3 (emphasis added).

¹¹ *See, e.g.*, Ops. Att’y Gen. 90a-1 (October 7, 1976), 90-E-5 (November 13, 1969), 90e-5 (May 25, 1966), and 90-E-5 (August 25, 1955).

¹² *See, e.g.*, Ops. Att’y Gen. (July 30, 1940), and (July 14, 1939).

¹³ *See, e.g., Stone v. Bevans*, 92 N.W. 520 (Minn. 1902). *See also* Op. Att’y Gen. 90-A-1 (September 21, 1955).

¹⁴ *See* MAT’s Information Library Document No. C6000 - Statutory Conflicts of Interest Contracting with your own Town.

the spouse of a Town Board Supervisor, or a business owned by the spouse of a Town Board Supervisor, we recommend that the Town Board's determination be recorded in the Town Board meeting minutes. In addition, where a conflict of interest exists, the required resolution should be adopted and the required affidavits should be obtained.

Grading and Mowing for Residents

The Town owns a road grader, tractor and a mower.¹⁵ The duties of the Town's maintenance employee include snowplowing and grading Town roads, and mowing the ditches of the Town roads. The Town Board has also authorized the employee to use the Town's equipment to provide all of these services for the private driveways of Town residents. The Town charges an hourly fee for this "custom work" performed for residents.¹⁶

Generally, a town must have statutory authority to make an expenditure of public funds, such as paying hourly wages, or fuel and equipment costs related to snowplowing, grading and mowing.¹⁷ A town has the authority to remove snow from private property as long as the property owner pays the cost of the snow removal.¹⁸ However, the OSA knows of no authority that would allow a town to grade or mow private property.

The OSA recommends that the Town not provide mowing or grading services for private property.

Meeting Minutes

During its review, the OSA reviewed Town Board meeting minutes for 2011. While the minutes generally report the approval of a treasurer's report, the minutes do not report the claims approved by the Town Board, or the votes of each Town Board Supervisor on the claims presented.¹⁹ Some minutes simply report "Bills were paid."²⁰

The OSA recommends that the Town Board meeting minutes include a listing of all claims approved by the Town Board for payment and record the vote of each Supervisor on the claims list presented. The Town Board meeting minutes should also specifically

¹⁵ OSA conversation with the Town Clerk.

¹⁶ See Town Board meeting minutes for meeting held on April 10, 2012. The minutes provided to the OSA for this meeting had the year listed as 2011. However, the Town Clerk clarified that the minutes were for the April 10, 2012, meeting. At the meeting, the Town Board approved an increase in hourly "custom work prices."

¹⁷ In addition, all town expenditures must be for a public purpose. See Minn. Const. Art. 10, sec. 1.

¹⁸ See Minn. Stat. § 160.21, subd. 2. In addition, the work must not interfere with the removal of snow from public highways under the town's jurisdiction. *Id.*

¹⁹ The treasurer's report presented at Town Board meetings appears to be a report on the Town's financial accounts, indicating the starting and ending balance, checks cleared, deposits, and interest earned.

²⁰ See, e.g., Town Board meeting minutes for August 9, 2011.

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record when a Town Board Supervisor abstains from voting on a matter. For further guidance on meeting minutes, the OSA has enclosed a copy of our Statement of Position on Meeting Minutes, also available on our website at www.auditor.state.mn.us.

Conclusion

This letter provides the Town with the OSA's findings and recommendations regarding conflicts of interest and the grading and mowing of private property, and guidance on meeting minutes.

If you have any questions, please feel free to contact me at (651) 297-7108 or by email at Terrilyn.Diamond@osa.state.mn.us.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

Enclosure

cc: The Honorable Gerald DeBoer, Town Board Supervisor
The Honorable Douglas Qualley, Town Board Supervisor
Ms. Delores Myerchin, Town Clerk
The Honorable Gerald Amiot, Polk County Auditor/Treasurer
The Honorable Gregory Widseth, Polk County Attorney