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January 16, 2008

The Honorable Steve Peterson
Mayor, City of Virginia
327 – First Street South
Virginia, Minnesota 55792-2623

Dear Mayor Peterson:

The Office of the State Auditor reviewed donations the City of Virginia (City) made to two private cemetery associations in 2005, 2006, and 2007. Based upon our review, it appears the City did not have the authority to donate more than \$2,500 per year in public funds to the private cemetery associations. This letter presents our findings and outlines our recommendations regarding these matters.

Under Minnesota law, a city may appropriate up to \$2,500 per year to any public or privately owned cemetery.¹ The city does not need an ownership interest in the cemetery, and the cemetery may be located within or outside the boundaries of the city.

A city may expend city funds for the support and maintenance of a cemetery that the city owns and manages.² In addition, a city may enter into a maintenance agreement with a contiguous city or town that owns and maintains a cemetery.³ Each city or town entering into such a maintenance agreement may levy a tax or appropriate up to \$10,000 per year.⁴

¹ See Minn. Stat. § 471.84 (1957 amendment raised the maximum appropriation amount from \$1,500 to \$2,500 and extended the statute to public cemeteries). Burial of the dead in the cemetery must be allowed without restriction. *Id.* See also Op. Att’y Gen. 870-J (September 29, 1960) (village may appropriate up to \$2,500, but could not levy a special tax for the public cemetery association), Op. Att’y Gen. 870-J (August 5, 1957) (village may appropriate up to \$2,500 to a public cemetery), and Op. Att’y Gen. 870-J (May 16, 1955) (village may appropriate up to \$1,500 to public cemetery that is privately owned). The statute applies to statutory cities. The City is a home rule charter city. The City’s Amended Charter provides that all statutes not inconsistent with the City’s Charter apply to the City, and shall be construed as supplementary to the Charter provisions. Amended Charter City of Virginia (November 2, 1993), Section 12.10. We found no references to cemeteries in the City’s Amended Charter. Therefore, it appears that Minn. Stat. § 471.84 applies to the City.

² See Minn. Stat. § 412.221, subd. 9. The subdivision provides: “The council shall have power to acquire by purchase, gift, devise, condemnation or otherwise, *hold and manage* cemetery grounds, to enclose, lay out and ornament such grounds and sell and convey lots therein. It may by ordinance regulate cemeteries and the disposal of dead bodies.” (*Emphasis added.*)

³ See Minn. Stat. § 471.24.

⁴ *Id.*

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According to the City Clerk, the City does not own a municipal cemetery. However, for many years, the City has donated City funds to two private cemetery associations that own cemeteries located in the City.⁵ The City Clerk informed us that, in 2005, the City donated \$4,950 to one of the cemetery associations and \$7,650 to the other cemetery association. In 2005, the City also provided one of the cemetery associations with \$12,500 for a building project, and an additional \$12,500 as an interest-free loan.⁶ In both 2006 and 2007, the City gave \$6,000 each year to one of the cemetery associations, and \$8,500 each year to the other cemetery association.

We know of no authority for the City to donate more than \$2,500 in public funds per year to a private cemetery association such as the ones currently receiving funds from the City. In addition, under Minnesota law, before a city may appropriate up to \$10,000 in public funds for the maintenance of a cemetery it does not own, the city must have entered into a maintenance agreement with another city or town that does own the cemetery. We also know of no authority for the City to make an interest-free loan to a private cemetery association.

We recommend that the City comply with Minnesota law and appropriate no more than \$2,500 per year to either of the private cemetery associations. Alternatively, the City may want to obtain an ownership interest in the cemeteries, enter into joint maintenance agreements with a municipality having an ownership interest in the cemeteries, seek a clarifying opinion from the Minnesota Attorney General's Office, or attempt to obtain a change in the law.

If you have any questions about the issues discussed in this letter, please feel free to contact me directly at (651) 297-7108.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

Enclosure

cc: Ronald E. Lackner, City Clerk and Finance Director
McGladrey & Pullen, City Auditor
Thomas Butorac, City Attorney

⁵ The two cemetery associations are the Calvary Cemetery Association and the Greenwood Cemetery Association. According to the City Clerk, the cemetery associations own the cemeteries.

⁶ It is our understanding that the City of Mountain Iron repaid the loan in 2006. The City of Mountain Iron is also receiving a letter from the Office of the State Auditor regarding this matter.