



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

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February 13, 2014

The Honorable Thomas Kuntz  
Mayor, City of Owatonna  
540 West Hills Circle  
Owatonna, Minnesota 55060

Dear Mayor Kuntz:

The Office of the State Auditor (“OSA”) received concerns regarding the City of Owatonna (“City”) and the use of the City shop wash bay by City employees to clean personal vehicles. This letter will provide the City with guidance on this issue.

The OSA contacted the City and was informed that the City allows its employees to use the City wash bay during non-working hours to clean personal vehicles. The City implemented this practice in September 2011 and established procedures for the use of the wash bay by City employees.<sup>1</sup> The City informed the OSA that the City Council wanted to provide a benefit for all City employees after several years of wage freezes, layoffs, and reductions in LGA funding.

Generally, a city must have authority to expend public funds. Authority may be specifically stated in a statute or implied as necessary to do something that is expressly authorized.<sup>2</sup> In addition, the expenditure of public funds must be for a “public purpose.” A public purpose has been defined by the Minnesota Supreme Court as “[s]uch 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.”<sup>3</sup> The primary objective of the activity must not be a private interest.<sup>4</sup>

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<sup>1</sup> See City of Owatonna Memo from City Administrator Kris M. Busse to City Engineer Jeff Johnson, dated September 15, 2011. Employees are required to sign and submit a liability waiver and release form to the City before they may begin to use the City shop wash bay. The parameters for personal use of the City shop wash bay include:

- Use of the city wash bay is limited to city employee’s person vehicle(s) only in which he or she is the registered owner.
- Only city employees are allowed in the wash bay area and permitted to use the power sprayer and hose unit. Employees must bring their own car wash cleaning supplies.
- No vehicle maintenance activity is permitted (e.g., oil changes, light replacement, etc.).
- Use is limited to non-working hours only.
- Doors must be closed when using wash bay.
- Employees are not allowed to utilize any other city owned tools, equipment or supplies.
- Employees are not allowed to utilize the hoist.
- Employees must clean up after use and remove any mud and debris from their vehicles.
- City wash bay must be secured when finished.

<sup>2</sup> See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 357, 143 N.W.2d 813, 820 (1966).

<sup>3</sup> See *Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958).

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More specifically, the Minnesota Attorney General's Office has taken the position that nonmonetary benefits to public officers and employees must be specifically authorized by law.<sup>5</sup> A public employee's personal use of public resources is a nonmonetary benefit to the public employee.<sup>6</sup>

The OSA is unaware of any specific authority that would allow city employees to use city facilities or equipment for non-work related purposes on any basis other than that afforded to the general public.

We recommend the City consult with its attorney and/or seek an Attorney General's opinion prior to permitting City employees to use the City shop wash bay to clean personal vehicles in the future.<sup>7</sup> The City Council's decision regarding the personal use of City resources by City employees should be the result of thoughtful and open deliberation, considering all the practical, legal, and political implications of the practice.

### **Conclusion**

The Office of the State Auditor hopes the City finds this information to be helpful. This Office will not be taking further action on this matter at this time. If you have any questions, please feel free to contact me at (651) 297-7108 or [Terrilyn.Diamond@osa.state.mn.us](mailto:Terrilyn.Diamond@osa.state.mn.us).

Sincerely,

*/s/ Terrilyn Diamond*

Terrilyn Diamond, Attorney  
Office of the State Auditor

cc: The Honorable Les Abraham, City Council Member  
The Honorable Dave Burbank, City Council Member  
The Honorable Nathan Dotson, City Council Member  
The Honorable Kevin Raney, City Council Member  
The Honorable Greg Schultz, City Council Member  
The Honorable Brent Svenby, City Council Member  
The Honorable Raymond Truelson, City Council Member  
Ms. Kris Busse, City Administrator

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<sup>4</sup> See *Burns v. Essling*, 156 Minn. 171, 194 N.W. 404 (1923).

<sup>5</sup> See, e.g., Ops. Att'y Gen. 359b (Oct. 24, 1989) and 161b-12 (Jan. 24, 1989).

<sup>6</sup> *Id.*

<sup>7</sup> See Minn. Stat. § 8.07 (Attorney General Opinions).