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May 31, 2012

The Honorable Steve Dinsmore
Mayor, City of Starbuck
P.O. Box 606
Starbuck, Minnesota 56381-0606

Dear Mayor Dinsmore:

The Office of the State Auditor (“OSA”) received concerns regarding the City of Starbuck (“City”). Specifically, concerns were raised about the City’s compensation policy for the Mayor and City Council Members, and about timekeeping procedures for City employees. This letter contains recommendations for the City based upon the OSA’s review of these concerns.

City Council Compensation

The OSA understands that the City established compensation amounts for the Mayor and City Council Members. Specifically, the Mayor receives \$100 and City Council Members receive \$75 for each regular monthly meeting they attend. In addition, the Mayor and City Council Members receive \$50 for each special meeting they attend.

The OSA reviewed 2010 and 2011 meeting payment requests for the Mayor and City Council Members. Some meeting payment requests did not identify whether the meeting was a regular or a special meeting. For example, in addition to listing regular City Council meetings and special meetings, claims were submitted for meetings simply identified as work on budget, personnel, union negotiations, team management, Hobo Park, community center, mediation, budget, or blight patrol.¹ In addition, there were multiple instances where a City official requested payment for more than one meeting held on a particular day.

Minnesota law allows a city council to set the compensation rate for city officials and employees.² We recommend that the City review its compensation policies for City officials and, if the City continues to pay compensation on a per meeting basis, clarify

¹ The number of meetings for which payments were claimed far exceeded the number of meetings for which minutes are posted on the City’s website.

² See Minn. Stat. § 412.111.

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which meetings qualify for payment.³ The City should also determine whether a City official may receive payment for more than one meeting held in a day. Finally, we recommend that City officials report at the next City Council meeting the results of any meetings attended for which compensation is claimed.⁴

It may be helpful for the City to review the OSA's Statement of Position on County Commissioner Per Diem Payments. By law, county commissioners may receive per diem pay.⁵ However, the law limits these payments to one per day.⁶ In addition, when per diems are paid, the OSA recommends that the county board meeting minutes document both the authorization of the commissioner's attendance at the meeting, as well as a report on the results of the meeting.

Timekeeping

The OSA received concerns that not all City employees were required to comply with the City's timekeeping procedures. Specifically, concerns were raised about consistency in requiring employees to use a time clock, to sign timecards, and to obtain a supervisor's signature on timecards.

The OSA understands the City has made progress in applying its timekeeping procedures more uniformly. We encourage the City to monitor compliance with timekeeping procedures for all employees. For additional guidance on this topic, a copy of the OSA's Statement of Position on timekeeping procedures is enclosed.⁷

³ The City may also want to consult with the City Attorney or the League of Minnesota Cities regarding compliance with Minnesota's Open Meeting Law (e.g., notice requirements for regular and special meetings).

⁴ The report should be noted in the meeting minutes. The OSA recognizes that, at times, the report may be limited in scope in order to comply with the Minnesota Government Data Practices Act.

⁵ See Minn. Stat. §§ 375.055 and 375.06.

⁶ A copy of the OSA's Statement of Position on "County Commissioner Per Diem Payments" is enclosed and is also available at the following link:

http://www.auditor.state.mn.us/other/Statements/commissionerPerDiem_0707_statement.pdf.

⁷ The OSA's Statement of Position on "Employee Timekeeping Procedures For Employees Paid on an Hourly or Daily Basis" is also available on the OSA's website at the following link:

http://www.auditor.state.mn.us/other/Statements/employeetimekeepingproc_0808_statement.pdf.

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Conclusion

The OSA hopes the City finds the recommendations contained in this letter to be helpful. 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

Enclosures

cc: The Honorable Jamie Logan, City Council Member
The Honorable Mike Moen, City Council Member
The Honorable Helen Pladsen, City Council Member
The Honorable Ranae Spore, City Council Member
Ms. Dianna Schleif, Clerk/Treasurer



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Statement of Position County Commissioner Per Diem Payments

In addition to an annual salary, a county commissioner may collect a per diem, provided that the requirements and limitations relating to per diems have been met.

County Board Action Required

The County Board must take some action if county commissioners are to be able to collect per diems. County commissioners may be paid a per diem in addition to their salary “for each day necessarily occupied in the discharge of their official duties while acting on any committee under the direction of the board.”¹ The county board must identify by resolution the duties that qualify for per diem payments. The board may then establish a schedule of per diem payments for service by individual county commissioners on any board, committee, or commission of county government.²

No Per Diem with High Salary

Minnesota law contains an important exception to a county commissioner’s ability to collect a per diem: If a county commissioner is paid a salary that is more than 50 percent of the salary of the governor, the commissioner may not be paid any amount, by per diem or otherwise, except as reimbursement for expenses, for attendance at meetings related to the business of any local government unit.

The governor’s salary can be found at:

<http://www.commissions.leg.state.mn.us/lcer/officialssalaries.htm>

¹ Minn. Stat. § 375.06.

² Minn. Stat. § 375.055, subd. 1; *see also* Op. Atty. Gen. 124a – April 28, 1994 (The Minnesota Attorney General concluded that commissioners are authorized to be paid a “per diem” for performing the duties of office, in addition to an annual salary, including work on committees.).

Reviewed: April 2010
Revised: April 2010

2007-1021

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This Statement of Position is not legal advice and is subject to revision.

Documentation Needed

County officials are responsible for making and preserving all records “necessary to a full and accurate knowledge of their official duties.”³ Payment of public funds by a county requires written documentation.⁴ When a per diem is claimed for a commissioner’s committee work or service required by law, the county must make and preserve the records necessary to support payment.

Thus, any claim for a per diem payment must be based on documented activities by a commissioner that constitutes:

1. The duties of office, including work on committees (under direction of the board); or
2. Individual service required by law.

Committee work may include information gathering activities as well as liaison activities. For those counties that do not use committees, such activities will be part of an individual commissioner’s board activities. In both instances, board or committee minutes serve as documentation to support the per diem payment. Board or committee minutes should confirm three aspects of the activity as committee work: First, that a matter is before the board or committee that necessitates the activity; second, that the activity has been authorized by the board or committee; and, third, that the commissioner has reported to the board or the committee on the results of the information gathering or liaison activities. Absent authorization in the minutes and a report to the board or committee (which should also be in the minutes), these per diem payments are questionable and, potentially, unauthorized by law.⁵ If counties have made such payments, repayment of the per diem payment may be requested.

Social events

A number of commissioners have submitted claims for per diem payments based on their attendance at parties, employee appreciation events, county fairs, festivals and parades. The Office of the State Auditor (OSA) views these activities as primarily social in nature. Mere attendance at social events does not constitute committee work. Absent documentation of legitimate committee or board work and specific authorization by the board or committee, the OSA does not consider social activities as qualifying committee work. The authorized activity that constitutes committee work must be identified in the per diem claim and documented in the minutes of the committee or board.

³ Minn. Stat. § 15.17.

⁴ Minn. Stat. § 471.38.

⁵ There may be instances where an explanation provided with the submitted per diem claim will be sufficient to document committee work.

Attendance at meetings with groups or individuals

Commissioners cannot claim a per diem payment whenever they meet with a constituent or group. However, commissioners often act as agents for the board or committees of the board in gathering information or acting as liaison. As discussed above, the commissioners' role in performing these activities for the board or a committee must be documented in the committee minutes. The minutes should note the authorization of the meeting by the board or committee and should later reference the commissioner's report regarding the results of the meeting. When the board or a committee authorizes a commissioner to meet with a group or a single person to obtain information for a matter under consideration before the committee, a per diem payment is appropriate.

Joint Boards

Many county commissioners serve on the boards of joint powers. Minnesota Statutes, section 471.59, authorizes the joint exercise of powers by government units. Subdivision one states in part: "Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties"

The joint powers board may set a per diem amount available to the board members who attend joint board meetings. Some commissioners receive the per diem payment from the joint powers board and, if this amount is less than their regular county per diem payment, submit a claim for the difference to their own county.

It is the position of the OSA that, if a joint powers board sets a per diem amount, that per diem amount and only that per diem amount is available to a commissioner attending a joint powers board meeting. When a joint powers board acts, it is exercising the common power of the participating government entities. The participating counties have the authority to set governing board per diem payments and, through the joint powers board, have in fact determined a per diem amount available to members of the governing board for attending meetings. No other per diem amount is applicable for this joint powers board activity. The submission of a per diem claim for a greater amount is not authorized.



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Statement of Position

Employee Timekeeping Procedures

For Employees Paid on an Hourly or Daily Basis

Minnesota law requires statutory cities to implement certain internal controls with regard to payroll for employees paid on an hourly or daily basis.¹ For example, the statute requires both the employee, and a timekeeper, supervisor, or other person having knowledge of the employee's work, to sign declarations attesting to the hours/days worked. While counties, school districts, and towns do not have similar statutory requirements, they too must devise payroll control procedures.

Statutory cities are authorized to use electronic time recording systems if the governing body of the city adopts policies to ensure that the timekeeping and payroll methods used are accurate and reliable.² Some counties, school districts, and towns have been using electronic time recording systems, and have implemented various control procedures.

Regardless of the type of payroll/timekeeping recording system used, all government entities should adopt policies and procedures to ensure that timekeeping and payroll methods are accurate and reliable. We encourage public entities to design and implement a system that will get as close as possible to the following basic payroll system model for employees paid on an hourly or daily basis:

1. Positive reporting systems. Employees should affirmatively attest to the hours or days they have actually worked and the dates on which they worked. This is in contrast to negative payroll systems, where employees report only periods they were absent from work using vacation or sick leave.
2. Two attestations of the hours worked. One attestation should be by the employee, and the other should be by the employee's supervisor or other appropriate person.
3. Policies and procedures that:
 - Verify the identity of those involved in the submission and approval of payroll claims; and

¹ See Minn. Stat. § 412.271, subd. 2(b).

² See Minn. Stat. § 412.271, subd. 2(c).

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- Provide for the education of users in the safeguarding and protection of their electronic/digital identities.
4. Affirmation of carry-forward amounts. During each payroll cycle, employees should affirm the carried-forward amounts of vacation or sick leave they have accrued. We discourage the carrying forward of “flex-time” from one time period to another. However, if this is allowed, the accrual of accumulated flex-time should also be acknowledged by the employee.
 5. Hold-back period. There should be a delay or hold-back period between the end of the pay period and the date of payment to allow for review, approval, and processing.

The adoption of this basic payroll system will increase the accuracy and reliability of timekeeping and payroll procedures used by local units of government.