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September 23, 2016

**TRANSMITTED VIA U.S. MAIL
AND ELECTRONIC MAIL**

The Honorable Steve Johnson
Mayor, City of Kasson
401 5th Street SE
Kasson, MN 55944-2204

Dear Mayor Johnson,

The Office of the State Auditor (OSA) received a concern about the City of Kasson (City). Specifically, the concern involved the removal of a park shelter at the west end of Veterans Memorial Park (Park Shelter) by a City Council Member. The Park Shelter subsequently was stored on the City Council Member's property. In response to the concern, the OSA reviewed City records (including video recordings of City Council meetings) and spoke with the City Administrator.

Background

On March 15, 2016, the City's Park Board met and discussed the deterioration of the Park Shelter and plans to replace it. The Park Board unanimously voted to accept a set of bids for the construction of a new structure to replace the Park Shelter, but the minutes of the meeting do not mention any discussion of what was to happen to the existing Park Shelter.¹

On April 27, 2016, the City Council approved the Park Board's recommendation for construction of a new shelter.² The City Council Meeting Minutes do not indicate any discussion about the disposition of the existing Park Shelter, but the North Park West Shelter Re-Bids Quotes document states, "there will be extra costs for the project for the tear down of the existing shelter."³

It was reported to the OSA that the Park Shelter was removed from the Park on the evening of May 6, 2016, and taken to a Council Member's property. During meetings of the City Council in

¹ See Kasson Park Board Meeting Minutes, March 15, 2016.

² See Kasson City Council Meeting Minutes, April 27, 2016.

³ See Kasson City Council Meeting Materials, April 27, 2016 (North Park West Shelter Re-Bids Quotes).

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May and June, discussions arose about what happened to the Park Shelter.⁴ Meeting minutes reflect that the Mayor had authorized the removal based on his understanding that the Park Shelter was going to be torn down and thrown away and “he had an offer from someone to buy it and haul it away.”⁵

Subsequently, at the City Council Meeting on June 22, 2016, the City Administrator reported that the Park Shelter had been returned to the City and that advertisements seeking bids on it would be placed.⁶ As of July 6, 2016, the City reported that it had received no bids for the Park Shelter and was planning to demolish it.

Findings and Recommendations

The concerns raised about the Park Shelter related to (1) whether the City could allow a private citizen to remove the Park Shelter rather than have it put up for sale, and (2) if the Park Shelter should have been put up for sale, what process should have been followed. Before considering these questions, however, it is important to address *who* is authorized to make decisions on behalf of the City and *how* the decisions are to be made.

In general, a city acts through its elected city council, and council members’ statutory duties (with very few exceptions) are to be performed by the city council as a whole.⁷ Individual council members, including mayors, usually do not have authority to act unilaterally on behalf of the city. In some instances, city councils may delegate certain duties. For example, Minnesota law allows a city with a population of more than 1,000 to establish by ordinance a park board.⁸ Here, the City Council had done just that, giving the Park Board “full, absolute and exclusive control over all property set aside for park purposes, subject only to Council budgetary consent.”⁹ Just as is true for the City Council, actions of the Park Board are to be carried out by the Park Board as a whole; no individual Park Board member can act unilaterally.

Actions of a governing body typically must take place in a meeting open to the public.¹⁰ The Minnesota Supreme Court has stated that this serves three purposes: prohibiting public bodies from hiding their decision-making process from the public; allowing the public to be informed; and allowing the public to present its views.¹¹

⁴ See May 17, 2016 Kasson Park Board Meeting Video, 49:30 to 49:52. *YouTube*, uploaded May 20, 2016, www.youtube.com/watch?v=jnNmebX_g3w&feature=youtu.be, and June 8, 2016 Kasson City Council Meeting Video, 3:29 to 12:18. *YouTube*, uploaded June 8, 2016, www.youtube.com/watch?v=ba2LE4j4JIY&feature=youtu.be

⁵ See Kasson City Council Meeting Minutes, May 25, 2016.

⁶ See Kasson City Council Meeting Minutes, June 22, 2016.

⁷ See League of Minnesota Cities, Handbook for Minnesota Cities Ch. 6, at 16 (2015).

⁸ Minn. Stat. § 412.501.

⁹ Kasson, Minn. Code of Ordinances § 92.22(A) (2015).

¹⁰ See Minn. Stat. §§ 13D.01, 412.191 and League of Minnesota Cities Information Memo, “Meetings of City Councils.”

¹¹ *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994).

Although both the City Council and the Park Board discussed the Park Shelter and the plans to replace it, neither discussed nor decided as a whole in advance how to dispose of it. Those decisions and discussions occurred between the Mayor and the Parks and Recreation Director, outside of official meetings. Had that question been taken up and decided upon in an open meeting, either of the Park Board or the City Council, much of the confusion and concern likely could have been avoided. At a minimum, concerns could have been aired, considered, and addressed up front.

Minnesota law generally provides that a city may dispose of city property as the city's interests require.¹² This general authority is limited by statutory prohibitions that apply in certain circumstances and procedures that must be followed in others.¹³ With these limits in mind, if the City Council or the Park Board determined that the Park Shelter was scrap without value and it was in the City's interest to allow a private citizen to remove it, Minnesota law likely would permit the City to make that decision.¹⁴

If the City Council or the Park Board determined that the property did have value and it was in the City's interest to sell the Park Shelter, the City had a resolution in place at the time that addressed how such a sale should be conducted: "the City Council approves the sale of surplus property which shall be advertised for sale to the highest sealed bid."¹⁵

Based on the OSA's review, it does not appear that the City made any such determination at the time.

The OSA recommends that in the future, the City Council conduct its duties and exercise its authority as a whole. In addition, documenting decisions in meeting minutes along with the reasons for reaching a decision can be helpful in answering questions about the action taken.¹⁶

The OSA understands that the City is in the process of drafting a policy on the disposition of surplus property, which should be a good step in avoiding concerns similar to those that arose concerning the Park Shelter. Since some of the controversy regarding the Park Shelter related to whether it had value or not, the City may find it useful to include in its policy a process for determining the value of the property.

¹² See Minn. Stat. § 412.211.

¹³ See, e.g., Minn. Stat. §§ 471.87 -89 (conflicts of interest – general prohibitions, exceptions, procedures); 471.345 (Uniform Municipal Contracting Law); 15.054 (required procedures for sale of surplus property to employees; prohibition of sale to officers).

¹⁴ Even when City property is thought to be scrap, a sale process that provides for public notice followed by bidding or an auction offers the dual benefit of giving interested citizens the opportunity to participate and creating a record of the value (or lack of value) of the property.

¹⁵ Kasson City Council Resolution 4.1-15, Approving the Sale of Public Property.

¹⁶ For additional information about meeting minutes, see the OSA Statement of Position on Meeting Minutes, available on the OSA's website under "Statements of Position."

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I hope that you find this information helpful. If you have any questions about this matter, please feel free to contact me at 651-296-4717 or by email at Mark.Kerr@osa.state.mn.us.

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr
Special Investigations Director

cc:

The Honorable Coy Borgstrom, City Council Member
The Honorable Doug Buck, City Council Member
The Honorable Charles Coleman, City Council Member
The Honorable Dan Egger, City Council Member
Ms. Theresa Coleman, City Administrator
Ms. Linda Rappe, City Clerk