



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

March 8, 2018

The Honorable William Bodin
Chair, Welch Town Board of Supervisors
12626 267th Street
Cannon Falls, Minnesota 55009

Dear Chair Bodin:

This letter follows up on our December 15, 2017, letter to you, in which the Office of the State Auditor raised concerns regarding apparent Town of Welch (Town) violations of Minnesota law regarding contracting (failure to contract using formal bidding), and conflict of interest (contracting with a company owned by a Town supervisor).¹ We asked the Town to respond, which it did in a letter from the Town Attorney, dated January 5, 2018.²

The Town Attorney's letter acknowledged the problems and noted that the Town, in its January 4, 2018, meeting had taken steps to address the violations. The OSA confirmed the Town Board's actions by reviewing the official minutes of the January 4, 2018, Town of Welch Board of Supervisor's Meeting.³ The minutes state:

The Chairperson recognized Darwin Fox, who wanted to make a special announcement. Mr. Fox said he was resigning his position on the Board, effective immediately. In his short address, he stated that after a fair and extensive review by the Office of the State Auditor, it was found there was a conflict of interest. This conflict was caused by administrative errors.

The remaining members of the Board accepted the resignation by resolution and cancelled the current contract with Luhman Construction. The remaining Town Board members and Clerk voted to nominate Aaron Bauer to the Board, completing the remaining two months of the Darwin Fox term. Clerk's note: *It was later discovered that MN Statutes require the vacated position serve until the 2019 election cycle as the appointment was made after the Notice of Election had*

¹ M. Kerr December 15, 2017, letter to W. Bodin, attached as Attachment A.

² E. Hanson January 5, 2018, letter to M. Kerr, attached as Attachment B. The OSA appreciates Mr. Hanson's prompt and thorough response.

³ Welch Township Board Minutes of Meeting, January 4, 2018, attached as Attachment C.

been sent to the County. The Board then discussed and adopted a short term contract with Luhmans for the period of January 4 through May 31, 2018 (motion made by Aaron Bauer, seconded by Dan Bauer.). There was a brief discussion of whether the Township should pay Luhman Construction for the December road maintenance. Since this is work authorized in the past, it was felt the invoice should be paid. The attorney agreed. It was noted an advertisement for sealed road bids has been sent to the Red Wing Republican Eagle for publication as soon as possible. Bids are to be opened in the February meeting. The current advertisement does not state a time period. Mr. Slingsby is to attempt to add the period of contract (May 31, 2018 to May 31, 2020) to the ad. (Clerk's Note: *The ad was to run for two weeks. The first week had already been sent to the press. The period of the contract will be added to the second week's copy.*)

We acknowledge this action by the Town Board, and with this acknowledgement we are closing our file. As required by Minn. Stat. § 6.51, we will file a copy of this letter, including attachments, with the Goodhue County Attorney.⁴

We remain available to provide you with additional assistance in this matter, should you need it. You can contact me at (651) 296-4717 or mark.kerr@osa.state.mn.us. If you are unable to reach me, feel free to contact Nichole Bjornrud, CPA, CFE, at (651) 282-2750.

Sincerely,

/s/ Mark F. Kerr

Mark Kerr, JD, CFE
Special Investigations Director
(651) 296-4717

Enclosures

cc: The Honorable Aaron Bauer, Town Board Supervisor
The Honorable Dan Bauer, Town Board Supervisor
The Honorable Ken Slingsby, Town Clerk
The Honorable Joan Slingsby, Town Treasurer
Einar Hanson, Town Attorney

⁴ See Minn. Stat. § 6.51 ("If such report disclose malfeasance, misfeasance, or nonfeasance in office, the state auditor shall file such copy with the county attorney of the county in which the administrative offices of the political subdivision are located, and the county attorney shall institute such proceedings as the law and the public interest require.").

ATTACHMENT A

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR



REBECCA OTTO
STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

December 15, 2017

The Honorable William Bodin
Chair, Welch Town Board of Supervisors
12626 267th Street
Cannon Falls, Minnesota 55009

Dear Chair Bodin:

The Office of the State Auditor (OSA) received concerns about the Town of Welch (Town). Based on those concerns, the OSA conducted a review of the Town's road maintenance contracting procedures. During the review, the OSA contacted the Town Clerk and reviewed copies of Town documents. This review raised several questions about the Town's compliance with Minnesota Law.

This letter summarizes information obtained by the OSA and presents outstanding questions to which responses are needed from the Town.

Background

For years, the Town has been involved in a quote-based purchasing arrangement with Luhman's Construction Co. of Red Wing (Luhman's Construction), a Business Corporation in which one of the Town Board Supervisors apparently has an ownership interest.¹ The Town provided the OSA with a copy of a "QUOTE" from Luhman's Construction on which the Town Board Supervisor is referred to as the "SALES REP."² This quote, effective for the three-year period June 1, 2015, to May 31, 2018, sets unit prices for a list of road-maintenance-related items including: graders, dozers, loaders, backhoes, attachments, trucks, scrapers, Mott's mowers, labor, and class 5 crushed rock.³ The quote states "Maintenance of the township roads to include: Road grading, road surfacing, ditching, snow removal, dust & weed control, mowing, and other work as requested per the township board."⁴

¹ See Secretary of State Filing for Luhman's Construction Co. of Red Wing.

² See Quote for Welch Township from Luhman's Construction Co. of Red Wing for the Season June 1, 2015, to May 31, 2018.

³ *Id.*

⁴ *Id.*

Pursuant to the quote-based purchasing arrangement, Luhman's Construction issued monthly invoices to the Town for the road maintenance items and services provided. The OSA obtained these invoices for the period January 2016, through December 2016, which totaled \$202,384.18.⁵

Based on the foregoing information, the OSA asks the Town to respond regarding the following issues.

Minnesota's Contracting Laws

The Uniform Municipal Contracting Law, Minn. Stat. § 471.345, establishes dollar thresholds that determine whether municipalities, including Towns, shall or may enter into contracts on the basis of competitive bids, quotations, or purchase or sale in the open market.

The framework established by the Uniform Municipal Contracting Law applies to each "contract," defined as "an agreement entered into by a municipality for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property."⁶

Generally, the following thresholds apply:

If the amount of the contract is estimated to exceed \$100,000, a town must make the contract by soliciting bids by giving ten days public notice.⁷

If the amount of the contract is estimated to exceed \$25,000 but not to exceed \$100,000, a town may make the contract either upon sealed bids or by direct negotiation, by obtaining two or more quotations when possible, and without advertising for bids.⁸

If the amount of the contract is estimated to be \$25,000 or less, a town can make the contract either upon quotation or in the open market.⁹

As noted above, invoices submitted to the Town by Luhman's Construction under the quote-based purchasing arrangement for 2016 totaled \$202,384.18, far in excess of the \$100,000 threshold for formal bidding.¹⁰ Therefore, based on the information provided by the Town, it appears that the quote-based purchasing arrangement between the Town

⁵ See Luhman's Construction Invoices No. 2044 to 2055.

⁶ Minn. Stat. § 471.345, subd. 2.

⁷ Minn. Stat. § 471.345, subd. 3 (Dollar threshold); Minn. Stat. § 365.37, subd. 3 (Ten days public notice).

⁸ Minn. Stat. § 471.345, subd. 4.

⁹ Minn. Stat. § 471.345, subd. 5.

¹⁰ See Luhman's Construction Invoices No. 2044 to 2055.

and Luhman's Construction should have instead been made through a formal solicitation of bids as required by Minn. Stat. § 471.345, subd. 3.

The OSA is requesting a written explanation from the Town outlining its consideration of Minnesota's Uniform Municipal Contracting Law in entering into the quote-based purchasing arrangement with Luhman's Construction, specifically addressing whether the Town has complied with applicable Minnesota law, and how it plans to comply in the future. The Town may want to consult with its attorney on this matter.

Conflicts of Interest

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."¹¹ Abstaining from voting on the contract does not negate a conflict of interest.¹² Also, the Attorney General has opined that in general a conflict exists in a contract with a municipal governing board member's employer if it is contemplated that the governing board member is to supervise the work on behalf of the employer.¹³

The Minnesota Attorney General's Office has taken the position that whether an officer has a personal financial interest in or will personally benefit financially from a contract is a matter that involves questions of fact that are appropriately determined by the governing body.¹⁴ Therefore, when contracting with a town officer, the town board should examine all the circumstances in each transaction to determine whether the conflict of interest exists.¹⁵

Because the general rule is so strict, the legislature has created limited exceptions, found in Minn. Stat. § 471.88, that permit interests that would otherwise be prohibited.

If a conflict is found to exist, the contract is only permitted if one of the specific exceptions provided in Minn. Stat. § 471.88 applies and all of the statutory requirements associated with the exception are followed. These safeguards assure the taxpayers that the town's contracting process is open and in the town's best interests.

¹¹ 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").

¹² *See, e.g.*, Ops. Att'y Gen. 90e-6 (June 15, 1988), and 90-E-5 (November 13, 1969).

¹³ Op. Att'y Gen. 90-A-1 (Sept. 21, 1955).

¹⁴ *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).

¹⁵ *See, e.g.*, Ops. Att'y Gen. (July 30, 1940), and (July 14, 1939).

The Honorable William Bodin
Town of Welch
December 15, 2017
Page 4

The OSA requests a follow-up written explanation from the Town, outlining its consideration of Minn. Stat. §§ 365.37, and 471.87- .89, on whether an impermissible conflict of interest exists due to the quote-based purchasing arrangement with an interested town supervisor. Again, the Town may want to consult with its attorney on this matter.

Additional information on conflicts of interest is available on the Minnesota Association of Townships' (MAT) website, www.mntownships.org.¹⁶

If you have any questions, please feel free to contact me.

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr
Special Investigations Director
Office of the State Auditor
(651) 296-4717

cc: The Honorable Darwin Fox, Town Board Supervisor
The Honorable Dan Bauer, Town Board Supervisor
The Honorable Ken Slingsby, Town Clerk
The Honorable Joan Slingsby, Town Treasurer

¹⁶ See MAT's Information Library Document No. C6000 - Statutory Conflicts of Interest Contracting with your own Town.

STROBEL & HANSON, P.A.

ATTORNEYS at LAW

Einar E. Hanson

ehanson@strobelhanson.com
- Admitted in MN and WI
- Civil Trial Specialist, certified by the
Minnesota State Bar Association

Jonathan A. Edin

jedin@strobelhanson.com
- Admitted in MN, WI, IA, CA

Benjamin J. Kirk

bkirk@strobelhanson.com
- Admitted in MN

Nathaniel J. Weimer

nweimer@strobelhanson.com
- Admitted in MN

January 5, 2018

Mark F. Kerr
Special Investigations Director
Office of the State Auditor
525 Park Street, Suite 500
St. Paul, MN 55103-2139

Re: Township of Welch

Dear Mr. Kerr:

I write in response to your letter of December 15, 2017, as counsel for the Township of Welch. The Township has carefully reviewed the analysis you have provided through your letter. As I explain below, the violations you note were inadvertent by the Township. It has now taken the curative steps necessary to bring its contracting practices into compliance with the law.

While this may have already been identified to you in your review of the background facts, the Township of Welch has contracted with Luhman's Construction for road maintenance work for many years prior to its most recent contract of 2015-2018 which you address in your letter (the "Contract"), and prior to when Darwin Fox, a Township supervisor, acquired an ownership interest in Luhman's Construction.

In letting the Contract, the Township had no intent to violate municipal contracting laws. I am advised that, while Luhman's Construction did bring in its quote in a sealed envelope for the June 2015-May 31, 2018 contract, notice of the contract being let was not published to give proper public notice. Through its informal contacts, the Township believed that other contractors lacked interest in bidding, and, with the previous contract expiring, the Township failed to address the renewal sufficiently in advance of the expiration of the previous contract to publish notice prior to the expiration. This does not excuse the violation of the applicable contracting laws for the Contract, but does support that the failure to correctly let the Contract was not intentional.

Similarly, Mr. Fox did not intend to violate the conflict of interest laws. Rather, the minutes of the Township reflect a lack of understanding of what was necessary to properly comply with them. On many occasions, Mr. Fox abstained from voting on issues that he believed would cause a conflict of interest with regard to road work. For instance, on one occasion, he provided an affidavit of disclosure to the Board of his financial interest in Luhman's Construction, which apparently was with the belief that this would excuse the conflict. Again, I

Mark F. Kerr
January 5, 2018
Page 2

provide this information not to say that the conflict of interest statutes were not apparently violated by Mr. Fox, but that, under the circumstances, the violation was inadvertent.

The Board of Supervisors took steps last night to correct these violations. Mr. Fox has resigned from the Board of Supervisors of Welch Township; a new supervisor was appointed. Welch Township declared the Contract to be void. It is re-letting the Contract for the remainder of its term by sealed bid in accordance with Minn. Stat. §471.345, with bid opening to be at the next Township meeting at the beginning of February. Because winter conditions will require immediate road work, however, the Township is purchasing on the open market road services in an amount under \$25,000 from Luhman's Construction at the unit prices of the Contract for the month of January, until the new contract on sealed bid has been let.

I hope you agree that this sufficiently addresses the issues you raised in your letter. Please give me a call if you wish to discuss this further. Thanks.

Sincerely yours,

STROBEL & HANSON, P.A.



Einar E. Hanson

EEH/clb

cc: Board of Supervisors (via email only)
Ken Slingsby, Town Clerk (via email only)

STROBEL & **H**ANSON, P.A.

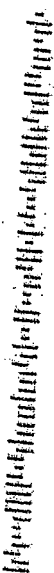
Tulgren Square Building
502 Second Street, Suite 301
Hudson, WI 54016

RECEIVED
JAN 09 2018
OFFICE OF THE STATE AUDITOR

Mark F. Kerr
Special Investigations Director
Office of the State Auditor
525 Park Street, Suite 500
St. Paul, MN 55103-2139



55103-2139



Welch Township Board Minutes of Meeting

January 4, 2018 page 1

The meeting was called to order by Chairperson William Bodin at 7:00 P.M. Supervisors Dan Bauer and Darwin Fox were also present. Treasurer Joan Slingsby and Clerk Ken Slingsby were present. The minutes of the December 2017 meeting which were previously sent to the Town Board members were not read. The minutes were approved as written on a motion made by Darwin Fox, seconded by Dan Bauer. Joan Slingsby read the Treasurer's report. Dan Bauer made a motion to accept the Treasurer's report as written. Darwin Fox seconded.

The Chairperson recognized Darwin Fox, who wanted to make a special announcement. Mr. Fox said he was resigning his position on the Board, effective immediately. In his short address, he stated that after a fair and extensive review by the Office of the State Auditor, it was found there was a conflict of interest. This conflict was caused by administrative errors.

The remaining members of the Board accepted the resignation by resolution and cancelled the current contract with Luhman Construction. The remaining Town Board members and Clerk voted to nominate Aaron Bauer to the Board, completing the remaining two months of the Darwin Fox term. Clerk's note: *It was later discovered that MN Statutes require the vacated position serve until the 2019 election cycle as the appointment was made after the Notice of Election had been sent to the County.* The Board then discussed and adopted a short term contract with Luhmans for the period of January 4 through May 31, 2018 (motion made by Aaron Bauer, seconded by Dan Bauer.). There was a brief discussion of whether the Township should pay Luhman Construction for the December road maintenance. Since this is work authorized in the past, it was felt the invoice should be paid. The attorney agreed. It was noted an advertisement for sealed road bids has been sent to the Red Wing Republican Eagle for publication as soon as possible. Bids are to be opened in the February meeting. The current advertisement does not state a time period. Mr. Slingsby is to attempt to add the period of contract (May 31, 2018 to May 31, 2020) to the ad. (Clerk's Note: *The ad was to run for two weeks. The first week had already been sent to the press. The period of the contract will be added to the second week's copy.*)

BUILDING PERMIT REQUESTS

Name	Location	Declared Value	Twp. Fee
Description Bryon Lange/James Good Remodel Bleu Dog Cafe	Village of Welch	\$5,000	\$25.00

OTHER BUSINESS

County Commissioner Ron Allen was recognized. He stated the County would not raise taxes. The sales tax would not increase in the County as local businesses did not support the move. We can assume the idea will resurface at a later date.

Einar Hanson, Attorney, described the forms he provided to dissolve the Welch Sewer Cooperative and sale of the property from the Cooperative to the Township. The members of the Cooperative are to meet and agree this is the path they want to take, sign the papers, and present them to the Town Board in a future meeting.

Einar Hanson stated he had not heard back from Bolton-Meck regarding questions and concerns about the Tribal Master Plan details outlined in a recent letter to the Township received in December.

Welch Township Board Minutes of Meeting

January 4, 2018 page 2

William Bodin made a motion for the Treasurer to establish a new checking account for the SSD for the Village of Welch. Dan Bauer seconded the motion.

Dan Bauer made a motion to pay current bills. William Bodin seconded.

Check

To Order of:.....Description.....Amount

DEPOSITS

Deposits moved to February to better align with the Treasurer.

CHECKS

5751	Strobel & Hanson.....	Legal advice-Elder Care.....	\$ 150.00
5752	Strobel & Hanson.....	Legal Advice-SSD Welch.....	2,146.74
5753	void.....	void.....	0.00
5754	PERA.....	4th Qtr Payment.....	90.00
5755	Forum Communications.....	Notice of Hearing for SSD.....	292.50
5756	Joan Slingsby.....	Meetings.....	47.50
5757	Levi Dahling.....	Lawn mowing at Town Hall.....	335.00
5758	Forum Communications.....	Request for road bids.....	165.60
5759	Ferrellgas.....	Tank Rent.....	45.00
5760	Ken Slingsby.....	Meetings.....	47.50
5761	William Bodin.....	Meetings.....	47.50
5762	Goodhue Co. Assn Twps.....	Annual Dues.....	827.12
5763	Luhman Construction.....	Dec. road maint.....	7,333.70
5764	Dan Bauer.....	Meetings.....	47.50
		TOTAL CHECKS.....	\$ 11,575.66
		TOTAL DEPOSITS.....	\$ 0
		ENDING BALANCE.....	\$ 408,625.61

The meeting was adjourned at 8:25 P.M.

GUESTS

Steve Sweney
Larry Gustafson
Al & Cindy Johnson
Randy & Lisa Peine
Ron Allen
Cheryl Fox
Andy Jenson
Unreadable signature

Aaron Bauer
Barb Nelson
Brian Lange
Debbie Olson
Bob Luhman
Einar Hanson
Tom Ryan

Welch Township Board Minutes of Meeting

January 4, 2018 page 3

Minutes Accepted

[Signature], Chairperson

In my presence on this date, I acknowledge the above signature on this document:

Ken Slingsby, Notary *Jan 4, 2018*, Date

ATTACHMENTS

