



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

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June 18, 2009

The Honorable Michael Ebnet  
Chair, Minden Town Board  
1800 - 35<sup>th</sup> Ave NE  
Sauk Rapids, MN 56379

The Honorable Henry Oehrlein  
Supervisor, Minden Town Board  
3425 Golden Spike Road  
Sauk Rapids, MN 56379

The Honorable Steve Simones  
Supervisor, Minden Town Board  
7415 - 35<sup>th</sup> Street NE  
Sauk Rapids, MN 56379

Dear Minden Town Board,

The Office of the State Auditor received a number of concerns regarding the Township of Minden ("Town"). Many of these concerns related to issues involving driveways, roads, the timeliness and wisdom of Town decisions, and the demeanor of Town Board supervisors. Governance issues and policy decisions are generally outside the scope of our authority. More specifically, this Office does not have oversight for town decisions regarding town roads or driveways. Similarly, this Office does not have the authority to review governance issues or policy decisions made by a town board. These sorts of issues are best left to the voters to resolve during town elections.

The Office of the State Auditor has the authority to review financial matters involving local units of government. Two of the concerns we received involved financial matters. Specifically, we received concerns regarding the Town's expenditures for legal services and the Town's delay in depositing checks. We limited our review to these two issues.

### **Town Expenditures for Legal Services**

It was alleged that a former Township Supervisor, Michelle Johnson, contacted the Town's attorney without Town Board ("Board") approval and may have discussed matters that were not related to Town business. It was further alleged that the Town incurred excessive legal fees with no measurable benefit.<sup>1</sup>

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<sup>1</sup> See Letter from Concerned Citizens of Minden Township to Representative Dan Severson, dated February 20, 2009. Ms. Johnson is no longer a Town supervisor.

The town board is a town's governing body. Town boards have the authority to hire attorneys for town business.<sup>2</sup> While a town may work with the Minnesota Association of Townships, a town may also hire its own attorney.<sup>3</sup> The town board also has the authority, and the responsibility, to review and approve claims presented for payment.<sup>4</sup>

Some towns designate a particular supervisor to fill specific duties of the town board.<sup>5</sup> If the particular supervisor commits town funds while fulfilling those duties, the supervisor runs the risk that the town board will disagree. In those situations, the supervisor may become personally liable for the payments.<sup>6</sup>

The Office of the State Auditor requested copies of the legal bills received by the Town for the time period of March 2007 through February 2009, the claims lists containing the legal bills presented to the Town Board for review and approval, and the Town Board meeting minutes at which the claims were reviewed for payment. We received and reviewed all but three months of the requested legal bills, the claims lists for January 2008 through May 2009, and the Town Board meeting minutes for meetings held on September 16, 2008, December 9, 2008, January 13, 2009, and March 24, 2009.<sup>7</sup>

The legal bills we reviewed were detailed and itemized.<sup>8</sup> From the itemizations contained on the bills, it appears that the legal work performed was related to Town business. Among other issues, the legal work related to annexation, roads, driveways, a feedlot moratorium, the duties of the town clerk, the content of meeting minutes, and zoning issues. More importantly, it appears that the Town Board approved all of the claims presented for legal fees. The minutes we reviewed showed that motions were passed to approve the monthly claims list. The monthly claims lists contained the legal bills. In 2008, the claims lists were signed by the Town Board supervisors.<sup>9</sup>

The Town Board was in the best position to determine the need for and the relevancy of the legal bills. This Office is unable to determine that the legal services were not related to Town business.

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<sup>2</sup> See Minn. Stat. § 366.01, subd. 7.

<sup>3</sup> The payment of annual dues to the Minnesota Association of Townships is specifically authorized in Minn. Stat. § 366.01, subd. 3.

<sup>4</sup> See Minn. Stat. §§ 366.01, subd. 1, and 367.18.

<sup>5</sup> Perhaps the most common example is the designation of a particular supervisor as the "road supervisor."

<sup>6</sup> If a supervisor purchases items without town board authorization, the items may be returned.

<sup>7</sup> The Office of the State Auditor did not receive legal bills for August and September of 2007 and January of 2008.

<sup>8</sup> The itemization of claims presented to a town for payment is required by Minn. Stat. §§ 366.20 and 366.21.

<sup>9</sup> The claims lists for June and December 2008 contained the signatures of two Town Board supervisors. The remaining 2008 claims lists contained the signatures of all three Town Board supervisors. The 2009 claims lists did not contain the supervisors' signatures.

According to the Town Clerk, the Town designated former Supervisor Johnson to be the Town's contact person with the Town Attorney.<sup>10</sup> We were provided with a copy of a letter the Town received from the Town Attorney stating he voided charges for a telephone conversation about Town business that he had with a supervisor who was not the Town's designated point of contact.<sup>11</sup> We also noted that, according to the unofficial minutes of the September 16, 2008, Town Board meeting, the Town Attorney requested that all future requests or questions be submitted in writing. According to the unofficial minutes, the Town Attorney stated he would then respond to the requests/questions in writing to avoid any appearance of impropriety.

If the Town Board felt that Supervisor Johnson's contacts with the Town's attorney were not appropriate, the Town Board could have refused to approve the expenditures or restricted the authorization it had previously granted to Supervisor Johnson.<sup>12</sup> The Town Board did not do so. As a result, the Town is liable for the claims approved by the Town Board.

If Town residents believe the Town is spending too much on legal fees, or on any other type of expenditure, they need to bring their concerns to the Town Board. If the Town Board is not sufficiently responsive to their concerns, the voters can make their feelings known at the next Town election.

It is our understanding that the Town adopted a new policy in order to reduce future concerns regarding legal fees. Under the new policy a specific Supervisor was given the authority to contact the Town attorney.<sup>13</sup> The Town Clerk told us that the Supervisor's authority to contact the attorney could only be exercised after the supervisor had first contacted the Minnesota Association of Townships. However, no such limitation is contained in the March 24, 2009, Town Board meeting minutes. The Town Clerk told us that the Town Board decides as a whole when the Supervisor should seek legal guidance. Again, no such limitation is contained in the March 24, 2009, Town Board meeting minutes.

It is not uncommon for a town to designate a specific person to be the contact person with the town's attorney. The designation is often an attempt by the town to limit the legal fees that could be incurred if each town supervisor individually contacted the town attorney, potentially asking the same questions. It is also not uncommon for town boards to place limitations on the types of matters that the designated supervisor may bring to

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<sup>10</sup> The Office of the State Auditor was provided with unofficial minutes from the Town Board's meeting on September 16, 2008, reflecting a motion that Supervisor Johnson was to work with the Town Attorney. We were not provided with prior meeting minutes at which Supervisor Johnson was designated as the contact person.

<sup>11</sup> See Letter to Minden Township Secretary from Andrew D. Hultgren, dated July 14, 2008.

<sup>12</sup> Requiring requests for legal advice to be submitted in writing is an example of such a restriction.

<sup>13</sup> See Town Board Meeting Minutes for March 24, 2009, page 4.

the town attorney, once again in an effort to control legal fees. Any such limitation should be contained in the town's meeting minutes. Once the authority to contact the town's attorney is delegated to a specific person, the town board remains responsible for monitoring that the delegation is being used appropriately. Only contacts with an attorney that are related to town business may be approved by the town board.

The Office of the State Auditor recommends that the Town review and memorialize in the Town Board meeting minutes the procedures to be used by the Town when seeking legal advice.

### **Delay in Deposit of Town Checks**

We received a concern that in September of 2006, the Town received a check made payable to the Town from the City of Sauk Rapids for property taxes stemming from the annexation proceedings, but the check was not deposited until May of 2007.<sup>14</sup> The Town confirmed that it delayed the deposit of the check. According to the Town, the deposit was delayed because the amount of the check was in dispute. We also received a copy of a City of Sauk Rapids check dated January 9, 2008, payable to the Town that appears to have not been deposited until May 15, 2008.<sup>15</sup>

The Office of the State Auditor recommends that all future deposits be made in a timely manner so the Town obtains interest on the balance and reduces the risk the checks may be lost or stolen. If a dispute exists regarding the amount of a check written to the Town, we still recommend that the check be deposited in a timely manner; any dispute should be documented in writing and resolved separately.

### **Town Board Meeting Minutes**

Meeting minutes serve as the official record of a town's meetings. During our review, we noticed that the Town Board has, on at least one occasion, failed to approve an official copy of the Town Board's meeting minutes.<sup>16</sup> We were informed that the failure to approve the minutes was due to conflicting opinions regarding the content of the minutes. We are also concerned that we did not receive a complete set of the Town Board meeting minutes.

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<sup>14</sup> We obtained a copy of City of Sauk Rapids check number 76453 for \$2,480.40, dated September 8, 2006. It appears the check was not deposited until May 14, 2007.

<sup>15</sup> We received a copy of City of Sauk Rapids check number 80155 for \$1,342.18, dated January 9, 2008. It appears the check was not deposited until May 15, 2008.

<sup>16</sup> The Minden Township Meeting Minutes dated September 16, 2008, sent to the Office of the State Auditor were marked as unofficial. Town Clerk Spiczka confirmed over the telephone on May 26, 2009, that she and other members of the Board were in dispute over the content of the minutes and that the Town Board failed to approve the minutes of the September 16, 2008, meeting. From the December 9, 2008, Town Board meeting minutes, it appears that minutes for Town Board meetings held on June 10, 2008, August 12, 2008, September 16, 2008, and October 14, 2008 were also "unapproved."

Minnesota Statutes § 15.17 provides that towns “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.” In addition, all meeting minutes must include the information required by Minnesota Statutes § 13D.01, also known as the “Open Meeting Law.”<sup>17</sup> Specifically, the minutes must include the individual votes of each member of the governing body on any action other than the “payments of judgments, claims, and amounts fixed by statute.”<sup>18</sup>

Beyond these statutory requirements, the decision regarding how elaborate or extensive the minutes should be is within the town board’s discretion. Meeting minutes should not be cluttered with unnecessary detail and should not reflect the clerk’s opinion on things that were said or done at the meeting. If there is a dispute between the town clerk and the town board over the minutes, the Minnesota Attorney General has stated that “the town clerk must defer to the reasonable discretion of the town board with respect to the scope and content of the record (minutes) of its official actions, provided such record will otherwise comply with the above-cited statutory requirements and there is no dispute between the clerk and the board as to the accuracy of the information therein.”<sup>19</sup> A copy of the Minnesota Attorney General’s opinion on this topic is enclosed.

The required information about the votes of the governing body must be maintained in a journal that is open to the public.<sup>20</sup> Most towns meet this requirement by maintaining a copy of the town board’s meeting minutes at the town hall.

The Office of the State Auditor recommends that the Town make and preserve an accurate record of the Town’s official activities. Specifically, we recommend that a complete set of the Town Board meeting minutes be maintained at the Town Hall for review by members of the public. We recommend that a copy of the claims list considered at the Town Board meetings be attached to the meeting minutes. We further recommend that the meeting minutes reference the amount of the claims list considered at the meeting, and record how each supervisor voted on the payment of the claims contained on the list.<sup>21</sup> Copies of our Statements of Position on meeting minutes and the maintenance of town records are enclosed to provide the Town with additional guidance on these issues.<sup>22</sup>

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<sup>17</sup> The Information Policy Analysis Division (“IPAD”) of the Minnesota Department of Administration has the authority to review alleged Open Meeting Law violations. IPAD charges individuals a \$200 fee for providing an Open Meeting Law advisory opinion. Additional information about the Open Meeting Law is available on IPAD’s website: <http://www.ipad.state.mn.us/opinions/index.html>.

<sup>18</sup> See Minn. Stat. § 13D.01, subd. 4.

<sup>19</sup> Op. Att’y Gen. 851-C (March 5, 1992).

<sup>20</sup> See Minn. Stat. § 13D.01, subd. 5.

<sup>21</sup> Of the meeting minutes we reviewed, only the September 16, 2008, minutes referenced the amount of the claims list that was approved by the Town Board.

<sup>22</sup> The Statements of Position are also available on our website at:

[http://www.auditor.state.mn.us/other/Statements/meetingMinutes\\_0710\\_statement.pdf](http://www.auditor.state.mn.us/other/Statements/meetingMinutes_0710_statement.pdf) (minutes) and

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### **Conclusion**

We hope that the recommendations contained in this letter will help the Town provide greater transparency for Town activities. If you have any questions or concerns regarding this letter, please feel free to contact me at 651-297-5853.

Sincerely,

*/s/ Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel

Enclosures

cc: Jeanette Spiczka, Town Clerk  
Esther Ebnet, Town Treasurer  
The Honorable Dan Severson, Minnesota House of Representatives