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October 17, 2016

The Honorable Brian Wittenhoeft
Mayor, City of Georgetown
100 Probsfield Street
Georgetown, Minnesota 56546

Dear Mayor Wittenhoeft:

The Office of the State Auditor (OSA) received concerns about the City of Georgetown (City). In response to those concerns, the OSA completed a review of the City's bank statements from January 1, 2016, through June 30, 2016, and meeting minutes from January 1, 2015, through June 30, 2016. During this review, the OSA found that several of the City's checks did not contain the statutorily required number of signatures, the City did not follow the requirements of Minnesota's conflict of interest law, and certain required information was not included in the City Council's meeting minutes. This letter will provide the City with recommendations to bring the City into compliance with Minnesota law.

Background

The City is a statutory city with a population of approximately 84. The City has a five-member City Council, consisting of the Mayor, Clerk, and three Council Members. The City also has an elected Treasurer. The City Council meets monthly for its regularly scheduled Council meetings.

City Check Signatures

The OSA reviewed the City's check images as provided in its monthly bank statements and found that many of the City's checks, including those written to the City Clerk, contained only the signature of the City Clerk.¹ Others contained the signature of the City Clerk and the Treasurer, but not the Mayor.

¹ According to the City, the City has one checking account. The City Clerk, Treasurer and Mayor are authorized as signatories on the account.

Under Minnesota law, no city check shall be issued until the related claim for payment has been audited and allowed by the city council, except for checks issued “for the payment of judgments, salaries and wages previously fixed by the council or by statute, principal and interest on obligations, rent and other fixed charges, the exact amount of which has been previously determined by contract authorized by the council.”²

Minnesota law requires city checks to be signed by the mayor, the city clerk, and the treasurer.³ As a general rule, a check must not be issued until the claim to which the check relates has “been audited and allowed by the council.”⁴ Cities with governing boards that meet monthly have 35 days from the date of receipt to pay claims.⁵ The signatures of the mayor and clerk are normally obtained at the city council meeting in which the payments are approved, and once these two signatures are obtained, the treasurer signs the checks.

Minnesota law provides two exceptions to this general rule regarding check issuance:

Exception 1: Minnesota law provides for a process by which a city council may adopt a resolution to delegate its authority to pay certain claims to an administrative official.⁶ However, “a city that does not prepare annual audited financial statements which have been attested to by an independent certified public accountant, public accountant, or the state auditor” may not use this exception.⁷ The City does not prepare annually audited financial statements. As a result, this exception does not apply, and the City may not delegate the payment of claims to the City Clerk.

Exception 2: When deferring payment of a claim would result in a loss to the city, Minnesota law provides for the immediate payment of claims based on contract if “at least a majority of all the members of the council” endorse the itemized claim.⁸ In these instances, the claim must be acted upon formally “at the next council meeting in the same manner as if it had not been paid.”⁹ Prior payment does not remove the right of the council or taxpayer to challenge the validity of the claim.¹⁰ The claim payments reviewed by the OSA did not fit within this exception either.

² Minn. Stat. § 412.271, subd. 1.

³ See Minn. Stat. § 412.271, subs. 1 and 3 (“No disbursement of city funds, including funds of any municipal liquor dispensary operated by the city, shall be made except by an order drawn by the mayor and clerk upon the treasurer.” “Each order shall be so drawn that when signed by the treasurer in an appropriate space, it becomes a check on the city depository.”).

⁴ See Minn. Stat. § 412.271, subd. 1.

⁵ See Minn. Stat. § 471.425, subd. 2(a).

⁶ See Minn. Stat. § 412.271, subd. 8.

⁷ *Id.* In addition, the Law requires (1) the city implement “internal accounting and administrative control procedures to ensure the proper disbursement of public funds,” and (2) a list of all claims paid under the established procedures be “presented to the city council for informational purposes at the next regularly scheduled meeting after payment of the claim.”

⁸ See Minn. Stat. § 412.271, subd. 4.

⁹ *Id.*

¹⁰ *Id.*

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The OSA knows of no authority for the City to have issued checks without approval of the City Council and the signatures required by law. The OSA recommends that in the future, the City obtain approval for claim payments from the Council and the necessary signatures for all City checks, in compliance with Minnesota law.¹¹

For additional guidance on paying city claims, a copy of the League of Minnesota Cities' (LMC) Information Memo on Procedures for Paying City Claims is enclosed.¹²

Conflicts of Interest

The OSA reviewed City Council meeting minutes and found approval of several payments for mowing services provided by a City Council Member.¹³ The December 14, 2015, City Council meeting minutes indicate that a City Council Member and the City Clerk would continue to do the lawn care and mowing "until a later date to be discussed."¹⁴ At the May 2, 2016, City Council meeting, the Mayor reported receiving two proposals for the City's 2016 seasonal mowing, one from the first City Council Member and the City Clerk, and one from the City Treasurer and her spouse, a different City Council Member.¹⁵ According to the minutes, the Mayor and a City Council Member who did not submit a proposal "received the bids" and "made the decision" to give the 2016 seasonal contract to the City Council Member and City Clerk.¹⁶ Based on the minutes, it appears there was no City Council vote on the issue.

Under the general conflict of interest provisions of Minn. Stat. § 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."¹⁷ Because the general rule is so strict, the legislature has created a number of exceptions, which are found in Minn. Stat. § 471.88. Under one exception to this

¹¹ Under appropriate circumstances, Minnesota law provides other ways for a city to pay expenses. See, for example, the enclosed OSA Statements of Position on Petty Cash (Imprest) Funds and on Credit Card Use and Policies (both also available on the OSA website, www.auditor.state.mn.us).

¹² The Information Memo is also available on LMC's website, www.lmc.org. The City may also want to review Chapter 23 (Expenditures, Purchasing, and Contracts) in LMC's Handbook for Minnesota Cities, available on LMC's website.

¹³ The City Council approved payments of \$7,862.78 for mowing by the City Council Member from January 1, 2015, through June 30, 2016.

¹⁴ See the December 14, 2015, City Council meeting minutes. This is stated in the "Clerk's Report" section of the minutes, which do not indicate a motion or a vote of the City Council.

¹⁵ See the May 2, 2016, City Council meeting minutes. The OSA obtained the proposals. The written proposal from the City Clerk did not mention the first City Council Member; the second proposal was from the second City Council Member's lawn care company.

¹⁶ See the May 2, 2016, City Council meeting minutes.

¹⁷ A public officer who violates this provision is guilty of a gross misdemeanor. See Minn. Stat. § 471.87.

statute, a city council, “by unanimous vote, may contract for goods or services with an interested officer” if the contract is one “for which competitive bids are not required by law.”¹⁸ To use this broad exception, however, the contract price must be “as low as, or lower than, the price at which the commodity or services could be obtained from other sources” and the city and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89.¹⁹ This section requires the city council to “authorize the contract in advance of its performance by adopting a **resolution** setting out the essential facts and determining that the contract price is as low as, or lower than, the price at which the commodity or services could be obtained elsewhere.”²⁰ In addition, before claims are paid on the contract, the interested officer must file with the city clerk an **affidavit** stating:

- (a) the name of the officer and the office held by the officer;
- (b) an itemization of the commodity or services furnished;
- (c) the contract price;
- (d) the reasonable value;
- (e) the interest of the officer in the contract; and
- (f) that to the best of the officer's knowledge and belief, the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.²¹

A sample of the required resolution and affidavit are available on the League of Minnesota Cities’ website, www.lmc.org.²²

The Minnesota Attorney General’s Office has taken the position that whether an officer has a conflict of interest in a contract is a matter that involves questions of fact appropriately determined by the governing body.²³ Therefore, when contracting with the spouse of a city officer or a business in which a city officer has an interest, the city council should determine from all the circumstances whether a conflict of interest exists.²⁴ If a conflict of interest is found to exist in a contract for goods or services and the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources, the city must follow the statutorily required resolution and affidavit procedures.

¹⁸ See Minn. Stat. § 471.88, subs. 1 and 5. Generally, under Minn. Stat. § 471.345, competitive (sealed) bids are not required unless the amount of the contract is estimated to be over \$100,000. For contracts estimated to cost over \$25,000 but not more than \$100,000, the contract may be made either upon sealed bids or by direct negotiations (by obtaining two or more quotations when possible).

¹⁹ See Minn. Stat. § 471.89, subd. 3.

²⁰ See Minn. Stat. § 471.89, subd. 2 (emphasis added).

²¹ See Minn. Stat. § 471.89, subd. 3 (emphasis added).

²² Additional guidance on conflicts of interest is available in the League of Minnesota Cities’ information memo on Official Conflict of Interest. A model resolution and a model affidavit are provided on pages 37-40 of the memo.

²³ 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).

²⁴ See, e.g., Ops. Att’y Gen. (July 30, 1940) and (July 14, 1939).

We recommend that the City Council's conflict of interest determinations be recorded in the City Council meeting minutes. When the City Council determines that a conflict of interest exists, we recommend that the required resolutions be adopted and the required affidavits be obtained if the City is contracting for goods or services that are not subject to competitive bidding.²⁵ This process should be followed by the City for any payments made to its Council members for services, including payments for cleaning services, reading meters, and repairing City facilities.²⁶

Meeting Minutes

During its review of the City Council meeting minutes, the OSA found that while the minutes generally report the approval of a Clerk's report and include a list of "City Bills," the minutes do not report the claims approved by the City Council, or the votes of each City Council member on the claims presented.²⁷

Under Minnesota's "Open Meeting" law, city council minutes must include the individual votes of each member of the city council on any action, including each appropriation of money, other than "payments of judgements, claims, and amounts fixed by statute."²⁸ In addition, the minutes should include the subject matter of each motion, the persons making and seconding each motion, the roll call vote on each motion, and whether defeated or adopted.²⁹ Finally, Minnesota law requires all city officers to "make and preserve all records necessary to a full and accurate knowledge of their official activities."³⁰

The OSA recommends that the City Council create meeting minutes that conform to Minnesota law, and contain information sufficient to provide a full and accurate knowledge of the City Council's activities. If the City presents a list of claims to the City Council for approval, it is a best practice for each Council member to sign the list. For further guidance on meeting minutes, the OSA has enclosed a copy of our Statement of Position on Meeting Minutes, also available on our website at www.auditor.state.mn.us.

²⁵ Due to the dollar value, competitive bidding was not required for the noted contracts. Under Minnesota law, the contracts could be awarded either upon quotation or in the open market. *See* Minn. Stat. § 471.345, subd. 5. Similarly, employment contracts are generally not subject to the competitive bidding laws.

²⁶ During the time period reviewed by the OSA, the City Clerk was paid \$75 per month for cleaning services, and a Council Member was paid \$315 for reading meters and \$100 for toilet repair and dispenser install.

²⁷ The Clerk's report presented at the City Council meetings notes that "all regular monthly bills have been paid."

²⁸ Minn. Stat. §§ 13D.01, subd. 4.

²⁹ Minn. Stat. § 331A.01, subd. 6. We recommend that the list of claims include the City check number for each payment.

³⁰ Minn. Stat. § 15.17.

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If you have any questions, or if the OSA can provide you with additional assistance, please feel free to contact me at 651-296-4717 or Mark.Kerr@osa.state.mn.us.

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr
Special Investigations Director

Enclosures

cc. The Honorable Zebulen Dickey, City Council Member
The Honorable Earl Nowacki, City Council Member
The Honorable Trevor Sorenson, City Council Member
The Honorable Tammi Sather, City Clerk
Ms. Crystal Dickey, City Treasurer
Mr. John T. Shockley, City Attorney
The Honorable Brian J. Melton, Clay County Attorney



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Statement of Position Meeting Minutes

Minnesota law requires all public authorities and political entities to “make and preserve all records necessary to a full and accurate knowledge of their official activities.”¹ That is, the law requires that meeting minutes be created and maintained. Auditors review the minutes of a governing body when performing financial and compliance audits. Minutes are reviewed to determine if actions taken at the meeting meet statutory requirements. Consequently, the Office of the State Auditor receives questions concerning what items must or should be included in meeting minutes.

Minutes may be defined as a record of the “proceedings” of a governing body.² Minnesota law defines the term “proceedings” (and, therefore, the contents of the record or minutes of the “proceedings”) to include at minimum:

- the subject matter of a motion;
- the persons making and seconding a motion;
- the roll call vote on a motion;
- the character of resolutions or ordinances offered, including a brief description of their subject matter; and
- whether the motion to approve a resolution or ordinance was defeated or adopted.³

Similarly, Minnesota’s “Open Meeting” law requires that minutes include the individual votes of each member of the governing body on any action, including each appropriation of money other than “payments of judgments, claims, and amounts fixed by statute.”⁴

¹ Minn. Stat. § 15.17.

² Various statutes that refer to taking or publishing minutes use the term “proceedings” or “official proceedings.” *See, e.g.*, Minn. Stat. §§ 384.09 (counties); 412.151, subd. 1 (statutory cities); 367.11(1) (towns); and 123B.09, subd. 10 (school districts).

³ *See* Minn. Stat. § 331A.01, subd. 6. The League of Minnesota Cities has also compiled a list of items required in meeting minutes in their information memo titled “Meetings of City Councils,” at http://www.lmc.org/media/document/1/meetings_of_city_councils.pdf?inline=true.

⁴ Minn. Stat. § 13D.01, subd. 4.

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Revised: July 2012

2007-1024

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

Beyond these statutory requirements, the decision regarding how elaborate or extensive the minutes should be is within a governing body's discretion.⁵ The amount of detail which is appropriate for inclusion in the minutes is likely to vary, depending on the nature of the proceedings and the subject matter involved. The minutes need not record the discussions of the members and others, or information relating to the process by which a decision is made. Moreover, the minutes should not be cluttered with unnecessary detail that could hamper efforts to review or otherwise use the minutes at a later date. In addition, the minutes should never reflect the clerk's or secretary's opinion on anything said or done.

Nevertheless, there will be instances where it would be wise for the governing body to include in the minutes information in addition to what is required to satisfy the minimum statutory requirements. For example, a governing body's reasons for reaching a particular decision may be important for defending a challenge to the action taken. In that circumstance, the minutes should include all findings of fact, conclusions, and reasons for conclusions so that an entity may defend its actions. Including this additional detail should protect the board against claims that it acted arbitrarily or capriciously in making its decision.

The Office of the State Auditor often reviews meeting minutes and recommends that meeting minutes include the following information in addition to the statutory requirements:

- type of meeting (regular, special, adjourned regular, adjourned special, recessed, or emergency);
- type of group that is meeting (*i.e.*, the governing body or a committee);
- date and place the meeting was held;
- the time the meeting was called to order;
- approval of minutes of the previous meeting, with any corrections noted;
- identity of parties to whom contracts were awarded;
- abstentions from voting due to a conflict and the member's name and reason for abstention;
- reasons the governing body awarded a particular contract to a bidder other than the lowest bidder;
- granting of variances and special use permits;
- approval of hourly rates paid for services provided, mileage rates, meal reimbursement amounts, and per diem amounts;
- a listing of all bills (including per diems) allowed or approved for payment, noting the recipient, purpose and amount;
- a list of all transfers of funds;
- appointments of representatives to committees or outside organizations;
- reports of the officers;

⁵ Charter cities may have adopted additional meeting minute requirements in their charters.

- authorizations and directions to invest excess funds, and information on investment redemptions and maturities; and
- the time the meeting concluded.

The Office of the State Auditor recommends that the minutes be signed by the clerk or secretary.

Meeting minutes also should be approved by the governing body, usually at the next meeting. The minutes should be signed and dated by a designated member of the governing body to indicate that they are the official meeting minutes.⁶ The approved minutes are the official record of the proceeding.

Audio or video recordings of meetings are not meeting minutes and are not a substitute for meeting minutes.⁷

⁶ For some entities, Minnesota law specifies who must sign meeting minutes. *See, e.g.*, Minn. Stat. § 365.55 (requiring the minutes of town meetings to be signed by “the clerk of the meeting and the moderator”).

⁷ With certain exceptions, however, a governing body must electronically record all closed meetings at its own expense. *See* Minn. Stat. § 13D.05, subd. 1(d).



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Statement of Position Petty Cash (Imprest) Funds

By law, school districts, towns, counties, and cities are allowed to establish petty cash (imprest) funds.¹ These funds are cash funds with currency in the form of coins and bills, not separate checking accounts. Using an “imprest system,” you can only spend what you have in the fund and can only be reimbursed if you have receipts. Petty cash funds are allowed for the payment of claims if “it is impractical” to pay the claims in any other manner. The law prohibits their use for salaries or personal expenses of an officer or employee.

Each petty cash fund must be established by the governing body, and a “custodian” of the fund must be appointed. Meeting minutes should document the creation and amount of any petty cash fund. Periodically, the governing body should review these funds to determine whether they are still necessary. The designated petty cash custodian is personally responsible for the cash entrusted to the fund.

Disbursements from Petty Cash

There are two permissible methods of disbursing petty cash funds: 1) the reimbursement method, and 2) the advance method.

When using the reimbursement method, an individual purchases an authorized item with personal funds, provides the original detailed vendor receipt to the petty cash custodian, and is then reimbursed from the petty cash fund. This method is less complicated than the advance method. There is no risk of loss of petty cash funds due to the purchaser failing to buy the item and/or failing to submit supporting documentation for the purchase. It also allows the petty cash fund to be replenished more quickly than with the advance method. For these reasons, the reimbursement method is generally preferred.

¹ Minnesota law on petty cash (imprest) funds is found at Minn. Stat. §§ 123B.11, subd. 1 (school districts), 366.01, subd. 12 (towns), 375.162, subd. 1 (counties), and 412.271, subd. 5 (cities). School districts and counties are also authorized to establish imprest funds for travel. Minn. Stat. §§ 123B.11, subd. 2 and 375.162, subd. 2. Money may be advanced to pay actual and necessary expenses for school district officers and employees traveling to attend school district meetings outside the school district, and for county officers and employees for travel related to the performance of their job duties or for attending meetings outside the county.

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When the advance method is used, the petty cash custodian advances petty cash funds to an individual for the purchase of a specific item. The custodian should document the date and the person to whom the funds were provided, the amount provided, and the purpose for the advance. The individual receiving the advance then purchases the authorized item, returning the original detailed vendor receipt and any remaining change to the petty cash custodian. Under the advance method, the custodian may need to follow-up if the individual does not return the receipt and change in a timely manner.

Replenishing the Petty Cash Fund

To replace the petty cash fund, a claim itemizing all disbursements from the petty cash fund must be presented to the governing body at its next meeting after the disbursements are made. If the governing body approves the claim, the fund's custodian should be given payment to replenish the fund. If the governing body fails to approve the claim in full, the fund's custodian is personally responsible for the difference. When replenishing petty cash funds, the total of the original receipts maintained by the custodian should match the amount of the replenishing check.

Controls over the Petty Cash Fund

Because these are cash funds, extra security precautions need to be taken to safeguard these funds. The petty cash custodian should properly secure petty cash funds in a metal lock box that is maintained in a locked desk, locked cabinet, or locked safe to which access is limited.

Reconciliations of the petty cash fund should be done by someone other than the person approving disbursements from the fund. At any time, the amount of cash on hand plus the receipts (plus any outstanding advances if the advance method of disbursement is used) should equal the amount of the approved petty cash fund. The original receipts should be maintained and filed as supporting documentation.

The governing body should consider adopting a petty cash policy. The policy could describe when petty cash funds may be used, items that may not be purchased with petty cash funds, proper petty cash documentation, and petty cash replenishing procedures.



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Statement of Position Credit Card Use and Policies

Counties, cities, towns, school districts, watershed districts, and soil and water conservation districts have authority to make purchases using credit cards issued to the public entity.¹ The statutes authorizing credit card use by public entities restrict the use of credit cards to purchases for the public entity. No personal use of the credit card is permitted.²

According to Minnesota law, credit cards should only be used by those employees and officers otherwise authorized to make purchases. If the public entity does not authorize a credit card purchase, the officer or employee who made the purchase becomes personally liable for the amount of purchase.

Purchases made with the credit card must be consistent with other state law. For example, under Minnesota law, claims presented for payment must be in writing and itemized.³ Monthly statements received from a credit card company lack sufficient detail to comply with these statutory requirements. As a result, public entities using credit cards must retain the invoices and receipts needed to support the items charged in the bill from the credit card company.⁴ Similarly, listing only the credit card company on a claims list would merely identify the method of payment. It does not identify the vendors providing the goods and services, as required by law.

The authority to use credit cards does not authorize the creation of a new form of debt for the public entity. The statutes governing the issuance of debt by a public entity add a number of restrictions to the issuance of any obligation. The credit card statutes simply authorize another method of payment. Therefore, the public entity's governing board must adopt a policy of paying off the credit card charges on a monthly basis.

¹Minn. Stat. §§ 471.382 (cities and towns); 375.171 (counties); 123B.02, subd. 23 (school districts); 103D.325, subd. 4 (watershed districts); 103C.321, subd. 6 (soil and water conservation districts).

² See, e.g., *State v. Norman*, No. A11-1721 (Minn. Ct. App. Sept. 17, 2012) (unpublished) (reimbursement of personal charges on city credit card does not negate false claim or theft by swindle charges).

³ See Minn. Stat. § 471.38, subd. 1.

⁴ If the original supporting documentation is missing, an attestation or affidavit identifying how, where, and when the money was spent, signed by the individual seeking reimbursement will suffice.

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Before implementing the use of credit cards, a public entity should adopt a comprehensive credit card policy that may include such areas as good management practices and internal control procedures.

We recommend the adoption of a comprehensive credit card policy that provides the following safeguards:

- Prohibit the use of the credit card for personal purchases;
- Identify the employees and officers who are authorized to make purchases on behalf of the public entity and are eligible to use the card;
- Identify the particular purchases that are to be made with the credit card;
- Set up a review process for all purchases made with the credit card;
- Require supporting documentation for all purchases made with the credit card;
- Restrict the total amount of charges that can be made on the credit card; and
- Obtain signed written acknowledgments of the credit card policies from all authorized card users.

Some public entities have obtained debit cards instead of or in addition to credit cards. While entities have the authority to make purchases using credit cards, the authority to use debit cards is less clear.⁵ Debit cards allow funds to be immediately withdrawn from the entity's financial account, provide fewer protections than credit cards provide, and circumvent statutory claims approval safeguards. We recommend that entities use credit cards, and not debit cards, to make purchases for the public entity.

The ability to use a credit card for small purchases in the ordinary course of business offers many advantages. However, the ability of the cardholder to make the public entity liable for an improper or illegal purchase is an inherent risk associated with credit cards. Compliance with statutory requirements, and the adoption of and adherence to a policy implementing further internal controls will greatly reduce the public entity's exposure to loss of public funds through theft or misuse of the credit card.

Additional guidance on using purchasing cards for government purchases may be found on the Government Finance Officers Association (GFOA) website at: <http://www.gfoa.org/purchasing-card-programs>.

The State of Minnesota's purchasing card and use policy is available at: <http://www.mmd.admin.state.mn.us/pdf/alpappnpolicy1.pdf>.

⁵ In contrast, cities, towns, and counties have clear authority to *accept* payment by use of debit cards. See Minn. Stat. § 471.381, subd. 2.