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State Auditor

Suite 500  
525 Park Street  
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May 20, 2025

The Honorable Mark Freiberg  
Chair, SouthWest Transit Board of Commissioners  
14405 W. 62nd St.  
Eden Prairie, MN 55346

Dear Chair Freiberg:

The Office of the State Auditor (OSA) received concerns about SouthWest Transit sponsoring a nonprofit organization's annual fundraising gala. In response to these concerns, the OSA requested information from SouthWest Transit. Based on this review, the OSA finds SouthWest Transit's event sponsorship donation to the nonprofit organization appears to be an expenditure not authorized by Minnesota law.

This letter contains the OSA's findings and recommendations to help SouthWest Transit comply with Minnesota law.<sup>1</sup>

### **Background**

SouthWest Transit is a joint powers entity formed by the Cities of Eden Prairie, Chaska, and Chanhassen to provide certain transit services in the southwest Twin Cities area.<sup>2</sup> The governing body of SouthWest Transit is a seven-person Board of Commissioners (the Board), which is composed of one elected official and one resident appointed by each city, each serving a three-year term; and one at-large representative serving a three-year term.<sup>3</sup>

In 2023, SouthWest Transit's annual expenses totaled \$15,955,823.<sup>4</sup>

SouthWest Transit reported to the OSA that, for many years, SouthWest Transit has sponsored a nonprofit organization's annual fundraiser gala, and some members of the Board routinely attend the event.

### **Minnesota Law**

Minnesota law permits two or more governmental units to "jointly or cooperatively exercise any power common to the contracting parties or any similar powers."<sup>5</sup>

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<sup>1</sup> This letter covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues or approval of any act or transaction not mentioned.

<sup>2</sup> See *Fifth Restated Joint Powers Agreement* § 2.

<sup>3</sup> See *Fifth Restated Joint Powers Agreement* § 5.

<sup>4</sup> See SouthWest Transit Annual Comprehensive Financial Report for the Fiscal Year Ended December 31, 2023.

<sup>5</sup> Minn. Stat. § 471.59, subd. 1(a).

Expenditure of public funds by a public entity, such as SouthWest Transit, requires that there be both authority and a public purpose.<sup>6</sup> A public purpose has been defined by the Minnesota Supreme Court as “such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.”<sup>7</sup>

The Minnesota Supreme Court has recognized that Minnesota municipalities have no inherent powers; they possess only powers “expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”<sup>8</sup>

#### Authority to Advertise

The Cities of Eden Prairie, Chaska, and Chanhassen are all statutory optional Plan B cities.<sup>9</sup> Minnesota law provides that the “governing body of any statutory city . . . may annually appropriate money to advertise the municipality and its resources and advantages. The money appropriated shall be used only to advertise the municipality or for cooperative programs of promotion for the area by more than one municipality and its resources and advantages.”<sup>10</sup> (Emphasis added.)

#### Authority to Donate

Under Minnesota law, donations to nonprofits, charities, or individuals generally have been deemed not to serve a public purpose.<sup>11</sup> Such donations are not permitted unless they are based upon specific statutory or charter authority. For example, the Minnesota Attorney General’s Office has issued opinions finding that cities have no authority to donate city funds to certain organizations due to a lack of specific authority.<sup>12</sup>

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<sup>6</sup> See, e.g., Op. Att’y Gen. 59a-22 (Dec. 4, 1934) (“[A] municipal council may not expend public funds for any public purposes . . . unless there is statutory or charter authority so to do, and in expending public money, municipalities are restricted to the purposes authorized by law.”); Op. Att’y Gen. 59a-22 (Nov. 23, 1966) (“Municipal funds may only be expended for public purposes of the municipality as authorized by state law or city charter.”).

<sup>7</sup> See *Visina v. Freeman*, 89 N.W.2d 635 (1958).

<sup>8</sup> See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (1966).

<sup>9</sup> See Minn. Stat. §§ 412.301-.651; <https://www.sos.mn.gov/about-minnesota/minnesota-government/county-local-government/>.

<sup>10</sup> Minn. Stat. § 469.189.

<sup>11</sup> See Office of the State Auditor’s Statement of Position on Public Expenditures: Donations and Dues, available on the OSA’s website at: [https://www.osa.state.mn.us/media/3dxbalsl/publicexpdonationsdues\\_0809\\_statement.pdf](https://www.osa.state.mn.us/media/3dxbalsl/publicexpdonationsdues_0809_statement.pdf).

<sup>12</sup> See, e.g., Op. Atty. Gen. (Aug. 19, 1941) (“The rule is that a city may appropriate public funds only when authorized by charter or statutory provision, and not prohibited by the constitution.”); Op. Atty. Gen. (May 21, 1948) (A city “cannot appropriate money to a private organization to assist in carrying on of the program of the private organization.”); Op. Att’y Gen. 59a-22 (Dec. 4, 1934) (“[U]nless expressly authorized by charter or statutory provision a municipal corporation has no authority to appropriate or give away public moneys as donations to any person, corporation or private institution not under direct control of such municipality . . .”).

As an alternative to a donation, a local government may enter into a contract with an organization to accomplish tasks that the entity is authorized to perform by statute or charter. The amount of money paid to the nonprofit should be related to the value of the services the nonprofit provides to the local government.

### **OSA Review and Findings**

SouthWest Transit reported that in 2024, as in prior years, SouthWest Transit sponsored a nonprofit's annual fundraiser gala. In exchange for a \$1,500 payment, SouthWest Transit became a Bronze Sponsor and received dinner seating for six guests, name recognition during the pre-show and event program, name placement on the event website and all pre-event communications and invitation, one social media post recognizing all Bronze Sponsors, and name recognition in the post-event e-blast, newsletter, and the annual report.

A document from the nonprofit organization's website describing levels of donations for dinner gala sponsorship opportunities for 2024, states that \$1,194 out of a \$1,500 Bronze Sponsorship is tax deductible. This indicates the nonprofit organization places a value of \$306 for the dinner seating for six and name recognitions. The remaining \$1,194 is best characterized as a donation, given its tax-deductible nature.<sup>13</sup> This demonstrates that 79.6% of the \$1,500 expenditure represents a donation to the nonprofit, while only 20.4% represents value provided in the form of dinner for 6 and the various mentions of the sponsor/donor entity's name.<sup>14</sup>

SouthWest Transit's joint powers agreement allows SouthWest Transit's Chief Executive Officer to "have general management authority over administration of all of the business and affairs of [SouthWest Transit], including, but not limited to . . . marketing and promotion of [transportation services]."<sup>15</sup>

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<sup>13</sup> When there is a charitable contribution which benefits the donor, the amount of the charitable contribution is determined by subtracting the value of the benefit to the donor from the donor's total payment. Charitable Contributions, I.R.S. Pub. No. 526 (2024), Cat. No. 15050A (Feb. 26, 2025), <https://www.irs.gov/pub/irs-pdf/p526.pdf>.

<sup>14</sup> In 2025, the nonprofit organization once again hosted its annual fundraising gala. The website where tickets for the event could be purchased stated that SouthWest Transit was a Silver Sponsor. Additionally, a LinkedIn post from SouthWest Transit indicated that Commissioners and members of the executive leadership team attended the event, and that SouthWest Transit supported the organization with a Silver Sponsorship. A document from the nonprofit organization's website describing levels of donations for dinner gala sponsorship opportunities for 2025, indicated that a Silver Sponsor received a greater degree of name recognition and advertisement, as well as four more dinner seats, than a Bronze Sponsor. The document priced a Silver Sponsorship at \$3,000, and stated that \$2,490 out of that \$3,000 price was tax deductible. This indicates the nonprofit organization places a value of \$510 for the dinner seating for ten dinner seats and name recognitions. The remaining \$2,490 is best characterized as a donation, given its tax-deductible nature.

<sup>15</sup> *Fifth Restated Joint Powers Agreement* § 7(e).

The Board adopted SouthWest Transit's 2024 budget at its December 14, 2023, meeting.<sup>16</sup> The approved budget includes \$206,000 for advertising and marketing.<sup>17</sup> SouthWest Transit's purchasing policy permits the Chief Executive Officer to approve purchases of up to \$25,000 without specific prior approval from the Board.<sup>18</sup>

SouthWest Transit expressed a belief that the sponsorship donation for the nonprofit organization's annual fundraiser dinner gala falls under the Chief Executive Officer's authority to make expenditures of up to \$25,000.

When asked about this expenditure by the OSA, SouthWest Transit asserted that members of the leadership team who attended the event communicated with Eden Prairie residents, business leaders, and community leaders, discussing with them the resources and advantages that SouthWest Transit provided to the City of Eden Prairie (and the other member cities), the resources and advantages that SouthWest Transit had in development, and the kinds of resources and advantages that those residents, business leaders, and community leaders would like to see SouthWest Transit offer in the future.

SouthWest Transit also stated that it believed that the name recognition, name placement, and social media benefits provided by the sponsorship served to advertise the resources and advantages that SouthWest Transit provided to the City of Eden Prairie, as well as to the other member cities. Thus, it appears that SouthWest Transit believes that this expenditure falls under its marketing and advertising budget.

### **Conclusion and Recommendation**

The OSA finds that the gala sponsorship donation, less the non-tax deductible \$306 for the value of the dinner and name placement, represents a donation not expressly authorized by law as required for local government donations in Minnesota. Given that the nonprofit treats the money received as a donation, and given that there was no contract for advertising or promotion entered into between the nonprofit and SouthWest Transit, we find no basis for characterizing the dollars as anything other than a donation. And because there is no express statutory or charter authority for the joint powers entity to make donations, the amount donated was not a legally permitted expenditure of public funds.

Based on the above review, the OSA recommends that SouthWest Transit not make donations unless expressly authorized by law.

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<sup>16</sup> SouthWest Transit meeting minutes, December 14, 2023.

<sup>17</sup> 2024 SouthWest Transit Budget.

<sup>18</sup> SouthWest Transit December 10, 2024, letter. See Purchasing Policy for SouthWest Transit (April 2022).

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Chair, SouthWest Transit Board of Commissioners  
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If you have questions regarding this matter, please feel free to contact me at (651) 296-4717 or [Mark.Kerr@osa.state.mn.us](mailto:Mark.Kerr@osa.state.mn.us), or Camila Laval, JD, at (651) 297-7108 or [Camila.Laval@osa.state.mn.us](mailto:Camila.Laval@osa.state.mn.us).

Sincerely,

*/s/ Mark F. Kerr*  
Mark F. Kerr, JD, CFE  
Special Investigations Director  
Office of the State Auditor  
(651) 296-4717

cc: The Honorable McKayla Hatfield, Vice Chair  
The Honorable Josh Kimber, Secretary/Treasurer  
The Honorable Jerry McDonald, Commissioner  
The Honorable Lisa Toomey, Commissioner  
The Honorable Jon Grau, Commissioner  
The Honorable Greg Leeper, At-Large Commissioner  
The Honorable Erik Perschmann, Ex-Officio Commissioner  
Erik Hansen, Chief Executive Officer  
Maria Mancilla-Diaz, Chief Administrative Officer