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May 2, 2012

The Honorable Edward Becker, Chair  
Nevis Public School District 308  
210 Pleasant St. W.  
P.O. Box 138  
Nevis, Minnesota 56467

Dear Chair Becker:

The Office of the State Auditor (“OSA”) is aware that Nevis Public School District 308 (“District”) has been reviewing the District’s policies, practices and procedures related to School Board Policy 902 - Use of School District Facilities and Equipment. The District’s review was prompted by reports in 2010 of the personal use of a District vehicle by the Superintendent, and the use of the District bus garage and tools by the School Board Chair to repair a private vehicle.<sup>1</sup>

The Superintendent informed the OSA that the policy committee is struggling to revise the policy, but no revisions have been made other than to suspend all personal use of District motorized vehicles until the policy is changed.<sup>2</sup> The Superintendent also told the OSA that the District would welcome sample policies.

This letter will compare the District’s policy, practices and procedures on the use of District facilities and equipment with a model policy and applicable legal standards. The OSA encourages the District to complete its review of the District’s policies, practices and procedures related to the use of District facilities and equipment.

## **Existing Policies**

District Policy 902 is based upon a model policy developed by the Minnesota School Boards Association and the Minnesota Association of School Administrators

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<sup>1</sup> See School Board Meeting Minutes for May 24, 2010 (discussion of School Board Chair’s use of bus garage and tools), and September 27, 2010 (letter of deficiency to be put in Superintendent’s file). According to a related news report, the Superintendent stated that District staff members have used equipment in the industrial education room, and that he and District staff members have washed private vehicles at the bus garage. Park Rapids Enterprise, *Nevis looks at board and staff use of school facilities during off-hours* (May 5, 2010).

<sup>2</sup> See School Board Meeting Minutes for September 27, 2010.

(MSBA/MASA).<sup>3</sup> Sections I, II, III, and VI of District Policy 902 and the MSBA/MASA model policy are identical. Both policies seek to encourage maximum use of school facilities and equipment for community purposes.

The model policy does not separately address the personal use of school district facilities or equipment by district officers or employees. District Policy 902 references District staff members by stating that technology equipment may only be checked out by District staff members. In addition, the District's 2011-2012 Staff Handbook states: "Staff members are not to use the school shop or equipment for personal use, unless they are enrolled in an adult course or SPECIAL AUTHORIZATION has been given by the administration. If you wish to use the facility or equipment, the proper forms must be filled out and approved by administration."<sup>4</sup>

Both the model policy and District Policy 902 require requests for use of school facilities to be made through the school district's administrative office. Unlike District Policy 902, however, the model policy requires the administration to present to the school board recommended procedures for processing and reviewing requests for the use of school facilities. Once approved by the school board, the model policy requires the procedures to become an addendum to the policy.

Similarly, District Policy 902 requires applications for the use of District equipment to be filed with the Superintendent's office. In contrast, the model policy requires the administration to:

present a procedure to the school board for review and approval regarding the type of equipment that is available for community use, the extent to which it may be utilized and the manner by which it may be scheduled for use and any charges to be made relating thereto. Upon approval of the school board, such procedure shall be an addendum to this policy.

District Policy 902 has no similar provision.

### **Legal Standards**

Generally, a school district must have authority to expend public funds. Authority may be specifically stated in a statute or implied as necessary to do something that is expressly authorized.<sup>5</sup> Furthermore, the Minnesota Attorney General's position is that non-monetary benefits to public officers and employees must be specifically authorized by law.<sup>6</sup> In addition to express or implied authority, the expenditure of public funds must be

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<sup>3</sup> A copy of the MSBA/MASA model policy is enclosed.

<sup>4</sup> Emphasis in the original. The Staff Handbook is available on the District's website.

<sup>5</sup> See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 357, 143 N.W.2d 813, 820 (1966).

<sup>6</sup> See, e.g., Ops. Att'y Gen. 359b (Oct. 24, 1989) and 161b-12 (Jan. 24, 1989).

for a “public purpose.” A public purpose has been defined by the Minnesota Supreme Court as “[s]uch 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 primary objective of the activity must not be a private interest.<sup>8</sup>

A school board has statutory authority to allow the use of school district property for community purposes if the use will not interfere with school purposes.<sup>9</sup> A school board may also impose reasonable conditions for the use of school property.<sup>10</sup> The OSA recognizes that work-related use of District facilities or equipment may include staff development and training. However, the OSA is unaware of any specific authority that would allow school board members or school district personnel to use school district facilities or equipment for non-work related purposes on any basis other than that afforded to the general public. In addition, as the District is now aware, Minnesota law expressly restricts the personal use of publicly owned vehicles.<sup>11</sup>

### **Recommendation**

The OSA encourages the District to complete its review of the District’s policies, practices and procedures related to the use of District facilities and equipment.<sup>12</sup> The School Board will need to determine how best to preserve District facilities and equipment for use by the District while encouraging maximum community use of the facilities and equipment, and complying with Minnesota law. For example, the District should decide whether the bus garage and tools should be made available to the general public for repairs on private vehicles, and whether the bus garage should be made available to the general public for washing private vehicles.

Public discussion and School Board approval of these policies, practices and procedures will encourage maximum use of District facilities and equipment for community purposes because the public will be made aware of the District’s policies, practices and procedures. The School Board’s decision should be the result of thoughtful and open deliberation, considering all the practical, legal and political implications of the

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<sup>7</sup> See *Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958).

<sup>8</sup> See *Burns v. Essling*, 156 Minn. 171, 194 N.W. 404 (1923).

<sup>9</sup> See, e.g., Minn. Stat. § 123B.51 (school board may authorize the use of schoolhouses for community purposes that will not interfere with school purposes, and may lease school district property to any person, business, or organization if the property is not needed for school purposes and the school board determines that the use of the property will not interfere with educational programs).

<sup>10</sup> See, e.g., Op. Att’y Gen. 160-m (Sept. 27, 1963) (community theatre rental).

<sup>11</sup> See Minn. Stat. § 471.666.

<sup>12</sup> Most districts have separate policies on internet and computer use. See, e.g., District Policy 524 (Internet Acceptable Use and Safety Policy).

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decision.<sup>13</sup> For additional assistance, the District may want to review policies adopted by other school districts and consult with the District's attorney.<sup>14</sup>

If you have any questions, please feel free to contact me at 651-297-5853 or [nancy.bode@osa.state.mn.us](mailto:nancy.bode@osa.state.mn.us).

Sincerely,

*/s/ Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel

Enclosure

cc. The Honorable Marvin Vredenburg, Vice Chair  
The Honorable Andrew Lindow, Treasurer  
The Honorable Gary Stennes, Clerk  
The Honorable Jeannette Dudley, Director  
The Honorable Sherman Anderson, Director  
Superintendent Steven Rassier  
Ms. Cathy Miller, Director, Legal & Policy Services,  
Minnesota School Boards Association  
Dr. Gary Amoroso, Executive Director,  
Minnesota Association of School Administrators  
Brady, Martz & Associates, P.C., District's Auditors

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<sup>13</sup> For example, the School Board should consider the liability implications of permitting general public use of specific District facilities, tools, and equipment.

<sup>14</sup> Many districts have their policies on their websites. *See, e.g.*, ISD 196 (Rosemount-Apple Valley-Eagan) policies on Use of District Equipment by Employees, Students and Volunteers (708.4AR) and Community Use of District Facilities (801.5AR); ISD 832 (Mahtomedi) Policy 902 – Use of School Facilities; ISD 2689 (Pipestone Area Schools) Building Usage Policy.

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 902

Orig. 1995

Revised: \_\_\_\_\_

Rev. 1999

## **902 USE OF SCHOOL DISTRICT FACILITIES AND EQUIPMENT**

### **I. PURPOSE**

The purpose of this policy is to provide guidelines for community use of school facilities and equipment.

### **II. GENERAL STATEMENT OF POLICY**

The school board encourages maximum use of school facilities and equipment for community purposes if, in its judgment, that use will not interfere with use for school purposes.

### **III. SCHEDULED COMMUNITY EDUCATION CLASSES AND ACTIVITIES**

- A. The school district administration shall be charged with the process of scheduling rooms and special areas for community education classes and activities planned to be offered during each session.
- B. Procedures for providing publicity, registration and collection of fees shall be the responsibility of the school district administration.
- C. Registration fees may be structured to include a pro-rata portion of costs for custodial services that may be needed.

### **IV. GENERAL COMMUNITY USE OF SCHOOL FACILITIES**

- A. The school board may authorize the use of school facilities by community groups or individuals. It may impose reasonable regulations and conditions upon the use of school facilities as it deems appropriate.
- B. Requests for use of school facilities by community groups or individuals shall be made through the school district administrative office. The administration will present recommended procedures for the processing and review of requests to the school board. Upon approval by the school board, such procedures shall be an addendum to this policy.
- C. The school board may require a rental fee for the use of school facilities. Such fee may include the cost of custodial and supervisory service if deemed necessary. It may also require a deposit or surety bond for the proper use and repair of damage to school facilities. A rental fee schedule, deposit or surety bond schedule and payment procedure shall be presented for review and approval by

the school board.

- D. When emergencies or unusual circumstances arise that necessitate rescheduling the use of school facilities, every effort will be made to find acceptable alternative meeting space.

## **V. USE OF SCHOOL EQUIPMENT**

The administration will present a procedure to the school board for review and approval regarding the type of equipment that is available for community use, the extent to which it may be utilized and the manner by which it may be scheduled for use and any charges to be made relating thereto. Upon approval of the school board, such procedure shall be an addendum to this policy.

## **VI. RULES FOR USE OF FACILITIES AND EQUIPMENT**

The school board expects members of the community who use facilities and equipment to do so with respect for school district property and an understanding of proper use. Individuals and groups shall be responsible for damage to facilities and equipment.

***Legal References:*** Minn. Stat. § 123B.51 (Schoolhouses and Sites; Access for Noncurricular Purposes)

***Cross References:*** MSBA/MASA Model Policy 801 (Equal Access to School Facilities)  
MSBA/MASA Model Policy 901 (Community Education)