



REBECCA OTTO  
STATE AUDITOR

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February 25, 2008

The Honorable James Neubert  
Chair, Town of Walcott  
4945 – 233<sup>rd</sup> Street East  
Faribault, Minnesota 55021

The Honorable Troy Karow  
Supervisor, Town of Walcott  
26235 Eaton Avenue  
Faribault, Minnesota 55021

The Honorable Wayne Maas  
Supervisor, Town of Walcott  
2560 – 265<sup>th</sup> Street East  
Faribault, Minnesota 55021

Dear Town of Walcott Board of Supervisors:

The Office of the State Auditor reviewed concerns that the Town of Walcott (“Town”) purchased a snowplow in December 2006 from the Minnesota Department of Transportation (“MnDOT”) on behalf of a private party. During our review, we also became concerned about certain purchases made by a Town Supervisor. In addition, our review raised concerns about Town Board meeting minutes.

This letter presents our findings and recommendations regarding these matters. We find that public funds were used to advance private purposes. We find that the Town had no authority to procure goods on behalf of a private party or a Town supervisor. We also find that the Town did not follow proper disbursement procedures when it issued a Town check for the snowplow purchase. Finally, we recommend that the Town consider whether more extensive meeting minutes should be maintained.

### **Background**

The Town Board is comprised of three supervisors, one of which serves as Chair.<sup>1</sup> The Town also has a Town Treasurer and a Town Clerk. The Town Board generally meets once a month. When the Town needs to pay for goods or services, it is our understanding that the Town generally uses the following procedures. A claim form is prepared at the meeting and circulated among the supervisors. If the supervisors approve payment of the claim, the supervisors sign the claim form. Town checks are then written at the meeting

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<sup>1</sup> It is our understanding that one Town Supervisor recently submitted his resignation.

for payment of the approved claims. Town checks are signed by the Town Chair, the Town Clerk and the Town Treasurer.<sup>2</sup>

### **December 2006 Snowplow Purchase<sup>3</sup>**

According to the Town meeting minutes, the Town Board met on December 12, 2006. Based upon the meeting minutes and cancelled checks, it appears that two claims were approved for payment at the December 12, 2006, meeting.<sup>4</sup> Subsequently, a Town check dated December 14, 2006, for \$10,000, was issued for the purchase of a snowplow from MnDOT.<sup>5</sup> The check was signed by the then Town Chair, the Town Clerk, and the Town Treasurer.<sup>6</sup> According to a Town claim form, the check was “audited and allowed” on December 14, 2006.<sup>7</sup> The Town Clerk and the current Town Chair informed us that the purchase of the snowplow was not approved at a Town Board meeting.<sup>8</sup> The Town Clerk informed us that he signed the December 14, 2006, check outside a Town Board meeting, at the request of the then Town Chair.<sup>9</sup>

An invoice dated December 18, 2006, confirms that the Town purchased a 1993 Ford truck from MnDOT, as well as related plow and sander units.<sup>10</sup> Two additional documents related to the purchase confirm that the snowplow was sold to the Town on December 18, 2006. However, the documents are signed “Harvey Reynolds” and “H. Reynolds.” We were informed that Harvey Reynolds was not a Town officer or employee in December 2006.<sup>11</sup> The Certificate of Title on file with the Minnesota

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<sup>2</sup> See Minn. Stat. § 367.18 (town checks to be signed by town chair, clerk and treasurer).

<sup>3</sup> Because any statute of limitations has expired, the Office of the State Auditor did not review allegations that the Town purchased a grader for \$55,758.07, for another private party, in May of 1994. It is our understanding that, as in the matter currently under review, the private party repaid the Town for the purchase.

<sup>4</sup> The Office of the State Auditor was provided with copies of two Town checks dated December 12, 2006. Both of the claims paid by the checks were referenced in the December 12, 2006, meeting minutes.

<sup>5</sup> See Town check number 3963, dated December 14, 2006, for \$10,000, payable to Commissioner of Transportation for “Plow Truck”.

<sup>6</sup> The check is signed “DuWayne Prange” as Town Treasurer, “Richard Langeslag” as Chairman, and “Benet R. Freund” as Town Clerk. A notation on the check indicates the funds were taken from “Rd & Brg”.

<sup>7</sup> The claim form is signed “Benet R. Freund” as Clerk, and “Richard Langeslag.”

<sup>8</sup> We reviewed Town meeting minutes for December 2006, and January 2007, and found no reference to the snowplow purchase. The current Town Chair was a Town Supervisor in December 2006. The former Town Chair informed us that he recalled that Harvey Reynolds came to the December 2006 meeting, and that the check for the snowplow purchase was written at the meeting. The third Town Supervisor present at the December 2006 meeting told the Office of the State Auditor that he just recently learned of the snowplow purchase – perhaps in the past 3-4 months.

<sup>9</sup> The Office of the State Auditor was unsuccessful in its attempts to contact the Town Treasurer.

<sup>10</sup> See also MnDOT “State Unit Assignment – Transfer or Trade-In” form dated December 18, 2006, showing “Direct Sale” to Town, and signed by “H. Reynolds”.

<sup>11</sup> The town hires another vendor for snowplowing services. While the Town had previously contracted with Mr. Reynolds for the spraying of weeds, Mr. Reynolds was not under contract with the Town in December 2006.

Department of Public Safety shows that MnDOT sold the vehicle to Harvey Reynolds of Faribault, Minnesota. According to the Certificate of Title, registration tax for the vehicle was paid on December 29, 2006.<sup>12</sup>

According to the Clerk's and Treasurer's Record of Receipts for fiscal year 2006, the Town deposited \$10,000 from Reynold's Services in the Town's account on December 20, 2006.

### **December 2006 Snowplow Purchase Findings and Recommendations**

Town expenditures must have a public purpose to be valid.<sup>13</sup> Town expenditures made for a private party's benefit generally are not made for a public purpose.

In addition to having a public purpose, a town's actions must be based upon statutory authority. Towns are created by statute, and generally have no authority outside the authority given by statute. We are aware of no statute that would specifically authorize a local government unit to procure goods and services on behalf of private parties.<sup>14</sup>

Generally, only a town board may make contracts on behalf of the town. Individual town board members or town officers may not enter into town contracts. The purchase of a snowplow involves a sales contract. Therefore, the snowplow purchase needed to be approved by the Town Board, not by individual Town Board members and officers. In addition, as a general matter, individual town officials cannot issue a town check until the town board has "audited and allowed" the claim.<sup>15</sup>

Under Minnesota law, a town may purchase equipment from a state agency without regard to statutory purchasing provisions.<sup>16</sup> As a result, MnDOT could sell the snowplow to the Town without complying with the Uniform Municipal Contracting Law's competitive bidding and solicitation of quotations requirements – requirements

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<sup>12</sup> A town's purchase of a snowplow for use exclusively for road maintenance is exempt from motor vehicle sales tax. *See* Minn. Stat. § 297B.03 (10).

<sup>13</sup> Minn. Const. Art. 10, §1.

<sup>14</sup> The Minnesota Attorney General's Office came to the same conclusion when looking at whether a school district could enter into an agreement with a cellular telephone provider for the benefit of school district employees who wished to purchase equipment and/or service for their personal use. *See* Letter to Steve Knutson and Michelle Kenney from Assistant Attorney General Shelley Roe (November 2, 1998).

<sup>15</sup> Minn. Stat. § 367.18 provides:

"Accounts audited and allowed, and the amount of any account voted to be allowed, at any town meeting, shall be paid by the town treasurer, on the order of the town board, signed by the chair and countersigned by the clerk. Each order shall be drawn so that when signed by the treasurer in an appropriate place, it becomes a check on the town depository. The order shall be received in payment of town taxes of the town."

<sup>16</sup> *See* Minn. Stat. § 471.64, subd. 1.

that would apply if MnDOT was selling the equipment to a private party.<sup>17</sup> In addition, a town may authorize any of its officers or employees to enter a bid on the town's behalf for the purchase of equipment from a state agency, and to make payment in full for the purchase.<sup>18</sup>

A town may also dispose of unneeded property. When unneeded property is transferred to another party, the sale is subject to the Uniform Municipal Contracting Law.<sup>19</sup>

We find that public funds were used to advance private purposes when the Town purchased the snowplow from MnDOT. We find that the Town Board did not authorize the expenditure of Town funds for the purchase of the snowplow. We find no evidence that Harvey Reynolds had authority to enter a bid for the snowplow on the Town's behalf, or to make payment in full for the purchase with the Town's funds. We also find that the Town's purchase of the snowplow, when the snowplow was actually purchased for a private party, circumvented statutory purchasing provisions.

We recommend that, in the future, Town checks be issued only after a claim has been audited and allowed by the Town Board. We recommend that, in the future, the Town refrain from purchasing items for private parties, even where the private party agrees to repay the Town in full.

### **Personal Purchases by Supervisor**

The Office of the State Auditor also became aware that a Supervisor purchased various items totaling \$75.50 from a surplus store for personal use. The items were billed to the Town. It is our understanding that the Supervisor repaid the Town for each purchase at the next Board meeting.<sup>20</sup>

Again, public funds were used to advance private purposes. We know of no authority for a town to purchase items for private parties, town employees, or town officials. We recommend that, in the future, the Town refrain from purchasing items for the personal use of private parties, Town employees, or Town officials, even where the Town is reimbursed for those purchases.

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<sup>17</sup> Under the Uniform Municipal Contracting Law, equipment contracts estimated to cost \$10,000 or less may be made either upon quotations, or in the open market; contracts estimated to cost more than \$10,000, but not to exceed \$50,000, may be made either upon sealed bids or by direct negotiation by obtaining two or more quotations when possible; and contracts estimated to cost more than \$50,000 must be made through the sealed bidding process. *See* Minn. Stat. § 471.345.

<sup>18</sup> *See* Minn. Stat. § 471.64, subd. 2.

<sup>19</sup> *See* Minn. Stat. § 471.345.

<sup>20</sup> It is our understanding that at least some of the items were only available to governmental entities, and therefore the store would only bill to the governmental unit.

### **Meeting Minutes**

During our review, the Office of the State Auditor was provided with Town meeting minutes. The minutes were handwritten notations on the Town Board meeting agenda. The minutes do not provide a listing of all bills allowed or approved for payment.

Enclosed is a copy of the Office of the State Auditor's Statement of Position on meeting minutes. We recommend that the Town consider the maintenance of more extensive meeting minutes.

### **Conclusion**

We appreciate the cooperation we received from Town officials during our review. As required by Minn. Stat. § 6.51, a copy of this letter is being provided to the Rice County Auditor and the Rice County Attorney. If you have any questions about these matters, please feel free to contact me directly at 651-297-5853.

Sincerely,

*/s/Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel  
Office of the State Auditor

Enclosure

cc. Mr. Benet Freund, Town Clerk  
Mr. DuWayne Prange, Town Treasurer  
The Honorable Paul Beaumaster, Rice County Attorney  
The Honorable Fran Windschitl, Rice County Auditor/Treasurer