**OFFICE OF THE**

**STATE AUDITOR**

**Minnesota Legal Compliance**

**Audit Guide for**

**Counties**

ORDER

Pursuant to Minn. Stat. § 6.65, I hereby prescribe the form and scope of the Minnesota Legal Compliance Audit Guide for Counties. The attached audit guide is hereby incorporated in its entirety. The audit guide consists of the following sections:

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| Page 2-1 | Conflicts of Interest, |
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| Page 3-1 | Public Indebtedness, |
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| Page 4-1 | Contracting - Bid Laws, |
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These sections will comprise the minimum procedures and audit scope for legal compliance for counties in Minnesota.

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| /s/ |
| Rebecca Otto |
| State Auditor |

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## INTRODUCTION

This Legal Compliance Audit Guide (Audit Guide) was prepared by the Office of the State Auditor pursuant to Minn. Stat. § 6.65, in consultation with representatives from the Attorney General’s Office, towns, cities, counties, school districts, and private sector public accountants. The Legal Compliance Audit Guide establishes minimum compliance guidelines for verification by auditors engaged in the process of auditing counties of the state.

This Audit Guide is divided into specific sections and presented in checklist form to assist the auditor of government units in the verification of statutory compliance. The Audit Guide is not meant to be a complete compilation of all laws affecting municipalities or a complete analysis of the laws cited throughout. The checklist is meant to act as a reference guide regarding minimum legal compliance, and municipal auditors must examine, in addition to applicable laws cited in the guide, those laws creating, granting power to, and restricting the municipal entities they are auditing.

Under each section, except for the initial question establishing the transaction covered by the topic heading and except where the explanation of a given question indicates otherwise, all questions should be answered in the affirmative. A negative answer indicates a compliance problem, and the user of the checklist is directed to the statutory section indicated on the left-hand side of the page. If after examination of the appropriate statute, the auditor using this Audit Guide is still unsure as to whether there has been legal compliance, he or she should check with legal counsel before rendering the opinion on compliance contained at the end of each section.

AUDITOR’S REPORTS ON COMPLIANCE

Chapter 6 contains 2 model reports, one of which is to be completed by the auditor following his or her completion of the appropriate compliance sections.

These reports or the language from these reports must be issued as part of the audits of the governmental entities or relief associations.

PREPARATION OF MINUTES

Auditing for legal compliance will require a review of the minutes of the County Board. In many instances, the minutes will be inadequate histories of the meetings involved. We have, therefore, deemed it appropriate to include below a discussion of minutes, so that in those instances where the minutes are substandard, auditors can provide a standard to assist clients in the future recording of meeting minutes.

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Minutes may be defined as a record of the “proceedings” of a deliberative body. Minnesota Statutes § 384.09 refers to the county auditor keeping an accurate record of the board’s “official proceedings.” The Minnesota Attorney General has used the definition of “proceedings” found at Minn. Stat. § 331A.01, subd. 6, in analyzing the clerk’s duties to take minutes. This statute states:

“Proceedings” means the substance of all official actions taken by the governing body of a political subdivision at any regular or special meeting, and at minimum includes 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 defeated or adopted.

While minutes must specifically identify the actions taken by the board, they need not record the discussions of the members and others. At a minimum, the minutes must include the information required by Minn. Stat. ch. 13D [Minnesota Open Meeting Law], unless such information is recorded elsewhere. Minn. Stat. § 13D.01, subd. 4, provides:

The votes of the members of the state agency, board, commission, or department; or of the governing body, committee, subcommittee, board, department, or commission on an action taken in a meeting required by this section to be open to the public must be recorded in a journal kept for that purpose. . . The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

In addition, subd. 5 states, “[t]he journal must be open to the public during all normal business hours where records of the public body are kept.”

The above provision requires that the individual votes of each member of the county board on “an action” be specifically recorded except for votes on “payments of judgments, claims, and amounts fixed by statute.”

Having satisfied minimum requirements, the question of how elaborate and extensive the minutes should be is largely a policy matter for determination by the particular body in the exercise of reasonable judgment and discretion. The Attorney General has explained:

...there may be circumstances in which it would be advisable for the town board to provide for the minutes to include information over and above what is necessary to satisfy minimum statutory requirements for a record of its official actions.

Op. Atty. Gen. 851-C, March 5, 1992. For example, the board’s reasons for reaching a particular decision could be crucial in defending a challenge to the action taken. The inclusion of such information may be deemed appropriate under other circumstances, such as where the body determines that the public interest warrants the award of a particular contract to a bidder other than the lowest bidder.

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Other examples might be zoning decisions, such as the granting of variances or special use permits. In any case, the amount of detail which is appropriate for inclusion in the minutes is likely to vary, depending upon the nature of the proceedings and the subject matter involved.

While the minutes of a county board should attempt to furnish relevant information over and above bare minimum requirements, they should not, at the same time, be cluttered with unnecessary detail which hampers efforts to review or otherwise utilize them at a later date. Perhaps the best standard to be applied to the preparation of minutes is the one applied by the courts to the publication of official proceedings, i.e., the minutes should be “sufficiently full to fairly set forth the proceedings.” *Ketterer v. Indep. Sch. Dist. No. 1*, 79 N.W.2d 428, 438 (Minn. 1956); *See* Op. Atty. Gen. 161-a-20, Dec. 17, 1970.

DESTRUCTION OF RECORDS

Minnesota Statutes, section 15.17, subd. 1, requires all officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, and other public authorities or political entities within the state to make and preserve all records necessary for “a full and accurate knowledge of their official activities.” The chief administrative officer is responsible for the preservation and care of the agency’s government records, which include all “written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business.” Minn. Stat. § 15.17, subd. 2. This duty not only prohibits destruction, but requires the custodian to take such steps as are necessary to protect public records from deterioration, mutilation, loss, or destruction. This statute also requires that all records must be delivered to the legal custodian’s successor upon expiration of the term of office or authority. Minn. Stat. § 15.17, subd. 3. Additional provisions regarding data practices are found in the Minnesota Government Data Practices Act, Minn. Stat., ch. 13.

For counties having problems with the storage of obsolete records, Minn. Stat. §§ 138.163‑.25 provide relief. Any person who intentionally and unlawfully removes, mutilates, destroys, conceals, alters, defaces or obliterates a public record is guilty of a misdemeanor. Minn. Stat. § 138.225.

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Unless a county adopts a records retention schedule (and notifies the Minnesota Historical Society), it may not destroy public records without the permission of the records disposition panel. Applications may be made to the State Archives Department for such permission. For instance, bids with supporting documents received by a county must be kept forever, unless the county (1) adopts the General Records Retention Schedule for Counties, in which case, the county must maintain these records for ten years, (2) adopt its own properly approved records retention schedule, or (3) receive authority to dispose of the records from the records disposition panel.

A county that wishes to adopt the General Records Retention Schedule for Counties can find information on the [State Archives website](http://www.mnhs.org/preserve/records/retentionsched.html).

For information and assistance in disposing of or transferring government records, contact:

Minnesota Historical Society

State Archives Department

345 Kellogg Boulevard West

St. Paul, Minnesota 55102-1906

(651) 259-3260

<http://www.mnhs.org/preserve/records/index.htm>

Questions about the Minnesota Government Data Practices Act should be directed to:

Minnesota Department of Administration

Information Policy Analysis Division

201 Administration Building

50 Sherburne Avenue

St. Paul, Minnesota 55155

(651) 296-6733

(800) 657-3721

<http://www.ipad.state.mn.us>

In future years, the *Minnesota Legal Compliance Audit Guide for Counties* will be updated and additional compliance sections may be added. If you have comments or suggestions with regard to future editions, please contact us at:

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