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April 11, 2017

The Honorable Sharon Zelazny
Mayor, City of Cromwell
1270 South Point Road
Cromwell, Minnesota 55726

Dear Mayor Zelazny:

The Office of the State Auditor (OSA) received concerns about certain payments by the City of Cromwell (City) to a particular City Council Member (Council Member). In response to the concerns, the OSA contacted the City Clerk/Treasurer and reviewed copies of relevant City documents.

Based upon its review, the OSA found that the City did not follow proper procedures when it wrote two checks to the Council Member to purchase equipment and software for the City's use. This letter contains the OSA's findings and recommendations to help the City comply with Minnesota law.

I. Background

In October of 2014, the City passed a motion approving a 30-day trial period of "PointOS" and a resolution to contract with the Council Member for computer support at a rate of \$30 per hour.¹ The Council Member abstained from voting on both of these matters.² The PointOS system was purchased in May 2015; and ultimately implemented by the City in or around mid-October 2016.³ Between the October 2014 decision to approve the trial period and the May 2015 actual purchase of the PointOS system, the City wrote two checks to the Council Member for PointOS items and support.

a. First Advance Check

On December 17, 2014, the City Council meeting minutes note that new computer software had been installed with a 30-day trial period.⁴ On December 31, 2014 the City wrote a check to the

¹ See October 15, 2014, City Council meeting minutes, including City Council Resolution #14.10.15. The PointOS system was a new point of sale (POS) system for the City's municipal liquor store. The City also supplied the OSA with an affidavit dated October 21, 2014, signed by the Council Member for computer services.

² See October 15, 2014, City Council meeting minutes.

³ The May 20, 2015, City Council meeting minutes report that the "PointOS was purchased on May 11th and is being installed." The City also reported that it hired a "new city IT person." See also October 19, 2016, City Council meeting minutes ("PointOS has been installed and is working good.").

⁴ See December 17, 2014, City Council meeting minutes.

Council Member for \$1,146.⁵ Upon request, the City provided the OSA an email from the Council Member dated January 12, 2015, with an “Order Summary” that listed the following items: a PointOS Starter, an additional station license and two 1-Year support plans. The document did not identify a vendor or indicate that the items had been purchased. In fact, City Council meeting minutes indicate the items were not purchased until May 11, 2015.⁶ Also on May 11, 2015, the Council Member submitted a bill “for his labor setting up and installing the PointOS system.”⁷

b. Second Advance Check

On March 4, 2015, the City wrote another check to the Council Member for \$1,985.⁸ Upon request, the City provided the OSA a copy of an undated “Order Summary,” listing the following items: a POS Station, Cash Drawer, and Printer. The document did not identify a vendor or indicate that the items had been purchased. The May 20, 2015, City Council meeting minutes report that the equipment had not yet arrived.⁹ The meeting minutes went on to indicate that “Per [Council Member] the equipment order has been canceled and he will return our money.”¹⁰ The City’s June and July 2015 meeting minutes document discussions about the Council Member’s reimbursement to the City during which the City’s attorney was consulted.¹¹ The Council Member reimbursed the City in cash on August 19, 2015.¹²

II. Analysis

The OSA knows of no authority under which a city may advance funds to a city council member for goods or services yet to be purchased. Generally, Minnesota law provides for cities to pay claims when money is owed on goods or services, and when the items for which payment is due can be itemized in the ordinary course of business, the law requires that a written, itemized claim be presented prior to payment. An undated or later-created list of items is not appropriate support for a city payment.

The OSA recommends that the City comply with Minnesota law in the future by refraining from advancing monies for purchases yet to be made and by requiring itemized claims before approving payment.

⁵ See City Check #18053.

⁶ The May 20, 2015, City Council meeting minutes report that the “PointOS was purchased on May 11th and is being installed.” The City also reported that it hired a “new city IT person.”

⁷ See May 20, 2015, City Council meeting minutes. The Council requested a more detailed invoice from the Council Member for the Council Member’s bill dated May 11, 2015 for \$300.

⁸ See City Check #18179.

⁹ See May 20, 2015, City Council meeting minutes.

¹⁰ See May 20, 2015, City Council meeting minutes.

¹¹ See June 17, 2015, and July 15, 2015, City Council meeting minutes.

¹² See City Receipt #2889 for \$2,045. The receipt documents “for computer reimburse & NSF fees NSF ck # 2843.” A prior attempt to reimburse the city had resulted in an NSF charge when the deposited item was returned as NSF. See City of Cromwell July 31, 2015, bank statement.

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Additionally, situations involving payment of City funds to city council members have the potential for conflicts of interest. The OSA previously provided guidance to the City in a letter dated June 25, 2013, on how to address potential conflicts of interest, including the resolution and affidavit process required under Minn. Stat. § 471.89. I have included a copy of that letter for your reference.

In this case, the unusual circumstances surrounding the sequence and timing of the payments to the Council Member, the delivery of the items to the City, and the return of the money advanced make it difficult to assess whether there was a potential conflict of interest.¹³ The OSA urges that in the future, however, the City be vigilant in reviewing all situations for potential conflicts of interest, with the assistance of legal counsel as needed, and in complying, when applicable, with the resolution and affidavit procedure prescribed by law.

If you have any questions about the issues raised in this letter, please feel free to contact me at 651-296-4717 or by email at Mark.Kerr@osa.state.mn.us.

Sincerely,

/s/ Mark F. Kerr

Mark F. Kerr, J.D.
Special Investigations Director

Enclosure

cc: The Honorable Raymond Lally, City Council Member
The Honorable Phil Lippo, City Council Member
The Honorable Art Vigness, City Council Member
The Honorable Warren Peters, City Council Member
Ms. LuAnn Friermuth, City Clerk/Treasurer

¹³ 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. *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).