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February 24, 2011

Missy Tibbetts Charnley
Clerk/Treasurer, City of Bena
38 County Road 8
P.O. Box 26
Bena, Minnesota 56626-0026

Dear Ms. Tibbetts Charnley:

The purpose of this letter is to confirm our conversations in early February 2011, regarding the City of Bena ("City"). Specifically, we discussed procedures for contracting with interested City officials, and City donations for holiday parties. As we discussed, the City must follow the requirements of Minn. Stat. §§ 471.87 - 471.89 in order to conduct business with the Mayor, the Acting Mayor or a City Council member who may personally financially benefit from the transaction. In addition, the City may only make donations that have a public purpose.

The Office of the State Auditor recommends that the City and Council members comply with Minnesota law in the future. This letter will provide the City with guidance for compliance. In addition, as required by Minn. Stat. § 6.50, a copy of this letter has been forwarded to the City Attorney and the Cass County Attorney.

Conflict of Interest

The City acknowledged that the City has compensated Acting Mayor/City Council Member William Tucker for snowplowing services. However, the City did not follow the requirements of Minnesota's conflict of interest law for the work performed.

Under the general conflict of interest provisions of Minnesota Statute § 471.87, "a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom."¹

Because the general rule is so strict, the legislature has created a number of exceptions, which are found in Minn. Stat. § 471.88. Under one exception to this statute, a city council, "by unanimous vote, may contract for goods or services with an interested

¹ A public officer who violates this provision is guilty of a gross misdemeanor. See Minn. Stat. § 471.87.

officer" if the contract is one "for which competitive bids are not required by law."² To use this broad exception, however, a city and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89. This section requires the city council to "authorize the contract in advance of its performance by adopting a **resolution** setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere."³

In addition, before claims are paid on the contract, the interested officer must file with the city clerk "an **affidavit** stating:

- (a) the name of the officer and the office held by the officer;
- (b) an itemization of the commodity or services furnished;
- (c) the contract price;
- (d) the reasonable value;
- (e) the interest of the officer in the contract; and
- (f) that to the best of the officer's knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources."⁴

More guidance on these requirements may be found in the League of Minnesota Cities Research Memorandum, "*Official Conflict of Interest*," at <http://www.lmc.org/page/1/resource-library.jsp>. (Type the title in the Keyword box and click on go.) The document contains a model resolution on page 39 and a model affidavit on page 41. If the City has any additional questions about contracting with an interested official, we strongly urge the City to consult with the City Attorney.

Public Purpose

This Office also reviewed the City's financial reporting forms and noticed that the City makes an annual donation to an individual who sponsors Christmas and Easter parties. An expenditure of public funds may only be made when there is specific statutory authority for the expenditure, and the expenditure is made for a public purpose. We are not aware of any statutory authority for this type of a donation, and question whether the donation would qualify as a public purpose.⁵

² See Minn. Stat. § 471.88, subs. 1 and 5. Generally, under Minn. Stat. § 471.345, competitive (sealed) bids are not required unless the amount of the contract is estimated to be over \$100,000. For contracts estimated to cost over \$25,000 but not more than \$100,000, the contract may be made either upon sealed bids or by direct negotiations (by obtaining two or more quotations when possible).

³ See Minn. Stat. § 471.89, subd. 2 (emphasis added).

⁴ See Minn. Stat. § 471.89, subd. 3 (emphasis added).

⁵ The Minnesota Attorney General's Office has issued opinions stating that cities do not have authority to donate public funds to private organizations such as 4-H Clubs, the Red Cross or the Boy Scouts.

Ms. Missy Tibbetts Charnley
Clerk/Treasurer, City of Bena
February 24, 2011
Page 3

We recommend that the City comply with Minnesota law in the future. To assist the City, we have enclosed a copy of our Office's Statement of Position on the topic of Public Expenditures: Donations and Dues, No. 2007-1017. A copy of the document is also available on our website at the following link:

http://www.auditor.state.mn.us/other/Statements/publicexpdonationsdues_0809_statement.pdf.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor
(651) 297-7108

Enclosure

cc: The Honorable William Tucker, Acting Mayor
The Honorable Randy Johnson, City Council Member
The Honorable Diana Stangel, City Council Member
The Honorable Bob Zygutis, City Council Member
The Honorable Christopher Strandlie, Cass County Attorney
Mr. John Valen, City Attorney