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August 4, 2015

The Honorable Jeff Orth
Chair, Rochester-Cascade Road Services and Maintenance Joint Powers Board
5414 Heritage Ln SW
Rochester, MN 55902

Dear Chair Orth:

The Office of the State Auditor (OSA) received a number of concerns about the Rochester-Cascade Road Services and Maintenance Joint Powers Board (Joint Powers Board). The concerns included the Town Board Supervisors being hired as employees of the Joint Powers Board, timekeeping procedures, expense reimbursements and per diem payments. This letter will provide the Joint Powers Board with guidance to enable them to comply with Minnesota law on these issues and to better safeguard its financial resources.

Background

The Joint Powers Board was created pursuant to Minn. Stat. § 471.59 when two townships agreed to “jointly own and purchase road maintenance equipment and supplies, and to jointly operate their road maintenance activities.”¹ Any contracts, including employment agreements, or purchases made by the Joint Powers Board must conform to the same requirements applied to the contracts and purchases of the Towns who are members of the Joint Powers Board.²

The Joint Powers Board is composed of two member townships: (1) the Cascade Township Board and (2) the Rochester Township Board (collectively referred to as Member Towns).³ The Cascade Town Board was a 3-member board for the period reviewed. The Rochester Town Board is a 5-member board. The Rochester Township Clerk serves as the Joint Powers Board Clerk. The Joint Powers Board employs three full-time employees and three to four part-time employees to provide road maintenance services for Member Towns.

The Joint Powers Board hired a Supervisor on the Cascade Town Board of Supervisors as a full-time employee to supervise the road and equipment maintenance staff (Road Maintenance Supervisor). The Road Maintenance Supervisor is paid an hourly rate pursuant to an oral employment agreement. His employment and compensation are reviewed annually by the Joint Powers Board.

¹ Rochester-Cascade Road Services and Maintenance Joint Powers Agreement.

² See generally Minn. Stat. § 471.59.

³ Rochester-Cascade Road Services and Maintenance Joint Powers Agreement.

The Joint Powers Board hired a Supervisor on the Rochester Town Board of Supervisors to provide maintenance services for the equipment owned by the Joint Powers Board (Equipment Maintenance Employee). The Equipment Maintenance Employee is paid an hourly rate for his services.

Conflict of Interest

Whenever a governing body hires any of its officers as employees, it's likely that a conflict of interest will arise. In this case, the Joint Powers Board hired two Town Board Supervisors from its Member Towns as Joint Powers Board employees. The Joint Powers Board may contract by unanimous vote for goods or services even though a conflict of interest exists, provided the contract does not require competitive bids and the governing body authorizes the contract in advance of its performance.⁴ The records show that the Joint Powers Board appropriately passed a resolution to address the conflict of interest matter, however, the requisite affidavits needed to support claim payments to the conflicted employees were not filed with the Joint Powers Board Clerk, pursuant to Minn. Stat. § 471.89.

Before the Joint Powers Board pays claims related to conflicted employees, in this case the paychecks of the Road Maintenance Supervisor and the Equipment Maintenance Employee, the conflicted employees should file an affidavit with each submitted claim that includes the information specified⁵ on the attached Sample Affidavit.⁶

Timekeeping Procedures

In response to concerns raised about timekeeping procedures, the OSA reviewed the Joint Powers Board timecards and employee leave balances for the 2014 calendar year. All employees of the Joint Powers Board complete timecards for hours worked. The Road Maintenance Supervisor reviews the timecards of all Joint Powers Board employees (except his own). The Road Maintenance Supervisor's timecards are reviewed by the Joint Powers Board Clerk.

The Joint Powers Board employees accrue compensation time at the rate of one and one-half hours for every hour worked beyond their regular, daily work-hour schedule. However, the personnel policy states that over-time will accrue for every hour over a 40-hour work week. Accruing compensation on a daily basis is not consistent with the procedure in the personnel policy. This practice results in compensation time being accrued at a significantly faster rate than

⁴ Minn. Stat. § 471.89, subd. 1, 2 and 5.

⁵ Minn. Stat. § 471.89, subd.3 requires the affidavit to include the following information: (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.

⁶ See Appendix D of MAT's Information Library Document no. C6000 – Statutory Conflicts of Interest Contracting with your own Town, on the Minnesota Association of Townships' (MAT) website, www.mntownships.org.

is permitted. The Road Maintenance Supervisor received an additional 73 hours of compensation time; one road maintenance employee received an additional 67 hours of compensation time; and a second road maintenance employee received an additional 33 hours of compensation time.

The OSA also observed additional payroll recordkeeping irregularities. For example, on four different occasions the Joint Powers Board Road Maintenance Supervisor used compensation time and did not deduct the time from his leave balance. These errors, which were consistently made in the Road Maintenance Supervisor's favor, were reviewed by the Joint Powers Board Clerk and not corrected. These errors amounted to 43 hours of additional compensation time for the Road Maintenance Supervisor.⁷

The Road Maintenance Supervisor submitted mileage reimbursements with no supporting documentation. Despite the lack of supporting documentation, the Board approved these claims and the Road Maintenance Supervisor was paid.

Per Diem Payments

In response to concerns that multiple per diem payments were being obtained by board members for attending the same event on the same day, the OSA obtained per diem documentation from the Olmsted County Township Officers Association (OCTOA). We also had a conversation about per diems with the Treasurer of the Township Cooperative Planning Association (TCPA). The executive board meets approximately two weeks prior to the regular bimonthly meeting of the Association to approve the agenda.⁸ The OCTOA's regular meeting is on the third Thursday of every other month. A per diem payment of \$40 per meeting is paid by the OCTOA for meetings of the executive board but not for its regular meetings. Per diems are not paid by the TCPA for any of its meetings.⁹ We compared records of per diem payments from Cascade Town with the OCTOA records. The OSA found no instances where double payments were made by OCTOA and Cascade Town for the same meeting on the same day. We did note that the Cascade Town meeting minutes or agenda do not include a discussion by the Town Supervisor attending OCTOA meetings for which a per diem was paid by Cascade Town.

Conclusion

After reviewing the reported concerns, the OSA determined that the Joint Powers Board (1) was not following the statutorily required affidavit procedure for conflicts of interest, (2) was not following its own timekeeping policy and procedures, and (3) was not requiring receipts for expense reimbursements. The OSA did not find evidence of double per diem payments to a

⁷ The OSA found additional timekeeping errors in the Road Maintenance Supervisor's favor that were reviewed by the Joint Powers Board Clerk and not corrected. For example, the Road Maintenance Supervisor, on four different occasions, used sick leave or vacation that was not deducted from his leave balance. These errors amounted to 14 hours of sick leave and 8 hours of vacation for the Road Maintenance Supervisor.

⁸ According to the OCTOA Board secretary.

⁹ According to the Treasurer of the TCPA.

member for attending a meeting. We recommend that the Joint Powers Board implement the following recommendations.

- 1) Follow all of the procedures specified in Minn. Stat. § 471.89, including obtaining the required affidavits from conflicted employees prior to approving and paying each claim.
- 2) Review its current procedures for tracking vacation, sick and compensation time leave balances to determine why errors have occurred in the past, and implement procedures to prevent these errors from occurring in the future.
- 3) Update its policies and procedures related to timekeeping, including overtime, and expense reimbursement. The policies should reflect current law and account for current practice.
- 4) Require some type of documentation, such as a mileage log that tracks odometer readings, to verify miles traveled and to provide written support for all mileage reimbursement claims.¹⁰
- 5) Cascade Town should require a report about the meetings attended by its Town Board Supervisor, representing the Town Board as a whole when the Town Board Supervisor was paid a per diem by the Town and documenting in the Town Board meeting minutes that such a discussion took place.

If you have any questions, or if we can provide the Joint Powers Board with further assistance, please feel free to contact Nichole K Bjornrud at (651) 282-2750 or by email at Nichole.Bjornrud@osa.state.mn.us.

Sincerely,

/s/ Jeff Reed
Jeff Reed, Attorney
Office of the State Auditor

Enclosures

cc: The Honorable Douglas Butler, Joint Powers Board Supervisor
The Honorable Brian Mueller, Joint Powers Board Supervisor
The Honorable Brian Braaten, Joint Powers Board Supervisor
The Honorable Art Reckinger, Joint Powers Board Supervisor
The Honorable Arlen Heathman, Joint Powers Board Supervisor
The Honorable Lenny Laures, Joint Powers Board Supervisor
The Honorable Dan Frissora, Joint Powers Board Supervisor
The Honorable Jimmy Hoss, Joint Powers Board Supervisor
The Honorable Gary Sieck, Joint Powers Board Supervisor
Mr. Gary Swenson, Joint Powers Board Clerk
Mr. Steven Wilson, Cascade Town Clerk/Treasurer

¹⁰ See the attached OSA Statement of Position on Employee Timekeeping Procedures for Employees Paid on an Hourly or Daily Basis and Avoiding Pitfalls on Monitoring Internal Controls.