



INVESTIGATIVE REPORT
Camp 5, Town of

Executive Summary

The Town of Camp 5 (Camp 5), in its annual reporting forms, reported to the Office of the State Auditor (OSA) receipts from Lodging tax. In certain years, Camp 5 also reported disbursements from the same fund. The OSA requested copies of relevant Camp 5 documents including itemized invoices paid from the Camp 5 Lodging tax fund.¹ Based upon a review of these documents, the OSA found that Camp 5 made payments to a business owned by a Camp 5 Board member that do not appear to follow Minnesota Law for the disbursement of local lodging tax, nor do they follow Minnesota's conflict of interest laws.

This report contains the OSA's findings.

Investigative Report

Background

Camp 5 has a population of 35 and is located in Saint Louis County (County). According to Camp 5 documents, the County entered into a 1991 Joint Powers Agreement with the Town of Leiding for the collection and administration of a local lodging tax in the Pelican Lake area. The County entered into the agreement on behalf of the then unorganized territories in the Pelican Lake Area, which included the area that is now Camp 5. The 1991 Joint Powers Agreement, citing Minn. Stat. §§ 469.190 and 471.59 states that the County held a public hearing and "acting as a town board, extended the establishment of a lodging tax not to exceed three percent (3%) on the gross receipts from the furnishing for consideration of lodging...." The County also agreed that the "lodging tax shall be administered by the Township of Leiding" and that "at least ninety-five percent (95%) of the gross lodging tax proceeds shall be used to fund a local convention or tourism bureau for the purpose of marketing and promoting the lodging tax area as a tourist or convention center."

In an October 10, 2008 letter to a County Commissioner, [], owners of Melgeorge's Elephant Lake Lodge and Resort (Resort), asked to pay the Resort's "lodging tax to Camp 5 Township."² In this letter, the Resort stated, "I think our lodging tax could be used to better advertise what we are specifically to our area. We have asked Camp 5 if they are interested in managing the lodging tax money and they have

¹ The Town provided Requests for Lodging Tax Money dated December 12, 2023 (\$11,487.60), May 7, 2023 (\$12,460.01), December 13, 2021 (\$4,985), April 13, 2021 (\$8,924.85), December 10, 2019 (\$7,071.64), and February 13, 2012 (\$2,018.02).

² Town of Camp 5 reporting to the OSA indicates that [] has been a member of the Town of Camp 5 Board of Supervisors during the period relevant to this matter.

indicated that they would be.” The letter does not identify what local convention or tourism bureau would receive the lodging tax proceeds from Camp 5.³

On October 29, 2008, the then Deputy County Administrator wrote an email to Camp 5 that included information he received from the then Assistant County Attorney relating to the request from the Resort. The Assistant County Attorney noted, “Now that the township is organized, it controls its own direction with regard to joint powers agreement participation....”

In 2009, Camp 5 amended the 1991 Joint Powers Agreement with the Town of Leiding to remove “the previously unorganized territory of Township 66, Range 19...” from the Agreement and to permit Camp 5 “to administrate the Lodging Tax previously collected from Township 66, Range 19 under the same conditions as defined in the original Joint Powers Agreement.”

Minnesota Law

Lodging Tax

In general, the Minnesota lodging tax statute, Minn. Stat. § 469.190, provides towns with the authority to “impose a tax of up to three percent on the gross receipts from the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, or resort....”⁴ This statute requires the town to use 95 percent of the lodging tax proceeds to fund a local convention or tourism bureau for the purpose of marketing and promoting the town as a tourist or convention center.⁵

A 1988 Attorney General letter to the City of Bemidji clarified that the statute permits the use of lodging tax funds by the government authorized to collect them and to contract with a private entity “as a method of funding a local convention or tourism bureau as authorized by Minn. Stat. § 477A.018 (1986) [repealed, now see Minn. Stat. § 469.190 (2021)]....” This letter states, “[t]he fact that a private entity will make the actual expenditures neither expands the statutory authority for the expenditures nor does it remove restrictions which would apply to the [local government] if it made the expenditures itself. The [local government] cannot accomplish indirectly by contract what it cannot do directly. Op. Atty. Gen. 733, March 19, 1974.”

Conflicts of Interest

Minnesota’s general conflict of interest statutes are Minn. Stat. §§ 471.87 to 471.89. These statutes apply to public officers who are “authorized to take part in any manner in making any sale, lease, or contract in official capacity.”⁶ Under the statutes, these public officers must not “voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.”⁷ A

³ From this letter, it appears that the Pelican Lake Resort Association served as the local convention or tourism bureau to receive the lodging tax proceeds from the Town of Leiding under the joint powers agreement.

⁴ Minn. Stat. § 469.190, Subd. 1.

⁵ Minn. Stat. § 469.190, Subds. 1, 3 (1996).

⁶ See Minn. Stat. § 471.87.

⁷ *Id.*

Town board member is a “public officer.” Whether a conflict of interest exists is a question of fact for the governing body to resolve in the first instance.⁸

An interested public officer cannot avoid a conflict under the general conflict of interest statutes by abstaining from participation in the matter creating the conflict of interest.⁹

Because the general rule is so strict, the legislature created various exceptions that allow certain contracts for goods or services if statutory criteria are met.¹⁰ For example, one exception to the general rule authorizes a governing body to contract by unanimous vote for goods or services with an interested public officer if the contract is one for which competitive bids are not required by law. Minn. Stat. § 471.88, subds. 1 and 5. To use this broad exception, however, the governing body and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89. First, the governing body must 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. Second, before claims are paid on the contract, the interested officer must file with the clerk of the governing body an affidavit providing, among other things, an itemization of the commodity or services furnished, the interest of the officer in the contract, and a statement 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. Minn. Stat. § 471.89 also describes the steps that must be taken in an emergency when the contract cannot be authorized in advance.

When a situation involving a potential conflict of interest arises, it is the governing body's responsibility to determine, based on the facts at issue, whether a conflict of interest exists.¹¹ This determination should be documented in the town board's meeting minutes.¹²

OSA Review and Findings

The OSA requested Camp 5 records for the disbursement of proceeds from its local lodging tax. Camp 5 provided records to the OSA for several requests “for Lodging Tax Money” made by the Resort, which appears to be owned by a current Camp 5 Board member.¹³ These requests summarize and request reimbursement for Resort business expenses. Camp 5 also provided copies of the Resort's business expense invoices that apparently were provided by the Resort as support for the summaries in the requests for lodging tax money.

⁸ See, e.g., Ops. Att'y Gen. 90a-1 (Oct. 7, 1976), (Aug. 25, 1955), and (Jan. 22, 1953).

⁹ See, e.g., Ops. Att'y Gen. 90 (June 9, 1994); 90e-6 (June 15, 1988). Instead, if there is a conflict of interest as described in the statute, the contract is void, without respect to whether the interested officer did or did not take part in the transaction. See, e.g., *Singewald v. Minneapolis Gas Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966).

¹⁰ See Minn. Stat. §§ 471.88; 471.881.

¹¹ See, e.g., Ops. Att'y Gen. 90a-1 (Oct. 7, 1976), (Aug. 25, 1955), and (Jan. 22, 1953).

¹² Minn. Stat. § 15.17 (Public officers “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.”).

¹³ The Town provided Requests for Lodging Tax Money dated December 12, 2023 (\$11,487.60), May 7, 2023 (\$12,460.01), December 13, 2021 (\$4,985), April 13, 2021 (\$8,924.85), December 10, 2019 (\$7,071.64), and February 13, 2012 (\$2,018.02).

The OSA reviewed the Resort's requests for lodging tax money and the supporting business expense invoices and found that:

1) Camp 5 disbursed lodging tax funds collected under Minn. Stat. § 469.190 to the Resort, which is a Resort, not a "local convention or tourism bureau" as the statute requires. As the Resort's website states:

Since its humble beginnings with a few lakeshore cabins for anglers, three generations of Melgeorges have grown the resort and created a quality, year-round adventure vacation destination. Outdoorsmen and families of all kinds frequent Melgeorge's, and some of our guests have been coming back for more than 50 years. We have many lodging choices, including eight comfortable, modern rustic inn rooms at our lodge, and ten uniquely decorated, fully-equipped cabins, new or remodeled, dotting the lakeshore along a wooded trail or tucked in the woods. Amenities include a full-service bar and restaurant, large screen satellite TVs, Wi Fi, friendly, knowledgeable staff and small gift and supply shop. Also available are pontoon and boat and motor rental, new fish house and boat launch, private docks for cabins, bait and gas pump, canoes, kiddies beach, fire pits and more! Did we mention we are open year round? Fish, hunt, hike, snowmobile, and explore miles of wilderness on your ATV. Enjoy a bonfire outside your cabin door, or spend a quiet afternoon beside the lake doing nothing at all, except listening to the loons calling.

2) It appears Camp 5 made payments to an interested public official's business, without following the procedures required in Minn. Stat. § 471.89, because it appears neither Camp 5 nor the interested public official followed the affidavit and resolution process or meet the requirements of any other exception that would allow a contract with an interested public official under Minn. Stat. § 471.88.¹⁴

Conclusion and Recommendation

Based upon its review, the OSA found that Camp 5 made payments to a business owned by a Camp 5 Board member that do not appear to follow Minnesota Law for the disbursement of local lodging tax, nor do they appear to follow Minnesota's conflict of interest laws. The OSA recommends that Camp 5 use its lodging tax money in compliance with Minnesota law. It may, of course, also consider whether it should continue to collect lodging tax in the future.

¹⁴ The OSA requested, received, and reviewed the 2023 Camp 5 Town Board meeting minutes.