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November 16, 2012

Mr. James McLaughlin
Clerk, Town of Wyanett
34894 Nacre Street, N.W.
Princeton, Minnesota 55371

Dear Clerk McLaughlin:

Thank you for providing information to the Office of the State Auditor ("OSA") regarding concerns the OSA received about the Town of Wyanett ("Town"). This letter provides the OSA's recommendations to the Town regarding possible conflicts of interest and the processing of vendor claims.

Possible Conflicts of Interest

You informed the OSA that, from time to time, the Town contracts with Wood Bros. Black Topping Inc. ("Wood Brothers"), a business owned by a Supervisor's brother.¹ In at least one instance, the Supervisor authorized Wood Brothers to perform work for the Town.² The claim for the work was approved after-the-fact by the Town Board.³

In response to the OSA's questions about a possible conflict of interest, the Supervisor's involvement with Wood Brothers was discussed at the October 9, 2012, Town Board meeting. According to the minutes of the meeting provided to the OSA, the Supervisor stated he has never had an ownership interest in any Wood Brothers business. During a subsequent conversation, you informed the OSA that the Supervisor works for the business on an as-needed basis.

Generally, a public official does not have an interest prohibited by Minnesota's conflict of interest statutes solely based on employment with a vendor.⁴ However, according to

¹ For example, in July 2012, the Town paid Wood Brothers \$4,150 for blacktop repair work (\$3,450) and clearing trees (\$700).

² In July 2012, the Supervisor apparently authorized the removal of trees downed in a storm from a road so a property owner (the Supervisor's brother) would be able to repair a roof damaged in the storm.

³ You informed the OSA that the Supervisor helped remove the trees, but you did not know whether the Supervisor was paid by Wood Brothers for the work.

⁴ See Op. Att'y Gen. 90a-1 (October 7, 1976). See also Minn. Stat. § 471.87 for the general rule: "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." Exceptions to the general rule are found in Minn. Stat. §§ 471.88 and 471.89. See also Minn. Stat. § 365.37 (conflict of interest statute for towns).

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the Minnesota Attorney General's Office, whether a conflict of interest exists is a question of fact for the governing body to resolve in the first instance.⁵ The resolution of the question should include, among other things, consideration of the nature as well as the terms and conditions of employment.⁶ In addition, a public official should not act in a supervisory capacity for his employer with respect to the performance of any contract between the employer and the public entity.⁷

In the future, when a Supervisor may have a personal financial interest in a Town contract, the OSA recommends that the Town Board determine whether a conflict of interest exists before the contract is awarded. The discussion should be memorialized in the meeting minutes to provide transparency to the public.

If the Town Board determines that a conflict of interest in the contract exists, the Town Board should determine whether an exception would allow the Town to contract with the interested business.⁸ If the Town needs additional guidance on this topic, the OSA recommends that the Town consult with the Minnesota Association of Townships or the Town's attorney.

You also informed the OSA that Town Treasurer Cathy Lundeen and her husband contract with the Town to provide mowing and brush cutting services. The Town Treasurer is an elected position, but the Town Treasurer does not vote on Town contracts or claims. As a result, it appears the mowing and brush cutting services provided to the Town by the Town Treasurer and/or her husband do not present a prohibited conflict of interest for the Treasurer.

Vendor Claims

The Town Board meeting minutes state that the Town Board approved a motion hiring the Lundeen business to provide mowing and brush cutting work in 2012.⁹ The minutes did not specify the hourly rates the Town would pay for the services. You informed the OSA that the Town did not enter into a written agreement with the business.

⁵ See Op. Att'y Gen. 90a-1 (October 7, 1976).

⁶ See Op. Att'y Gen. 90a-1 (October 7, 1976).

⁷ See Op. Att'y Gen. 90a-1 (October 7, 1976). See, e.g., *Stone v. Bevans*, 92 N.W. 520 (Minn. 1902).

⁸ For example, under Minn. Stat. § 471.89, a town may contract with an interested officer if the town board authorizes the contract in advance of its performance, and adopts a resolution that, among other things, finds the contract price to be as low as or lower than the price at which the services could be obtained elsewhere. In addition, the interested officer must submit an affidavit before a claim is paid on the contract. Additional information, including a sample resolution and sample affidavits, are available on the Minnesota Association of Townships' ("MAT") website, www.mntownships.org.

⁹ See Wyanett Township, Minutes of Township Board Meeting, March 20, 2012 (Board approved motion to "continue with the current mowing and brushing practice for 2012"). The minutes also stated that the Town would develop brushing and mowing policies and procedures for future years. *Id.*

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The OSA reviewed some of the invoices the Town received during 2012 from the Lundeen business and from Wood Brothers. The Lundeen invoices reflected a variety of hourly rates. For example, brush cutting services were billed at \$160 per hour, \$105 per hour, and \$80 per hour. In addition, some of the Lundeen and Wood Brothers invoices did not provide details about the services provided to the Town, such as the date or location of the work performed.¹⁰

To avoid potential billing disputes and to provide transparency, the OSA recommends the Town consider entering into a written contract with the Lundeen business.¹¹ A written contract will allow all parties to be fully aware of the terms of the agreement. At a minimum, the Town should memorialize in the Town Board meeting minutes the hourly rates the Town has agreed to pay a vendor for services.¹²

In addition, Minnesota law generally requires invoices to be itemized.¹³ To reduce the risk of erroneous payments and disputes over work performed, the OSA recommends the Town obtain invoices from vendors that describe the work provided to the Town, including the date and location of the work performed.

Conclusion

The Office of the State Auditor hopes the Town finds this information to be helpful. If you have any questions, please feel free to contact me at (651) 297-7108 or by email at Terrilyn.Diamond@osa.state.mn.us.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

Cc: The Honorable Thomas Murray, Town Board Chair
The Honorable Dennis Haubenschild, Town Board Supervisor
The Honorable Travis Wood, Town Board Supervisor
Ms. Cathy Lundeen, Town Treasurer

¹⁰ For example, a Wood Brothers invoice dated June 28, 2012, described the services provided as “Blacktop patch.” Another Wood Brothers invoice dated May 20, 2012, described the services provided as “Placed class 5 (shoulder).” An email dated July 8, 2012, from the Lundeen business billed the Town for, among other services, “6 hours of brush clean up from winds” and “Mow ditches 31 hours.”

¹¹ Sample contracts for services and a sample mowing services contract are available on MAT’s website, www.mntownships.org (Document Nos. C5000A and C5200).

¹² For further guidance on meeting minutes, the Town may want to review the OSA’s Statement of Position on Meeting Minutes, available on our website, www.auditor.state.mn.us.

¹³ See Minn. Stat. § 471.38, subd. 1.