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January 9, 2012

The Honorable Roger Volk
Chair, Sandstone Town Board
26356 E Fork Road
Sandstone, MN 55072

The Honorable Keith Carlson
Supervisor, Sandstone Town Board
41488 Rocky C Road
Sandstone, MN 55072

The Honorable David Koland
Supervisor, Sandstone Town Board
39824 Koland Road
Sandstone, MN 55072

Dear Sandstone Town Board:

The Office of the State Auditor (“OSA”) received concerns about personal use of equipment owned by the Town of Sandstone (“Town”). Specifically, our Office understands that the Town has a verbal agreement with Eugene Kroeschel to operate the Town’s road grader and has given him authorization to grade and snowplow his private driveway using the Town’s equipment. This letter contains our recommendations to bring the Town into compliance with Minnesota law.

The Town Clerk informed the OSA that the Town owns a road grader and, for several years, has hired Eugene Kroeschel to operate it.¹ Mr. Kroeschel grades roads, hauls gravel and plows snow for the Town.² According to the Clerk, the Town pays Mr. Kroeschel an hourly rate for his services, which includes the cost of fuel and minor equipment repairs.³ The Town Clerk informed the OSA that the Town Board verbally authorized Mr. Kroeschel to grade or snowplow his private driveway in order to test the Town equipment before operating it on public roads. The Town does not have a written contract with Mr. Kroeschel.

¹ The Town Clerk informed the OSA that the Town uses another grader operator when Eugene Kroeschel is not available.

² The Town Clerk informed the OSA that Mr. Kroeschel uses the Town’s dump truck to tow his skid steer vehicle and trailer to the gravel pit in order to load gravel for the Town.

³ The Town pays equipment operators \$19.00 per hour. See Sandstone Township Board Meeting Minutes (April 7, 2011). The Town Clerk explained that the Town does not own any buildings and, as a result, the road grader is stored on property owned by Mr. Kroeschel or the Town Board Supervisors.

Generally, a town must have authority to make an expenditure of public funds. A town has the authority to remove snow from private property, but only upon payment by the property owner of the cost of the snow removal.⁴ However, the OSA is not aware of any statutory authority that would allow a town to grade gravel on private property. In addition, all town expenditures and the use of town equipment must have a “public purpose.”⁵ The Minnesota Supreme Court has generally defined a “public purpose” as something that is directly related to the function of government and benefits the community as a body. As a result, the use of town equipment for a private party’s benefit or for personal use does not qualify as a public purpose.

We recommend that the Town consider adopting a policy that restricts the personal use of any Town property or equipment. In addition, we recommend that the Town obtain sufficient documentation from Mr. Kroeschel and any other operator of Town equipment to establish that the equipment was used exclusively for public purposes.⁶

Finally, we recommend that the Town enter into a written agreement with Mr. Kroeschel regarding the services he is providing to the Town. A written contract identifies the significant terms of the agreement for both parties, including the services to be performed, storage arrangements, limits on the use of Town equipment, and conditions for payment. A written contract may also limit the Town’s exposure to the risk of damages. Sample road contracts are available on the Minnesota Association of Townships’ (“MAT”) website at www.mntownships.org.⁷ The Town may want to consult with its Town Attorney or with MAT for guidance on implementing these recommendations.

Conclusion

The recommendations contained in this letter will help the Town comply with Minnesota law. Please let us know how the Town resolves these issues. Specifically, please provide the Office of the State Auditor with a copy of:

- Any policy adopted by the Town Board regarding the private use of Town equipment; and
- Any written contract entered into by the Town and Mr. Kroeschel regarding grading, gravel hauling and/or snowplowing services.

Please also provide us with copies of the Town Board meeting minutes related to these items.

⁴ See Minn. Stat. § 160.21, subd. 2.

⁵ See Minn. Const. Art. 10, § 1.

⁶ For example, some towns require operators of town equipment to maintain a log showing when and where the equipment was used.

⁷ See MAT Document Nos. C5000A and C5000B.

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If you have any questions or concerns regarding our recommendations, please feel free to contact me directly at (651) 297-7108.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

cc: Mr. John Pitts, Town Clerk