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April 27, 2011

The Honorable Dallas Grewe
Chair, Clitherall Town Board
21086 County Highway 47
Battle Lake, Minnesota 56515

Dear Chair Grewe:

The Office of the State Auditor (“OSA”) received concerns about Clitherall Township (“Town”). Specifically, the OSA received concerns about the Town’s authority to spend Town funds in 2009 on the construction of a town hall, the hiring of a Town Board Supervisor to perform work for the Town, and a federal grant application submitted jointly by Clitherall and Nidaros Townships. This letter will summarize the OSA’s review and provide the Town with guidance for complying with Minnesota law in the future.¹

Town Hall

The OSA received concerns about a vote taken in September 2009, at the continuation of the Town’s annual meeting, regarding the construction of a town hall. Because it appears the Town subsequently obtained the required authority from voters to expend public funds for the construction of a town hall, the OSA will not be reviewing this issue further.

During its review of this issue, the OSA reviewed the relevant Town meeting minutes.² The minutes show that a proposal for a town hall, at an estimated cost of \$125,000, was defeated on March 17, 2009, at the Town’s annual meeting.³ Other matters were then discussed, and the meeting was “recessed” to “the Summer Informational Meeting” held on June 20, 2009. At the June 20, 2009, meeting, the Town Board presented two town hall proposals, and recessed the meeting to September 17, 2009, to discuss town hall options.⁴

¹ Generally, to avoid unnecessary legal fees, the OSA would have sent this letter directly to the Chair of the Town Board. However, at the direction of the Town’s Attorney, this letter was sent to the Town’s Attorney.

² The Town’s meeting minutes are available on the Town’s website, www.clitheralltownship.com.

³ See Annual Meeting Minutes (March 17, 2009). The vote was reported as 20 to 12.

⁴ See Recessed Annual Meeting Minutes (June 20, 2009).

Written notice of the September 17, 2009, meeting was apparently mailed to Town residents and landowners. The notice stated that the meeting was “to consider the building of a town hall.” The notice also stated that the Town Board intended to “present information about town hall options and relative cost estimates.” The notice did not reference that a “vote” would be taken at the meeting. According to the minutes of the September 17, 2009, recessed annual meeting, a resolution was read and passed by one vote.⁵ The minutes do not provide the wording of the resolution. However, the minutes from the Town Board’s September 17, 2009, monthly meeting, held immediately prior to and after the recessed annual meeting, indicate that the proposed cost of the town hall in the resolution was \$157,650.⁶

On January 27, 2010, the Town Board reviewed the town hall site and proposed floor plans, and voted to instruct the architect to design a town hall to be built on the site.⁷ The Town Board meeting minutes for February 25, 2010, state that the Town’s Attorney presented financing options for the town hall, including the implementation of a levy within the amount already authorized by the voters.

Under Minnesota law, town electors may allow a town board to build a town hall.⁸ The electors must also decide the amount of money to be raised for that purpose.⁹ Minnesota law also requires that a proposition at a town meeting to vote a tax must not be acted on out of the order of business stated by the meeting’s moderator.¹⁰ In addition, any motion to reconsider a vote must be made within one-half hour of the vote.¹¹

The Town’s Attorney took the position that the Town Board could not disregard the vote taken at the September 17, 2009, recessed annual meeting. As a general matter, town electors may authorize expenditures, but the town board is not required to make those expenditures.¹² The Town’s attorney also maintained that the September 17, 2009, vote

⁵ See Recessed Annual Meeting Minutes (September 17, 2009) (vote results were 19 to 18). Questions about the voting were raised at the monthly Town Board meeting held immediately after the recessed annual meeting, and again at the Town Board’s October 1, 2009, meeting. The questions included challenges to the eligibility of some voters. The OSA has oversight for Town financial matters, not election matters. Therefore, the OSA takes no position on those challenges.

⁶ See Town Board Meeting Minutes (September 17, 2009). The Town Board monthly meeting on September 3, 2009, was recessed to September 10, 2009, and then was apparently recessed again to September 17, 2009. The September 17, 2009, monthly meeting opened at 6:30 p.m., then recessed at 6:55 p.m. to allow the recessed annual meeting to begin at 7:05 p.m. The September 17, 2009, monthly meeting then reconvened at 8:15 p.m., immediately after the recessed annual meeting adjourned.

⁷ See Town Board Meeting Minutes (Town Hall Site Visit, January 27, 2010). The Town Board’s meeting minutes for February 11, 2010, report that an architect selected by the Town Board had presented the Town with a drawing for the town hall.

⁸ See Minn. Stat. § 365.10, subd. 6.

⁹ *Id.*

¹⁰ See Minn. Stat. § 365.56, subd. 3.

¹¹ *Id.* at subd. 4.

¹² Additional information on this topic is available on the Minnesota Association of Townships’ website (www.mntownships.org).

was not a motion to reconsider a prior vote or a vote on a tax.¹³ Regardless of the merits of these positions, there is at least an appearance that the vote on the new town hall continued to be raised until a favorable vote to go forward was obtained. It is also unclear whether the electors on September 17, 2009, voted to authorize the building of the town hall and the amount to be raised for that purpose, or simply voted to proceed with the planning process.

In any event, at the 2010 annual meeting, the minutes report that the Town considered several options to pay for a new town hall, and Town electors passed a levy that included \$40,000 to be placed in a Town Hall Capital Reserve Account.¹⁴ At the 2011 annual meeting, voters again approved a levy that included \$40,000 to be placed in the Town Hall Capital Reserve Account.¹⁵ As a result, it appears the votes at the 2010 and 2011 annual meetings provided the Town with authority to move forward with expenditures on the proposed town hall. Therefore, the OSA will not be reviewing this issue further.

Work Performed by Town Board Supervisor

The OSA also received concerns that the Town had contracted for brushing services to be performed by a Town Board Supervisor. While the Town's Attorney provided the OSA with a copy of a 2006 Resolution authorizing brushing work by a Town Board Supervisor, the OSA was not provided with a copy of the affidavit that is also required for such work.

Under Minnesota's general conflict of interest law, "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."¹⁶ Similarly, Minnesota town law generally provides that "a supervisor or town board must not be a party to, or be directly or indirectly interested in, a contract made or payment voted by the town board."¹⁷ Because the general rules are so strict, the legislature has created a number of exceptions.¹⁸ For example, a town

¹³ See Town Board Meeting Minutes (October 1, 2009) and OSA Telephone Conversation with Town Attorney (January 29, 2010).

¹⁴ According to the minutes, the vote at the 2010 annual meeting passed 33 to 26. See Annual Meeting Minutes (March 9, 2010). The minutes also state that the Town Board was relying on the architect's estimates for the cost of the town hall and had not gone out for bids. According to the minutes, the Town's Attorney explained that the Town Board could not "go out for firm bids without funding established by the voters." The Town Attorney reportedly further explained that, although the Town Board had authority to spend up to \$157,650, the voters were now being asked how to fund the construction of the town hall.

¹⁵ See Unapproved Annual Meeting Minutes (March 8, 2011).

¹⁶ See Minn. Stat. § 471.87.

¹⁷ See Minn. Stat. § 365.37, subd. 1.

¹⁸ The exceptions are found in Minn. Stat. §§ 471.87 - 89. See also Minn. Stat. § 365.37, subd. 1.

board, "by unanimous vote, may contract for goods or services with an interested officer" if the contract is one "for which competitive bids are not required by law."¹⁹

To use this broad exception, however, a town and the interested supervisor must follow additional procedures. First, the town board 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."²⁰ In addition, before claims are paid on the contract, the interested officer must file with the town 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."²¹

The OSA recommends that the Town adopt the required resolution, and obtain the required affidavit, when contracting with a member of the Town Board. For additional guidance on contracting with a Town Supervisor, the OSA recommends that the Town consult with its attorney or review Chapter 9 of the Township Manual found on the Minnesota Association of Township's website (www.mntownships.org). The Township Manual includes sample affidavits and resolutions.

Grant Application

The OSA received concerns that the Town submitted a grant application with another town that was not properly approved by either town prior to submission. According to the Town's meeting minutes, the grant application was denied.²² As a result, the OSA will not be reviewing this matter further.

To avoid these issues in the future, however, the OSA recommends that the Town Board approve the submission of grant applications in advance, and record the approval in the meeting minutes. When a grant application is submitted on behalf of more than one entity, each entity should have the approval documented in its minutes prior to the submission of the grant application.

¹⁹ See Minn. Stat. § 471.88, subs. 1 and 5. Generally, competitive (sealed) bids are not required unless the amount of the contract is estimated to be over \$100,000. See Minn. Stat. § 471.345, subs. 3 and 3a. Prior to 2008, the dollar amount threshold was \$50,000. See 2008 Minn. Laws ch. 207.

²⁰ See Minn. Stat. § 471.89.

²¹ *Id.*

²² See Minutes of Regular Monthly Meeting (February 11, 2010).

Meeting Minutes

During its review, the OSA reviewed several of the Town Board's meeting minutes. The OSA observed that, during the claims approval portion of the meeting, the minutes do not consistently record the total dollar amount of the claims approved.²³

The OSA recommends that the Town's meeting minutes include the total dollar amount of the claims approved at the meeting. In addition, a list of the approved claims should be attached to the meeting minutes retained by the Town. Enclosed is a copy of the OSA's Statement of Position on Meeting Minutes to provide the Town with additional guidance on this topic.²⁴

Conclusion

The Office of the State Auditor has completed its review of concerns it received regarding the Town of Clitherall. In this letter, the Town was provided with recommendations for complying with Minnesota law in the future.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
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Enclosure

²³ The minutes of the Regular Monthly Meeting held on January 13, 2011, provide an example of where the total dollar amount of the claims approved was recorded in the minutes.

²⁴ The Statement of Position is also available on the OSA's website at http://www.auditor.state.mn.us/other/Statements/meetingMinutes_0710_statement.pdf.