

STATE OF MINNESOTA

Office of the State Auditor



Rebecca Otto
State Auditor

TOWN OF ROOSEVELT
CROW WING COUNTY, MINNESOTA

JANUARY 1 THROUGH DECEMBER 31, 2013

Description of the Office of the State Auditor

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

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**TOWN OF ROOSEVELT
CROW WING COUNTY, MINNESOTA**

January 1 through December 31, 2013



**Audit Practice Division
Office of the State Auditor
State of Minnesota**

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**TOWN OF ROOSEVELT
CROW WING COUNTY**

REQUESTED ENGAGEMENT

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REPORT TO TOWN BOARD

Members of the Town Board
Town of Roosevelt

INTRODUCTION AND BACKGROUND

The Board of the Town of Roosevelt (Town), Crow Wing County, passed a resolution requesting the Office of the State Auditor (OSA) to examine the books, records, accounts, and affairs of the Town related to the White Pine Road and the 2013 Road Improvements projects in accordance with Minn. Stat. § 6.55 for the period January 1 through December 31, 2013. To provide for sufficient examination, information reviewed expanded beyond the dates requested.

The Town is a public corporation. The elected Town Board is the governing body of the Town and has general charge of town affairs. The Town employs a Clerk and Treasurer who are responsible for the administrative and financial duties of the Town. The Town does not meet the statutory criteria that would require an annual audit; therefore, the Town has not had a financial and compliance audit.

Communications with the Town Board assisted us in developing an understanding of the areas of interest and concern. Communications with Town Officers helped us understand the processes and procedures utilized by the Town. We want to thank the Town Officials for their cooperation. We established that some of the issues raised were not within the scope of this review and are not discussed in this report.

1. Cost of White Pine Road and 2013 Road Improvements Projects

The Town Board wanted to know the total cost of the White Pine Road and the 2013 Road Improvements projects. The following table identifies the expenditures by project where possible, along with the expenditures we were unable to attribute to one project or the other based on the records. Payments to contractor Anderson Brothers Construction, Inc., related to the White Pine Road project are not included because they were made by Crow Wing County.

Detail of Expenditures by Project

	<u>White Pine Road</u>	<u>2013 Road Improvements</u>	<u>Project Not Identified</u>	<u>Total</u>
Road construction contract	\$ -	\$ 725,461	\$ -	\$ 725,461
Engineering	74,486	215,928	-	290,414
Attorney fees	-	-	16,384	16,384
Award of damages	5,485	3,357	-	8,842
Town Officer per diem/mileage	-	-	7,502	7,502
Easements	-	-	4,658	4,658
Miscellaneous costs	903	809	2,884	4,596
Total	<u>\$ 80,874</u>	<u>\$ 945,555</u>	<u>\$ 31,428</u>	<u>\$ 1,057,857</u>

State aid payments for the White Pine Road project were requested and received by Crow Wing County on behalf of the Town of Roosevelt. During our review of expenditures, we noted an error was made by Crow Wing County on the State Aid Payment Request for the White Pine Road Project, SAP 018-600-029. The County requested and received from the Minnesota Department of Transportation (MNDOT) \$8,965 in State Park funds related to right-of-ways on the White Pine Road. This amount included \$3,480 in right-of-ways related to North Platte Lake Road reported in error. As a result of this error, the County owes MNDOT \$3,480 in State Aid Park funds, and the Town owes \$3,480 to the County.

2. Costs by Specific Road

The Town Board wanted to know the total cost by road for each of the following: White Pine Road and North Platte Lake Road, Fisher Road, and Cooley Drive, which were part of the 2013 Road Improvements project.

Based on a review of records, the total cost by road is not identifiable for several reasons. When the construction contract for the 2013 Road Improvements project was let on sealed bids, there was nothing in the advertisement for bids that required the project bid to be segregated by each individual road. The description of work in the bidding schedule identified the type of work or material and price for each item that was part of the 2013 Road Improvements project. Likewise, the payments made to the contractor, Anderson Brothers Construction, Inc., were not segregated by road. The same situation existed for some of the payments made to Bolton & Menk, Inc., for engineering services. There was \$65,892 (out of \$215,928) billed for engineering on the 2013 Road Improvements project which was not segregated by individual road. In addition, there was \$16,384 in attorney fees related to the two road projects. The attorney sent invoices to the Town that were referenced as either general matters or road improvement projects, but the individual billing lines under each of these did not contain enough detail to identify costs by specific road. Finally, sufficient detailed documentation was not available to fully segregate the costs by road associated with the Town Officer per diem/mileage, easements, and other miscellaneous costs.

We recommend that if the detail or breakdown of any project expenditures is desired in the future, the Town establish this at the start of the project and make sure that all vendors involved are aware of the need to identify costs separately.

3. Conflict of Interest

A concern was expressed that a conflict of interest may have existed regarding two of the three former members of the Roosevelt Town Board of Supervisors and that the conflict was not properly addressed at the time. The allegation was that their homes were located on two of the roads on which paving projects were done. Based on a review of Board minutes, there was no public acknowledgment noted regarding any potential conflict of interest prior to the votes on the road projects.

The Minnesota Supreme Court has listed several factors courts consider in determining whether a conflict of interest exists in non-contract situations.¹ These include:

1. the nature of the decision made;
2. the nature of the financial interest;
3. the number of interested officials;
4. the need to have the interested person make the decision; and
5. other means available, if any, to insure against arbitrary acts.

In setting out these factors, the Supreme Court acknowledged:

There is no settled general rule as to whether [a direct] interest will disqualify an official. Each case must be decided on the basis of the particular facts present.²

Because of the case-by-case nature of the inquiry engaged in by the courts, we cannot say definitely what a court would conclude in these types of situations.

4. Change in Bonds Issued for Road Projects

The Town Board wanted to know if there was an open meeting law violation related to the change in bonds to be issued to finance the road projects. Originally, the bonds were to be a single issuance of \$835,000 in either General Obligation Certificates of Indebtedness Bonds, Series 2013, or General Obligation Street Reconstruction Bonds, Series 2013, as discussed at the October 15, 2012, Special Town Board Meeting. The issuance changed to \$300,000 in General Obligation Certificates of Indebtedness Bonds, Series 2013A, and \$530,000 in General Obligation Tax Abatement Bonds, Series 2013A, as discussed at the January 7, 2013, regular Board meeting.

¹ *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209, 219 (Minn. 1967). We look to the *Lenz* common-law conflict of interest standards here, rather than the statutory conflict of interest standards of Minn. Stat. § 365.37 and Minn. Stat. §§ 471.87-.89, because there is no allegation of an interested person benefitting financially from a contract.

² *Lenz v. Coon Creek*, 153 N.W.2d at 219.

The Town Board asked its attorney at the August 30, 2012, meeting to contact financial advisor Bruce Kimmel to help the Board with financial decisions for paying the costs associated with the road plan. Mr. Kimmel is a Senior Financial Advisor/Director for Ehlers, Inc., assisting city, county, development authority, and regional governmental clients with financial management and community development issues. The Board met with Mr. Kimmel at the September 10, 2012, meeting, and all were in agreement that a special meeting was to be scheduled for October 15, 2012. This special meeting was to be held for the purpose of receiving information, discussing, and possibly taking action regarding the road plan, related road improvement projects, financing of the road projects, and related issues.

There was a handout provided by Mr. Kimmel at the October 15, 2012, special meeting that contained four sections. One of these sections summarized the statutory authorization for bond issuances including a table that showed the following:

Comparison of Possible Bond Issuances

	<u>GO Certificates of Indebtedness</u>	<u>GO Street Reconstruction Bonds</u>	<u>GO Improvement (Assessment) Bonds</u>
Maximum Term from Issuance	10 years	30 years	30 Years
Debt Service Payable From	Tax Levy	Tax Levy	Special Assessments, Tax Levy
Referendum Petition Threshold	10% of Voters*	5% of Voters	No Petition Option

*Option only for certificates greater than 0.25% (\$335,741) of Town's pay 2012 taxable market value (\$134,296,400).

For both the GO Certificates of Indebtedness and the GO Street Reconstruction Bonds, state law provides for a reverse referendum, which means that if, following published notice or a public hearing, a sufficient number of eligible voters sign a petition, then the debt cannot be issued until there is an election and voter approval is obtained. When bonds are paid by assessments, the benefited properties are assessed or charged for the increased value caused by the public improvement, and property owners pay off this assessment when they pay property taxes. During the assessment process, affected landowners can dispute the value of the benefit to their property. Mr. Kimmel noted that assessing would be quite costly.

Mr. Kimmel returned to the January 7, 2013, regular Board meeting to continue the discussion on financial strategy for the upcoming road projects. This time, his presentation consisted of one option consisting of the issuance of \$300,000 in General Obligation Certificates of Indebtedness Bonds, Series 2013A, and \$550,000 in General Obligation Tax Abatement Bonds, Series 2013A. The Board requested that \$20,000 of the total \$850,000 be removed, bringing the final amount to \$830,000.

The requirements for the Certificates of Indebtedness can be found in Minn. Stat. § 366.095, which gives a Town the authority to finance all or a portion of the cost of improvements by issuance of general obligation certificates of indebtedness payable from ad valorem taxes. Since the amount of the Certificates of Indebtedness finally issued by the Town was less than 0.25% (\$335,741) of the Town's 2012 taxable market value (\$134,296,400), there was no option of a referendum petition.

The requirements for the Abatement bonds can be found in Minn. Stat. §§ 469.1812 through 469.1815, which give a Town the authority to grant a property tax abatement on specified parcels in order to accomplish certain public purposes, including the construction of infrastructure. As part of the Abatement process, certain property parcels are designated as having their property tax abated. Property owners still pay property tax, but the amount paid is designated to pay debt service on the outstanding bonds.

The Abatement bond process does not provide for a referendum petition, but requires that the Town Board pass an Abatement Resolution specifying the terms of the abatement and a specific statement as to the nature and extent of public benefits which the Town Board expects to result from the agreement. The Town Board passed this Abatement Resolution following a duly noticed public hearing held at their regular February 4, 2013, meeting. They subsequently passed Resolution No. 2013-02, "A Resolution Awarding the Sale of General Obligation Bonds, Series 2013A, in the Original Aggregate Principal Amount of \$830,000; Fixing their Form and Specifications; Directing their Execution and Delivery; and Providing for their Payment." These bonds consisted of \$300,000 in General Obligation Certificates of Indebtedness Bonds, Series 2013A, and \$530,000 in General Obligation Tax Abatement Bonds, Series 2013A.

There was no clear verifiable evidence to conclude on whether there was an open meeting law violation related to the change in bonds issued between the October 15, 2012, and January 7, 2013, Board meetings.

5. Engineer Selection and Costs

The Town Board wanted to know about the selection process and costs for engineering services related to the White Pine Road and 2013 Road Improvements projects.

The Town first contracted with Darrick Anderson, PE, in the spring of 2011, while he was employed at Westwood Professional Services, regarding some issues they were having on Cooley Drive. As they were starting discussions with him over these issues, the Town began receiving letters from Crow Wing County Environmental Services regarding a plume of sediment off North Platte Lake Road. The Town approved two proposals from Westwood Professional Services for engineering services to help fix the problems on both Cooley Drive and North Platte Lake Road at its June 14, 2011, meeting. While engineering services for these two roads were being performed, the Town decided that it would be a good idea to

conduct a road inventory and develop a five-year road plan to prioritize road needs. The Town authorized the engineer to complete an inventory of the Town of Roosevelt's 30 miles of roads and prepare a five-year road plan in an amount not to exceed \$22,000. When the road inventory was completed, and Fisher Road became impassable during the spring of 2012, it was finally decided that North Platte Lake Road, Cooley Drive, and Fisher Road were the top priorities that needed to be taken care of. While this process was underway, the Town was also in communication with the Minnesota Department of Natural Resources to work on a joint project for White Pine Road. At the August 30, 2012, meeting, the Town accepted a proposal from Westwood Professional Services for professional services for the White Pine Road project. The Town learned that Mr. Anderson would be leaving Westwood Professional Services as of September 14, 2012, and had accepted a position with Bolton & Menk, Inc., so they amended the original White Pine Road contract with Westwood Professional Services to a reduced capacity. The Town decided it would be more efficient to keep working with Mr. Anderson, so they accepted engineering proposals from his new firm, Bolton & Menk, Inc., for White Pine Road and North Platte Lake Road at the October 1, 2012, Board meeting, and for the reconstruction of Fisher Road and Cooley Drive (West) at the October 15, 2012, Board meeting.

Following is a summary of Bolton & Menk, Inc., engineering expenditures by project:

	<u>White Pine Road</u>	<u>2013 Road Improvements</u>	<u>Total</u>
Bolton & Menk, Inc., actual expenditures	\$ 66,301	\$ 213,966	\$ 280,267
Bolton & Menk, Inc., contract amount	<u>34,110</u>	<u>112,600</u>	<u>146,710</u>
Expenditures (Over)/Under Contract	<u>\$ (32,191)</u>	<u>\$ (101,366)</u>	<u>\$ (133,557)</u>
Percent (Over)/Under	<u>(94.37)%</u>	<u>(90.02)%</u>	<u>(91.03)%</u>

When auditors contacted the engineer about the above overages, his response was that the complexity, scope, and effort for the projects grew as the projects developed. As an example, he pointed out that in the August 30, 2012, Board minutes, it was estimated that the 2013 Road Improvements project was going to cost around \$635,000, when it actually came to \$725,461. Also, the engineer stated that there was a lot more complex coordination, revisions, and public involvement for these projects than is typically seen for similar roads. While each of the contract proposals gave specified amounts for various services, there was a section called "Additional Services," which stated that any services requested by the client that were outside the project scope included in the proposal would be performed on an hourly basis at standard hourly rates.

Following is a summary of Westwood Professional Services engineering expenditures by project:

	White Pine Road	2013 Road Improvements	Total
Westwood Professional Services actual expenditures	\$ 8,185	\$ 1,962	\$ 10,147
Westwood Professional Services contract amount	<u>6,200</u>	<u>12,800</u>	<u>19,000</u>
Expenditures (Over)/Under Contract	<u>\$ (1,985)</u>	<u>\$ 10,838</u>	<u>\$ 8,853</u>
Percent (Over)/Under	<u>(32.02)%</u>	<u>84.67%</u>	<u>46.59%</u>

As noted earlier, once the Town Board became aware that Mr. Anderson was leaving Westwood Professional Services, they reduced the White Pine Road contract amount and did not make full use of the 2013 Road Improvements contract amount.

Engineering services are professional services not required to be bid. However, in the future, the Town Board could consider obtaining quotes or requests for proposals for such services.

6. Changes in Construction Plans

The Town Board wanted to know if there were changes in construction plans, specifically related to Cooley Drive, and if construction on one road was compromised for the benefit of another road.

As noted in Item 2 of this report, costs by road in the 2013 Road Improvements project were not separately identifiable. Thus, there is insufficient verifiable evidence as to the extent of any changes to specific portions of the project. We did, however, review the partial payments made to Anderson Brothers Construction, Inc., to determine if there were any documented changes to the overall contract. Following is a summary of the 2013 Road Improvements project contract, approved changes, and actual costs as of Partial Pay Estimate No. 4 for work through November 30, 2013.

	2013 Road Improvements
Original Construction Contract	\$ 717,493
Work Order #1 - culvert related	3,460
Supplemental Agreement #1 - common excavation	(2,155)
Change Order #1 - gravel reduction	(3,354)
Work Order #3 - culvert, apron, curb/gutter	<u>13,478</u>
Revised Construction Contract	\$ 728,922
Work Completed Through November 30, 2013	<u>(725,461)</u>
Costs Under Contract Amount (0.475%)	<u>\$ 3,461</u>

Note: Work Order #2 was voided and never signed

In addition, auditors contacted the engineer who prepared the plans and oversaw the road projects to obtain his understanding of any changes related to the Cooley Drive portion of the project. The engineer stated that before preliminary plans were drafted, and after the road inventory was complete and the roads prioritized, the Town Board decided that if they were going to address one specific issue on a roadway, they should also address any long-term issues. For Cooley Drive, if they were going to address the poor sub-grade, then they should also address the width and the length of the roadway to be fixed. The engineer confirmed to auditors that the road base on Cooley Drive was addressed. He also said the project was built to the original preliminary plan and intent to provide for a wider, seasonally stable, more agricultural roadway section that would allow enough road base for future paving if the Town so desired. He was not aware of any changes to the project since the preliminary discussions.

7. Contracts - Authorized Signatures

The Town Board wanted to know if the engineering and construction contracts involved with the road projects and the related debt issuance agreements had the proper authorized signatures.

We reviewed the contracts related to the road projects and debt issuance. The construction contract and the engineering proposals were all signed by the Board Chair. Town representatives brought to our attention two items with only the signature of the former Town Clerk. One of these items was a Contract to Provide “Limited” Continuing Disclosure Reporting Services between the Town and Ehlers & Associates, Inc., and the other was an Agreement Relating to Paying Agency, Registrar, and Transfer Agency between the Town and Bond Trust Services Corporation.

The Town passed Resolution No. 2013-02 “A Resolution Awarding the Sale of General Obligation Bonds, Series 2013A, in the Original Aggregate Principal Amount of \$830,000; Fixing their Form and Specifications; Directing their Execution and Delivery; and Providing for their Payment” (the Resolution) at the February 4, 2013, Board Meeting.

The Resolution states “[t]he Chair and the Town Clerk are authorized to execute and deliver, on behalf of the Town, a contract with the Registrar,” and identifies “Continuing Disclosure Certificate” to mean “that certain Continuing Disclosure Certificate executed by the Chair and Town clerk” Based on these provisions, the Agreement Relating to Paying Agency, Registrar, and Transfer Agency and the Limited continuing disclosure Reporting Services contract were signed by the former Town Clerk. These documents were not signed by the Town Board Chair.

We believe that the quoted passages of the Resolution granted the former Town Clerk the authority to sign these agreements. It appears, however, that the Resolution anticipated that these documents would be signed by the Town Board Chair as well.

8. Open Meeting Law

The Town Board expressed concern that the prior members of the Town Board may have discussed issues outside scheduled meetings because it appeared that the former members voted on issues without proper discussion at the Board meetings. The Minnesota Open Meeting Law generally requires meetings of a local government governing body, including a town board, to be open to the public. Minn. Stat. § 13D.01. The Minnesota Supreme Court has determined:

that “meetings” subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of a governing body . . . at which members discuss, decide, or receive information as a group on issues relating the official business of that governing body.”³

Based on the information available to auditors, we were unable to determine whether undocumented meetings of a quorum of the Town Board occurred at which members discussed, decided, or received information relating to official Town business.⁴

9. Expense Reimbursements and Unsupported Receipt

The Town Board had a concern that the former Town Clerk received duplicate reimbursement from the Town and Crow Wing County for time and mileage during the 2012 primary election and that there was an unsupported receipt posted in the general ledger to balance out the end of the year for 2013.

A. Expense Reimbursements

Auditors obtained and searched the 2012 Crow Wing County Account Activity Report for any disbursements made to the former Town Clerk around the time of the 2012 primary and general elections. Auditors also searched Roosevelt’s Small City and Town Accounting System (CTAS) records for any claims paid to the former Town Clerk related to the 2012 elections. Auditors received detailed claims from the County and the Town, and a comparison was done to see if the former Town Clerk had been reimbursed by both the County and the Town for the same expenses. The former Town Clerk was reimbursed \$43.30 from Crow Wing County on Commissioner’s Warrant #511944 dated September 11, 2012, for 1 hour of service on August 14, 2012, to return election ballots

³ *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983). A quorum of a three-member town board is two members under Minn. Stat. § 366.01, subd. 1. Although the law specifically allows meetings to be closed under certain circumstances, the Open Meeting Law notice requirements apply to closed meetings, and specific procedures must often be followed. *See e.g.* Minn. Stat. §§ 13D.03 - .05; 366.01, subd. 11.

⁴ The state office that oversees Open Meeting Law compliance is the Information Policy Analysis Division (IPAD) of the Minnesota Department of Administration. IPAD has the authority to issue advisory opinions on that topic. Additional information is available at IPAD’s website: <http://www.ipad.state.mn.us/opinions/index.html>.

and results at a rate of \$10 per hour and for 60 miles at \$0.555 per mile. The former Town Clerk was also reimbursed on Town check #7156 dated September 10, 2012, for 213 miles at a rate of \$0.55 per mile, with 60 of these miles taking place on August 14, 2012, with a description of "Close Polls & To Court House," and for 13 hours (6 a.m. - 3 p.m. and 7 p.m. - 11 p.m.) at a rate of \$10 per hour on August 14, 2012. It is our opinion that the former Town Clerk was reimbursed by both the Town and Crow Wing County for 1 hour of time and 60 miles from August 14, 2012.

B. Unsupported Receipt

Receipt #9999 was entered into the Town's general ledger on December 31, 2013, for \$135.21. It was coded to General Fund - Other Charges. The remitter of this collection was shown as "Rsvlt Staff" and the description was listed as "Balance EOY." There is no other documentation to support this receipt. It was noted as being deposited on March 1, 2014, but there was no related deposit in the Town's checking account bank statement. It appears that this entry was to make the cash balance at year-end. The current Town Clerk searched for an explanation for this entry and noted \$158.35 in interest revenue had not been recorded in the books for 2013. This amount is \$23.14 more than the amount recorded to balance accounts at year-end.

We recommend that any future reconciling adjustments be investigated on a timely basis.

10. Record Delivery to Successors

The Town Board was concerned that not all Town records were passed on to the current Town Officials by the outgoing Clerk and Town Board members before they left office. They questioned whether some records were disposed of in violation of the Town's General Records Retention Schedule, which was adopted on June 14, 2011.

All town officers "shall make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. § 15.17, subd. 1. The chief administrative officer is responsible for the preservation and care of an entity's government records, which include all "written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business." Minn. Stat. § 15.17, subd. 2. This duty not only prohibits destruction, but requires the custodian to take such steps as are necessary to protect public records from deterioration, mutilation, loss, or destruction. A town can only destroy public records pursuant to an adopted records retention schedule or by obtaining permission to destroy the records from the state records disposition panel.

Minnesota Statutes § 15.17, subd. 3, states that “[e]very legal custodian of government records, at the expiration of that official's term of office or authority, . . . shall deliver to a successor in office all government records in custody; and the successor shall receipt therefor to the predecessor or legal representative and shall file in the office a signed acknowledgment of the delivery. Every public officer shall demand from a predecessor in office, or the predecessor's legal representative, the delivery of all government records belonging to the office.”

Finally, Minn. Stat. § 367.01 states that “Every town officer shall, immediately after qualifying, demand from the officer’s predecessor or other person having control or possession of them, all books, records, and other property belonging to the office. Every person having control or possession of any of them shall, upon the demand, deliver them to the officer.”

Town officials could not substantiate what records may be missing, and auditors could, therefore, not determine whether all records were delivered from the former Town Officials to the current ones, or whether any Town records were destroyed without authority. We recommend that, in the future, the Town follow the guidance identified in the statutes noted.

CONCLUSION

We were not engaged to and did not perform an audit, the objective of which would be the expression of an opinion on specified elements, accounts, or items related to the concerns identified in this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Town of Roosevelt and is not intended to be, and should not be, used by anyone other than those specified parties.

/s/Rebecca Otto

/s/Greg Hierlinger

REBECCA OTTO
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GREG HIERLINGER, CPA
DEPUTY STATE AUDITOR

March 19, 2015