



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

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December 11, 2013

The Honorable Steve Sorenson  
Chair, Cormorant Town Board  
10194 Sherbrooke Beach Lane  
Pelican Rapids, Minnesota 56572

Dear Chair Sorenson:

The Office of the State Auditor (OSA) reviewed “donations” made by Cormorant Township (Town), including: 1) \$5,000 for a benefit held for a former Town Board Supervisor; 2) a total of \$2,000 in scholarships to high school students; and 3) \$500 to the Town Clerk in connection with the Clerk’s trip to Washington D.C. for a national township association event. During the course of its review, the OSA found additional items of concern, including the use of Town funds to purchase wine for a retirement party.

The OSA knows of no legal authority for the Town to make some of the “donations” reviewed by the OSA. For other “donations” reviewed by the OSA, the Town failed to take the steps necessary to make the expenditures authorized. This letter will provide the Town with guidance to comply with Minnesota law in the future.

### **Unauthorized Expenditures**

Town expenditures are limited to those authorized by statute. Towns must also comply with any restrictions the statutes impose on the expenditure of town funds, such as obtaining approval for the expenditure from town electors at the annual town meeting. In addition, all town expenditures must be for a “public purpose.”<sup>1</sup> These limitations apply to funds a town receives from taxes, as well as from any other sources.<sup>2</sup>

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<sup>1</sup> Additional information on this topic is found in the OSA’s Statement of Position on Public Expenditures: Donations and Dues, available on the OSA’s website, [www.auditor.state.mn.us](http://www.auditor.state.mn.us).

<sup>2</sup> See, e.g., Op. Att’y Gen. 107-a-3 (Jan. 22, 1980).

### 1. Donation to Benefit Held for Former Town Board Supervisor

At its August 27, 2013, meeting, the Town Board agreed to make a donation to a benefit held for a former Town Board Supervisor who had recently been diagnosed with cancer.<sup>3</sup> While the meeting minutes do not specify the amount approved for the donation, the treasurer's report at the next meeting showed that the donation was for \$5,000.<sup>4</sup>

The OSA knows of no authority for the Town to make this donation.

### 2. Scholarships

Each year, the Town Board creates a \$2,000 scholarship fund. High school seniors from Lake Park-Audubon Schools (LPA) continuing their education after graduation are eligible to apply.<sup>5</sup> At its March 26, 2013, meeting, the Town Board agreed to donate \$2,000 for LPA's Dollars for Scholars, a nonprofit corporation.<sup>6</sup> At its May 14, 2013, meeting, the Town Board awarded \$500 scholarships to four LPA graduates. Similarly, in 2012, the Town awarded one \$500 scholarship and donated \$1,500 to LPA; in 2011, two \$500 scholarships were awarded and \$1,000 was donated to LPA.<sup>7</sup>

The OSA knows of no authority for the Town to give scholarships to high school students or to donate money for scholarships to the School District or the nonprofit corporation Dollars for Scholars.<sup>8</sup>

### 3. \$500 Trip "Donation"

At its April 9, 2013, meeting, the Town Board agreed to a "donation" of \$500 towards expenses for the Town Clerk's April 17, 2013, trip to Washington D.C. The trip was connected with the National Association of Towns and Townships (NATaT). According to the April 9, 2013, meeting minutes, the Town Clerk would represent Minnesota to lobby for rural township issues.

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<sup>3</sup> See Town Board Meeting Minutes for Aug. 27, 2013. According to the minutes, the benefit was scheduled for September 7.

<sup>4</sup> See Town Board Meeting Minutes for Sept. 10, 2013.

<sup>5</sup> See 2013 Annual Town Meeting Minutes for Mar. 12, 2013.

<sup>6</sup> See Town Board Meeting Minutes for Mar. 26, 2013. Lake Park-Audubon Dollars for Scholars is registered with the Minnesota Secretary of State's Office as a nonprofit corporation.

<sup>7</sup> See 2013 Annual Town Meeting Minutes for Mar. 12, 2013; 2012 Annual Town Meeting Minutes for Mar. 13, 2012.

<sup>8</sup> The OSA recognizes that Minn. Stat. § 471.85 authorizes a town to transfer its personal property without consideration to another public corporation for public use when duly authorized by its governing body. However, a Minnesota Attorney General opinion notes that the "public use" to which the property is to be put must be one which is directly related to the public purposes of the transferring governing body. See Op. Att'y Gen. (Dec. 27, 1968). See also the OSA's Statement of Position on Outside Organizations Supporting Schools; and Minn. Stat. § 123B.02, subd. 6 (authority for school district to act as trustee of a trust created for its students' advanced education).

The Town Clerk provided a slide show of her trip at the April 30, 2013, Town Board meeting. No proof of actual expenses for the trip was provided to the Town.

A town board may pay “the annual dues in the Minnesota Association of Townships or a county unit that belongs to the association” and “the actual and necessary expenses of town officers for meetings relating to town business including meetings of town associations.”<sup>9</sup> Similarly, a town board may appropriate funds to defray “the actual and necessary expenses” of a representative to participate in the meetings and activities of a county, regional, state, or national association of a civic, educational, or governmental nature, which has as its purpose the betterment and improvement of municipal governmental operations.<sup>10</sup>

Under Minnesota law, a town board must not authorize the payment of a claim until the person claiming payment provides the board with a written, itemized claim and a declaration that no part of the claim has been paid.<sup>11</sup>

In the future, rather than making a “donation,” the OSA recommends that the Town Board pay “actual and necessary” expenses for meetings authorized by Minnesota law. Itemization of the expenses related to the meetings should be required, as well as a declaration that no part of the claim has been paid by any other organization.

#### 4. Retirement Party and Get Well Card

Town funds were used to purchase \$132.29 in wine and \$66.59 in party products for a retirement party held for a person retiring from employment with the Lake Aggassi Regional Library (LARL).<sup>12</sup> Town funds were also used to purchase a card for a Town employee who was sick.<sup>13</sup>

Town electors have the authority to set an amount of money that the town board may spend “to recognize volunteers, service efforts, and retiring town officers.”<sup>14</sup> However, absent a vote by the electors at the annual meeting, towns do not have authority to hold recognition events for volunteers or retiring officers.<sup>15</sup>

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<sup>9</sup> See Minn. Stat. § 366.01, subd. 3.

<sup>10</sup> See Minn. Stat. § 471.96, subd. 1.

<sup>11</sup> See Minn. Stat. § 471.38, subs. 1 and 2. These requirements do not apply to certain salary payments. In addition, the town board may allow the claim without the declaration if the declaration is on the reverse side of the town’s checks. See Minn. Stat. §§ 471.38, subd. 1, and 471.391. “Every member of such board who shall audit and allow any claim required to be itemized, without the same having been first duly itemized and verified, shall be guilty of a gross misdemeanor.” Minn. Stat. § 471.41.

<sup>12</sup> See Town Board Meeting Minutes for June 11, 2013 (Party City expenditures of \$52.76, \$7.93, and \$5.90) and July 9, 2013 (Cormorant Bottle Shop \$132.29 expenditure). LARL operates a LINK site in the lower level of the Town’s Community Center. The person was subsequently hired as the Town’s community volunteer coordinator. See Town Board Meeting Minutes for July 9, 2013.

<sup>13</sup> See Town Board Meeting Minutes for July 9, 2013 (Amy’s Hallmark expenditure of \$2.14).

<sup>14</sup> See Minn. Stat. § 365.10, subd. 12.

<sup>15</sup> See OSA’s Statement of Position on Employee Recognition Programs and Events.

The OSA knows of no authority for these expenditures. First, electors did not set an amount for the Town Board to spend on recognizing volunteers, service efforts, or retiring town officers at the annual meeting.<sup>16</sup> Furthermore, the employee provided with the retirement party was not retiring from employment with the Town. Second, the OSA has long taken the position that the use of public funds to purchase alcoholic beverages does not serve a public purpose. And finally, as a general matter, the OSA recommends that public employees and officials use personal rather than public funds for parties, flowers, presents, or cards for births, illnesses, deaths, or other personal life events of public employees and officers.

#### 5. ALERT Donation

The Town Board also voted at its March 26, 2013, meeting to donate \$6,000 to the Lake Park Area Lakes Emergency Response Team (ALERT), the area's first responder squad. ALERT is registered with the Minnesota Secretary of State's Office as a nonprofit corporation. The Town's check for the donation was made payable to the City of Lake Park.<sup>17</sup>

A town may make a grant to an emergency medical services agency that serves the town.<sup>18</sup> However, the statute requires that the grants be authorized "upon the affirmative vote of the town electors at the annual or a special town meeting."<sup>19</sup>

The OSA recommends that, in the future, grants to an emergency medical services agency be approved by the electors at the annual or a special town meeting, as required by law. We recommend that the Town work with ALERT and the City of Lake Park to clarify to whom the check should be written.

#### 6. Community Celebrations

The minutes for the Town's 2013 annual meeting report that "Cormorant Daze" was set for August 17, 2013.<sup>20</sup> However, the amount to be spent on the event was not set at the annual meeting.<sup>21</sup> Instead, the minutes for the 2013 annual meeting report that the Town Board makes

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<sup>16</sup> The minutes for the 2013 annual Town meeting note the upcoming retirement. The employee was given a round of applause for her service to the community, but no dollar amount for an event to recognize her service was set.

<sup>17</sup> When the prior year's check of \$6,700 to the City of Lake Park was questioned at the 2013 annual meeting, the minutes report that "Lake Park requires that the payment be made through the city, rather than direct" to ALERT. The OSA contacted the Clerk/Treasurer for the City of Lake Park who said he would have no objection if the check were made payable to ALERT instead of the City.

<sup>18</sup> The emergency medical services agency must meet the definition found in Minn. Stat. § 144.7401. *See* Minn. Stat. § 465.037. The definition includes organized first responder squads that are formally recognized by a political subdivision in the state. *See* Minn. Stat. § 144.7401.

<sup>19</sup> *See* Minn. Stat. § 465.037.

<sup>20</sup> *See* 2013 Annual Town Meeting Minutes for Mar. 12, 2013.

<sup>21</sup> Similarly, at the 2012 annual Town meeting, the Town Clerk suggested the Town support Cormorant Daze as it had in 2011. *See* 2012 Annual Town Meeting Minutes for Mar. 13, 2012. The minutes for the 2012 annual Town

the donation decisions, no donation suggestions were made at the meeting, and anyone with donation suggestions should contact the Town Board.<sup>22</sup>

At the next Town Board meeting, the lack of suggestions for donations from the audience at the annual meeting was noted, and the Town Board voted to donate \$500 to Cormorant Daze.<sup>23</sup> In addition to making the \$500 donation, the Town Board subsequently approved payments of at least \$194.08 for additional Cormorant Daze-related items.<sup>24</sup>

In addition, the September 10, 2013, meeting minutes report over \$2,000 in expenditures for a lobster dinner that was apparently held on August 23, 2013.<sup>25</sup> The Town Board meeting minutes for August provide no additional discussion of this event. It is the OSA's understanding that tickets are sold for the dinner to which the entire community is invited.<sup>26</sup>

At the annual town meeting, the town electors may set an amount of money for the town board to host or support a community celebration or to commemorate an event of historical significance to the town.<sup>27</sup>

We recommend that, in the future, the Town Board refrain from spending Town funds on Town celebrations unless the electors have set the amount for such expenditures at the annual Town meeting. The Town Board should then take care to review claims and to avoid spending more for the community celebration than the amount set by the electors at the annual Town meeting.

## 7. Show Team Expenditures

During its review, the OSA observed that the Town spends Town funds to bring various forms of entertainment to the Town's Community Center. The OSA learned that the events are organized by a community entertainment committee, the "Show Team."<sup>28</sup> A calendar of events was provided at the April 9, 2013, Town Board meeting. However, the Town Board did not approve

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meeting report that the electors were informed of the prior year's donations (\$6,000 to ALERT, \$200 to the Becker County Humane Society, and \$500 to Cormorant Daze). According to the minutes, "[n]o one in the audience opposed these donation suggestions and no further discussion was made."

<sup>22</sup> See 2013 Annual Town Meeting Minutes for Mar. 12, 2013.

<sup>23</sup> See Town Board Meeting Minutes for Mar. 26, 2013. The Town Board also voted to donate \$6,000 to ALERT, \$2,000 to the LPA Dollars for Scholars program, and \$200 to the Becker County Humane Society. *Id.*

<sup>24</sup> See Town Board Meeting Minutes for Sept. 10, 2013 (\$150 for "bounce house," and \$44.08 for "supplies"). The check stub for the \$500 Cormorant Daze check is dated April 16, 2013.

<sup>25</sup> A local news publication reported the date of the 2013 lobster dinner.

<sup>26</sup> A community entertainment committee, the Show Team, apparently organizes the event.

<sup>27</sup> See Minn. Stat. § 365.10, subd. 12. Similarly, the town electors at the annual town meeting "may let the town board contract with nonprofit organizations for not more than \$10,000 per year of health, social, and recreational services." See Minn. Stat. § 365.10, subd. 14.

<sup>28</sup> Show Team events in 2013 included musical performances (\$1,800 for Dick Dunkirk, \$500 for Tanya Todd, and \$160 for the Wayzata Women's Choir), a speaker series (\$100 for "Talk of the Town" speakers, including a local meteorologist and an author), and a talent show. The Show Team also organizes the annual lobster dinner.

a specific budget for the Show Team events, and does not sign contracts with the performers obtained by the Show Team.

A Town Board may appropriate money to support “artistic organizations” as that term is defined in Minnesota law.<sup>29</sup> Towns also have the authority to appropriate money to support the facilities, programs, and services of a public or private, not-for-profit senior citizen or youth center.<sup>30</sup> Separate statutory authorization provides that electors at the annual town meeting may let the town board contract with nonprofit organizations for not more than \$10,000 per year of health, social, and recreational services.<sup>31</sup>

The OSA knows of no authority for a community entertainment committee to commit to the expenditure of Town funds. Instead, we recommend that the Town Board review and approve the proposed expenditures in advance. To protect the Town and the performers, we also recommend that the Town Board enter into contracts with the performers where appropriate.

### **Donation Acceptance Procedures**

During the course of its review, the OSA observed that the Town received donations.<sup>32</sup> However, the Town Board did not adopt the resolutions required by Minnesota law when donations to the Town were accepted.

Towns are authorized to accept donations. However, Minnesota law requires town boards to accept a donation by a resolution adopted by a two-thirds majority vote.<sup>33</sup> Once the resolution has passed, the donated funds become public funds and may only be used for purposes that are both authorized by statute and serve a public purpose.

The OSA recommends that, in the future, the Town comply with Minnesota law by having the Town Board accept all donations by resolutions adopted by a two-thirds majority. A sample resolution for accepting donations, available on the Minnesota Association of Townships’ website, is enclosed.

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<sup>29</sup> See Minn. Stat. § 471.941. “Artistic organizations” are defined as “an association, corporation, or other group of persons that provides an opportunity for persons to participate in the creation, performance, or appreciation of artistic activities which include but are not limited to: music, dance, drama, folk art, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, costume and fashion design, motion pictures, television, radio, tape and sound records, activities related to the presentation, performance, execution, and exhibition of the art forms, and the study of the arts and their application to the human environment.” *Id.*

<sup>30</sup> See Minn. Stat. § 471.935.

<sup>31</sup> See Minn. Stat. § 365.10, subd. 14.

<sup>32</sup> See, e.g., Town Board Meeting Minutes for Sept. 10, 2013 (\$600 donation from the Cormorant Area Art Club).

<sup>33</sup> See Minn. Stat. § 465.03. The statute provides: “Any city, county, school district or town may accept a grant or devise of real or personal property and maintain such property for the benefit of its citizens in accordance with the terms prescribed by the donor. Nothing herein shall authorize such acceptance or use for religious or sectarian purposes. Every such acceptance shall be by resolution of the governing body adopted by a two-thirds majority of its members, expressing such terms in full.”

### Storage Payments to Town Board Supervisor

The April 9, 2013, Town Board meeting minutes report that Supervisor Tim Erickson moved Town equipment from his personal shed to a new Town shed. He asked the Board to consider paying for storage space for the last 1.5 years. The minutes do not record the Town Board's vote on this request, and provide no reference to any prior storage agreement or the amount of the monthly rent requested.<sup>34</sup> No conflict of interest resolution regarding the storage contract or payment was adopted.<sup>35</sup> Nevertheless, the May 14, 2013, Town Board meeting minutes report a payment of \$760 to Supervisor Erickson for "tar storage." The supporting invoice shows that the payment was for 19 months of "shed rent storage" at \$40 per month from October 2011 through April 2013.

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."<sup>36</sup>

Because the rule is so strict, the legislature created a number of exceptions. Under one exception, a town may contract with a town board supervisor for goods or services if the contract is one for which competitive bids are not required by law.<sup>37</sup> To use the exception, the town board must authorize the contract in advance by adopting a resolution setting out the essential facts and determining that the contract price is as low or lower than the price at which the commodity or services could be obtained elsewhere.<sup>38</sup> In addition, before claims are paid on the contract, the supervisor must file with the clerk an affidavit containing certain information about the contract.<sup>39</sup>

The OSA recommends that, in the future, storage costs be determined in advance. Any payments should be based on a pre-existing contract, not on a request for retroactive compensation. This is particularly important where the payments are to a Town Board Supervisor. The OSA recommends that the Town comply with Minnesota law when contracting with a Town Board

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<sup>34</sup> At the OSA's request, the Town Clerk reviewed the Town Board's 2011 meeting minutes and did not locate an agreement to pay the Supervisor \$40 per month in storage costs.

<sup>35</sup> At the Town Board's March 26, 2013, meeting, the Town adopted Resolution 2013-3 to contract with Supervisor Erickson for snowplowing, grading, and snow removal. Similar resolutions were adopted in 2012 (for snowplowing, grading, and snow removal) and 2011 (for snowplowing and waste management upkeep).

<sup>36</sup> See Minn. Stat. § 471.87. A public officer who violates Minn. Stat. § 471.87 is guilty of a gross misdemeanor.

*Id.*

<sup>37</sup> See Minn. Stat. § 471.88, subd. 5.

<sup>38</sup> See Minn. Stat. § 471.89, subd. 2.

<sup>39</sup> See Minn. Stat. § 471.89, subd. 3. The affidavit must state the name of the officer and the office held by the officer; an itemization of the commodity or services furnished; the contract price; the reasonable value; the interest of the officer in the contract; and 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.

Supervisor by authorizing the contract in advance, adopting the required resolution, and obtaining the required affidavit.

### **Debit and Credit Cards**

The Town Board members, the Town Clerk, and the Town Treasurer have a Town debit card. The Town is switching to Town credit cards. The Town does not have a written credit card policy.

Towns have the authority to make purchases using town credit cards.<sup>40</sup> The authority for towns to use town debit cards is less clear.

The OSA recommends that the Town adopt a comprehensive written credit card policy. Additional information on the use of credit cards is found in the OSA's Statement of Position on Credit Card Use and Policies, available on the OSA's website.

### **Meeting Minutes**

It is important that meeting minutes reflect all statutory requirements that establish a town's authority to make expenditures of town funds. Additional information on meeting minutes is found in the OSA's Statement of Position on Meeting Minutes, available on the OSA's website.

### **Reporting Obligation**

At its May 28, 2013, meeting, the Town Board was informed that ten large rectangular banquet tables were stolen or borrowed and never returned. According to the meeting minutes, a report was filed with the Becker County Sheriff's Office, and the Town's insurer was contacted. No report was filed with the OSA. The tables have since been located/returned.

If a town officer or employee discovers evidence of theft, embezzlement, unlawful use of public funds or property, or misuse of public funds by any person authorized to expend public funds, the employee or officer must promptly report to the OSA in writing a detailed description of the alleged incident or incidents.<sup>41</sup>

The OSA reminds the Town of this reporting obligation for any future incidents.

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<sup>40</sup> See Minn. Stat. § 471.382.

<sup>41</sup> See Minn. Stat. § 609.456, subd. 1. A prompt report must also be made to law enforcement. The report to law enforcement does not have to be in writing. Additional information about the reporting requirement and a reporting form are found on the OSA's website.



The Honorable Steve Sorenson  
Chair, Cormorant Town Board  
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## **Conclusion**

The Office of the State Auditor reviewed a number of Town expenditures and provided the Town with guidance to comply with Minnesota law in the future. We recommend that the Town work with the Minnesota Association of Townships to implement the changes recommended in this letter.

Sincerely,

*/s/ Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel  
651-297-5853

Enclosure

cc. The Honorable Tim Erickson, Town Board Supervisor  
The Honorable Sherwood Olson, Town Board Supervisor  
Ms. Claudia Hanson, Town Clerk  
Ms. Susie Braseth, Town Treasurer  
Mr. Kyle Hartnett, Minnesota Association of Townships