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STATE AUDITOR

# STATE OF MINNESOTA

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June 29, 2011

Mr. H. Brandon Guest, Fire Chief  
Hamel Volunteer Fire Department  
92 Hamel Road  
Hamel, Minnesota 55340

Mr. David DesLauriers, President  
Hamel Volunteer Fireman's Relief Association  
92 Hamel Road  
Hamel, Minnesota 55340

Dear Chief Guest and Mr. DesLauriers:

The Office of the State Auditor ("OSA") received concerns about the Hamel Volunteer Fire Department ("Fire Department"). Specifically, concerns were raised about the Fire Department's calculation and certification of service credits for its volunteer firefighters. This letter will provide the Fire Department and the Hamel Volunteer Fireman's Relief Association with recommendations for service credit determinations.

### **Background**

The Hamel Volunteer Fire Department is an independent nonprofit firefighting corporation. Minimum firefighter and service standards for the Fire Department are found in its Firefighter Attendance policy effective January 1, 2007.<sup>1</sup> The policy requires members to attend a minimum of 25% of all required emergency response situations, two-thirds of all regular training sessions, and all training sessions designated as mandatory. The policy allows firefighters to earn "makeup credit" of up to 5% of the required emergency response attendance through participation in "qualifying work assignments."<sup>2</sup> The policy states that attendance will be calculated and posted on a quarterly basis.

The policy then defines "consequences" for failing to meet the required attendance levels, subject to review by a Fire Department review board, as follows: firefighters failing to

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<sup>1</sup> The stated purpose of the Firefighter Attendance policy is: "To define the required attendance levels for all firefighter activities."

<sup>2</sup> "Qualifying work assignments" must be approved by the Fire Chief. The policy also specifies makeup sessions for the training requirements.

meet the required attendance levels for a calendar year may be denied active service credit for that year; firefighters consistently failing to meet minimum attendance levels may be subject to “additional consequences (up to and including termination) as determined by Department policy” and as determined and administered by the Fire Chief.

The Hamel Volunteer Fireman’s Relief Association (“Relief Association”) is a separate nonprofit entity that receives and manages public money to provide retirement benefits for the Fire Department’s volunteer firefighters.<sup>3</sup> The Relief Association is a “defined benefit relief association,” providing the firefighters with a lump-sum service pension that depends primarily upon the number of years of active service the firefighter served as an active member of the Fire Department.<sup>4</sup>

The Relief Association’s Restated Bylaws define an “Active Member” as a member of the Relief Association who is eligible for benefits and is “currently meeting the minimum firefighter and service standards with the Fire Department.”<sup>5</sup> In contrast, the Restated Bylaws define a “Deferred Member” as a member of the Relief Association “who is no longer meeting the minimum firefighter and service standards with the Fire Department but has not yet taken a full distribution of accrued benefits.”<sup>6</sup>

As of July 1, 2006, the Restated Bylaws require an “Active Member” to be a “Volunteer Firefighter” as defined in Section 2.1 of the Relief Association’s Defined Benefit Lump Sum Retirement Plan (“Plan”).<sup>7</sup> “Volunteer Firefighter” is defined in Section 2.1 of the Plan as any person who:

- (i) is engaged in providing emergency response services or delivering fire education or prevention services as a firefighter for the Fire Department or Municipality;
- (ii) is trained in or is qualified to provide fire suppression duties or to provide fire prevention duties under Minn. Stat. 424A.001, Subd. 8; and

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<sup>3</sup> See Minn. Stat. § 424A.001, subd. 4 (2010).

<sup>4</sup> See, e.g., Minn. Stat. §§ 69.772 and 424A.02 (2010). In contrast, some fire relief associations are “defined contribution relief associations,” providing volunteer firefighters with a service pension based solely on an individual account balance rather than a specified annual lump-sum or monthly benefit service pension amount. See Minn. Stat. § 424A.001, subs. 1b and 1c (2010).

<sup>5</sup> See Restated Bylaws of Hamel Volunteer Fireman’s Relief Association Inc. (April 1, 2009) (“Restated Bylaws”), Article II. Generally, any firefighter with the Fire Department is a member of the Relief Association. See Restated Bylaws, Section 4.1.

<sup>6</sup> See Restated Bylaws, Article II.

<sup>7</sup> See Restated Bylaws, Article II and Appendix B, Section 2.1(aa). Appendix B, Hamel Volunteer Fireman’s Relief Association Inc. Defined Benefit Lump Sum Retirement Plan, is incorporated as a component of the Restated Bylaws. See Restated Bylaws, Article XI.

(iii) meets any other minimum firefighter and service standards established by the Fire Department or Municipality.<sup>8</sup>

The Plan allows “Active Service” to be defined by the Fire Department, as stated in the Fire Department’s policies and procedures.<sup>9</sup> The Plan also recognizes a “Break in Service” as a period of months during which the participant “does not perform the minimum Active Service requirements as defined by the Fire Department, as stated in its policies and procedures.”<sup>10</sup> Participants are not allowed to accrue service credits for each month of the “Break in Service.”<sup>11</sup> The Relief Association also does not prorate service pensions for fractional years of active service.<sup>12</sup>

To determine eligibility for benefits, the Relief Association’s Board of Trustees must “confirm minimum firefighter and service standards” on at least an annual basis.<sup>13</sup>

### **Service Credit for Hamel Firefighters**

The OSA first received concerns about the certification of years of active service for Hamel firefighters in 2009. In response, the OSA discussed the concerns with the Fire Chief and reviewed the attendance records maintained by the Fire Chief. The Fire Chief explained that 2008 was a transition year for the Fire Department. The Fire Chief told the OSA that the Fire Department decided not to impose consequences for inadequate attendance in 2009, even though it appears that at least nine firefighters had less than 25% attendance at fire calls in 2009. The Fire Chief said that they did not impose consequences in 2009 because the firefighters had not been provided with sufficient feedback about their attendance.

When the OSA performed follow-up in 2011, the OSA again reviewed the attendance records maintained by the Fire Chief. Most Fire Department members far exceeded the 25% fire call attendance requirement in 2010.<sup>14</sup> However, three firefighters reported as being “active” in 2010 appear to have had less than 25% attendance at fire calls in 2010.<sup>15</sup> Indeed, one of the firefighters appears to have attended only 6% of the fire calls. Two of the firefighters appear to have attended less than 25% of the fire calls for at least the last three years, although they were reported as being “active” in each of those years.

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<sup>8</sup> See Restated Bylaws Appendix B, Section 2.1(aa). The Bylaws are consistent with Minnesota law. See Minn. Stat. § 424A.001, subd. 10 (2010).

<sup>9</sup> See Restated Bylaws Appendix B, Section 2.1(b).

<sup>10</sup> See Restated Bylaws Appendix B, Section 2.1(g).

<sup>11</sup> See Restated Bylaws Appendix B, Section 2.1(g).

<sup>12</sup> See Restated Bylaws Appendix B, Section 2.1(bb).

<sup>13</sup> See Restated Bylaws, Section 5.2(e).

<sup>14</sup> The OSA did not review training session attendance.

<sup>15</sup> The Fire Chief informed the OSA that meetings were being scheduled with the firefighters who did not meet the attendance requirements in 2010.

The Fire Chief directed the OSA's attention to the use of the work "may" in the Fire Department's policy establishing "consequences" for firefighters who did not meet minimum attendance requirements. As a result, he maintained, any "consequences," including the denial of active service credit for the year, were permissive, not mandatory.<sup>16</sup>

### **Analysis and Recommendations**

In Minnesota, minimum firefighter and service standards, and "active" firefighter service determinations, are made at the local level. The Relief Association's Restated Bylaws require active volunteer firefighters to meet any minimum firefighter and service standards established by the Fire Department. The Restated Bylaws appear to anticipate that the Fire Department has established minimum firefighter and service standards. In addition, the Fire Department's policy appears to establish minimum firefighter and service standards. However, the lack of "consequences" for the failure to meet the minimum standards has, in effect, turned the minimum standards into aspirational goals.

If the Fire Department intended its policy to simply establish aspirational goals, then the Fire Department's policy should be revised because the attendance levels for firefighter activities contained in the policy are not "required" for active service credit.

If the Fire Department intended its policy to set minimum firefighter and service standards, then the policy should be implemented as minimum requirements, not as aspirational goals. Firefighters who do not meet the minimum standards should not receive active service credit for that time period.

The OSA recommends that the Fire Department and the Relief Association review their policies and procedures for determining service credit eligibility. More specifically, the OSA recommends that:

- The Fire Department establish a minimum service requirement that **must** be met for a firefighter to receive active service credit;
- Firefighters should only receive active service credit for completed years of active service;<sup>17</sup> and
- In the future, periods during which a member does not meet the minimum requirements should not be counted toward the member's completed years of active service.

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<sup>16</sup> See, e.g., Minn. Stat. § 645.44, subs. 15, 15a, and 16 (2010) (definitions of "may", "must", and "shall").

<sup>17</sup> Some fire relief association bylaws allow credit for completed months of active service. The Hamel Volunteer Fireman's Relief Association does not appear to authorize pensions to be prorated monthly. See Restated Bylaws Appendix B, Section 2.1(bb).

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The OSA also recommends that the Relief Association's Board of Trustees confirm that minimum firefighter and service standards have been met by each firefighter on at least an annual basis, as required by the Relief Association's Restated Bylaws.

If you have any questions about these recommendations, please feel free to contact me at 651-297-5853 or Nancy.Bode@osa.state.mn.us.

Sincerely,

*/s/ Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel

cc. Rose Hennessy Allen, Office of the State Auditor Pension Director