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March 19, 1998

The Honorable Thomas J. Harbinson
Scott County Attorney
Scott County Courthouse
428 South Holmes Street
Shakopee, Minnesota 55379

Dear County Attorney Harbinson:

Pursuant to Minn. Stat. § 6.50, the Special Investigations Division of the Office of the State Auditor (hereinafter "OSA") is forwarding to your office information relating to potential violations of Minnesota statutes. On April 16, 1997, the OSA received a complaint that Spring Lake Town Treasurer, Thomas Vogel, was not properly handling the Town's funds.¹ During the OSA's review of the complaint, the OSA determined that \$10,000 of Spring Lake Town (hereinafter "Town") funds may have been misappropriated by Mr. Vogel. The OSA's findings are summarized below.

The Town received a tax settlement payment from Scott County in the amount of \$130,850.84. The OSA reviewed the flow of these tax settlement funds (\$130,850.84) through various accounts and had concerns regarding the disposition of \$10,000 of the \$130,850.84.

The OSA requested the canceled tax settlement check of \$130,850.84 from Scott County.² **Exhibit 1.** The OSA received the canceled check (#621566) from Scott County on April 28, 1997. The check was issued on November 26, 1996 to *SPRING LAKE TWP TREASURER TOM VOGEL, SR., 20220 LANGFORD WAY, JORDAN, MN 55352*. The endorsement on the back of the check indicated that this check had been cashed or deposited at Marquette Bank, N.A. - Minneapolis branch on February 19, 1997.

¹ The complainants requested confidentiality and were maintained as such pursuant to Minn. Stat. § 6.715.

² The OSA also received a copy of the canceled \$130,850.84 check from Marquette Bank, N.A. with the Bank's notes as to the meaning of the numbers on the backside of the check. **Exhibit 2.**

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The OSA issued a subpoena to Marquette Bank, N.A. on June 5, 1997 to obtain additional information regarding the February 19, 1997 deposit. The deposit detail documentation received from Marquette Bank, N.A. showed that the tax settlement check of \$130,850.84 had been deposited into Marquette Bank, N.A. and was separated as follows:

- (1) The name "Thomas E. Vogel" appeared on the deposit detail signature line for receiving \$110,000 back as "cash" which was received in the form of two cashier's checks, one in the amount of \$100,000 and the second in the amount of \$10,000. Exhibit 3.
 - a. The \$100,000 cashier's check was made payable to "PRIME RATE TRUST," Exhibits 3 and 4; and
 - b. The \$10,000 cashier's check was made payable to "PRIOR LAKE STATE BANK," Exhibits 3 and 5.
- (2) \$20,850.84 was deposited into the Town's Marquette Bank, N.A. account (#0504142), Exhibit 3;

The OSA obtained copies of the account statements to verify the deposits.³ It was confirmed that \$20,850.84 had been deposited into the Town's Marquette Bank, N.A. account (#0504142). Exhibit 6. The OSA determined that on February 19, 1997, the \$100,000 cashier's check payable to "Prime Rate Trust" was placed with Van Kampen American Capital to open an investment account to buy shares of Prime Rate Income Trust for the Town (#671342861) (hereinafter "Investment Account").⁴ Donald L. Schwartz is listed as the registered representative for the Investment Account. The name of "Thomas E. Vogel, Treasurer" appears on the client signature line of the Client Account Form for the new account. The name of the Investment Account listed on the Client Account Form is "Spring Lake Township, Thomas E. Vogel, Treasurer." Exhibit 7.

Upon initial review, the OSA was unable to locate the deposit of the \$10,000 cashier's check into the Town's checking account at the Prior Lake State Bank.⁵ Therefore, after gathering further

³ The OSA obtained the Marquette Bank, N.A. bank statement from Marquette Bank, N.A. and obtained both the Town's Prior Lake Bank statements and the Prime Rate Trust statements from Mr. Vogel pursuant to a subpoena.

⁴ The funds were invested in a closed-end business trust, which is not a permissible investment account pursuant to Minn. Stat. §§ 118A.04 and 118A.05. This item will be noted in the OSA's audit expected to be released to the public in April or May, 1998.

⁵ In addition to certificates of deposits, the only account the Town had with the Prior Lake State Bank was the checking account.

information, the OSA issued a subpoena on October 23, 1997, to the Prior Lake State Bank to obtain additional information relating to the \$10,000 cashier's check.⁶ The Prior Lake State Bank provided the OSA with documentation identifying that the \$10,000 cashier's check was deposited into account #1034719.⁷ **Exhibit 9.** Account #1034719 is a small business checking account owned by Mr. Thomas Vogel, DBA Wealth Preservation Designs using Tax Identification Number (hereinafter "TIN") 41-5892374 (hereinafter "Mr. Vogel's Checking Account").⁸ **Exhibit 10.** The bank form to open Mr. Vogel's Checking Account states that the account is a "SOLE PROPRIETORSHIP" opened for the business of "ESTATE PLANNING." **Exhibit 10.** From February through September 1997, the OSA reviewed all check withdrawals from Mr. Vogel's Checking Account; however, the OSA was unable to identify any withdrawals from this account (#1034719) that would show a repayment of the \$10,000 to the Town.⁹ Additionally, the OSA found no cash withdrawals or checks written to "cash" from February through September 1997 from Mr. Vogel's Checking Account.

In reviewing the bank statements for Mr. Vogel's Checking Account, the OSA noted that between February 1997 and July 1997, there were seven checks written to "Wealth Preservation Designs" in the amount of \$1,000 and one check written to "Tom Vogel" in the amount of \$60 from a "Donald L. Schwartz" that were deposited into Mr. Vogel's Checking Account. **Exhibit 12.** As previously noted, the OSA found that a "Donald L. Schwartz" was listed as the registered investment representative for the Investment Account previously opened in which the \$100,000 cashier's check was deposited. The address on the checks for Mr. Schwartz is: 10641 Kyle Avenue N., Brooklyn Park, Minnesota 55443.¹⁰

⁶ The Marquette State Bank, N.A. initially provided the wrong account documentation resulting in a delay.

⁷ Mr. Vogel's bank statement lists a \$10,207.79 deposit on February 19, 1997. The OSA has identified the \$207.79 as monthly treasurer wages paid by the Town to Mr. Vogel. A copy of the Town's receipt for the \$207.79 is attached. **Exhibit 8.**

⁸ As noted on **Exhibit 6**, the TIN for the Town is 36-3448861.

⁹ On January 26, 1998, the OSA received the last of the subpoenaed information from Prior Lake State Bank. The Prior Lake State Bank provided copies of all detail disbursements and deposits for Mr. Vogel's account from February 1997 through September 1997. **Exhibit 11.**

¹⁰ The OSA also found that a Donald L. Schwartz having the same address (10641 Kyle Avenue N., Brooklyn Park, Minnesota 55443) was listed as a member of the initial Board of Directors of "Wealth Preservation, Inc." a nonprofit corporation incorporated in 1992. **Exhibit 13.** According to the Secretary of State's office, Wealth Preservation, Inc. has not registered with them since 1994. The title of Mr. Vogel's personal bank account is "Thomas E. Vogel DBA Wealth Preservation Designs." **Exhibit 10.**

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The OSA reviewed the Investment Account statements from February 1997 through July 1997 to determine whether any funds were withdrawn from the Investment Account to Mr. Vogel and found no such withdrawals.¹¹

Minnesota law states that theft is committed when a person "intentionally and without claim of right takes, uses, transfers . . . possession of moveable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property."¹² A person who commits theft may be sentenced "to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$2,500."¹³ Another Minnesota statute provides that a person who receives money on behalf of a state subdivision and "intentionally refuses or omits to pay the same" to the subdivision entitled to the money may be sentenced to imprisonment and payment of a fine.¹⁴ Based upon the information the OSA has at this time, our Office believes \$10,000 of Town funds may have been misappropriated by Mr. Vogel in violation of Minnesota statutes.¹⁵

Additionally, in reviewing Town records obtained by subpoena from Mr. Vogel, the OSA found a bank statement for the Town's account at Marquette Bank, N.A. that was different from the bank statement obtained directly from Marquette Bank, N.A. The contrasting bank statements were for the same account (0504142) and for the same time period (statement date March 31, 1997). The bank statement obtained directly from Marquette Bank, N.A. listed a February 19, 1997 deposit into the Town's account of \$20,850.84 and a previous balance (prior to the \$20,850.84 deposit) of \$41,704.38. **Exhibit 15.** In contrast, the Marquette Bank, N.A. statement obtained from Mr. Vogel appeared to be a copy of a bank statement, and listed a deposit on February 19, 1997 of \$30,850.84. The previous balance was listed as \$31,704.38. **Exhibit 16.** A bank representative from Marquette Bank, N.A. reviewed the bank statement obtained by subpoena from Mr. Vogel, and indicated to the OSA that the bank statement obtained from Mr. Vogel was not a true and accurate statement. Additionally, the OSA was informed by the bank representative that the bank statement was "altered." The basis for this conclusion was that the bank had not altered the statement in their system and the interest calculation on

¹¹ A question arises as to why Mr. Schwartz made these payments to Mr. Vogel.

¹² Minn. Stat. § 609.52, Subd. 2(1) (Supp. 1997).

¹³ Minn. Stat. § 609.52, Subd. 3(2) (Supp. 1997).

¹⁴ Minn. Stat. § 609.445 (1996)

¹⁵ The Town has a \$100,000 bond for the Treasurer. The bond document provides that the bond "will cover losses incurred . . . through the failure of its Township Treasurer . . . acting alone or in collusion with others to faithfully perform their duties or to account properly for all monies or property received by such persons by virtue of their position during the bond period." **Exhibit 14.**

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the copy obtained from Mr. Vogel was incorrect. The altered bank statement supplied by Mr. Vogel misrepresented the amount of money actually deposited into the Town's account at Marquette Bank, N.A.

Minnesota law states that a person who, "with intent to defraud, falsely makes or alters . . . the records or accounts of a bank . . ." with whom funds of a state subdivision are deposited, so that the record purports to have been made by the bank, is guilty of aggravated forgery.¹⁶ Based upon the above information, the OSA has determined that the bank statement obtained by subpoena from Mr. Vogel may have been a forged document in violation of Minn. Stat. § 609.625.

In addition, the treasurer's actions may constitute neglect of treasurer's duties in violation of Minn. Stat. § 367.17.¹⁷ Violation of this law is a gross misdemeanor and punishable by forfeiture of office.

Based upon the above findings, the OSA is forwarding this case to you for your review in compliance with Minn. Stat. § 6.51. Please be advised that Minn. Stat. § 13A.02, Subd. 3, requires the OSA to notify an individual that the OSA has accessed the individual's bank records within 180 days. Based upon this statutory requirement, the OSA is required to notify Mr. Vogel of the OSA's access to his bank records at Prior Lake State Bank on or before April 21, 1998. We would like to work with you in determining the most appropriate time to contact Mr. Vogel in accordance with this law.

In compliance with Minn. Stat. § 6.715, Subds. 2 and 3, this letter and the data supporting it are protected nonpublic data or confidential data on individuals until litigation has been completed or is no longer actively being pursued. In order for the OSA to appropriately maintain its case file, please advise us as to how you will proceed with this case. If you have any questions or require additional information, please feel free to contact Kathy Docter at 282-2388 or Deno Howard at 297-3673.

Sincerely,



Judith H. Dutcher
State Auditor

JHD:tlf
Enclosures
judi\harbinson letter

¹⁶ Minn. Stat. § 609.625, Subd. 1 (7) (1996).

¹⁷ See also Minn. Stat. § 609.43 (1996).