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September 2, 2016

The Honorable Laura Ihrke
Steele County Auditor
Administrative Center
630 Florence Ave.
Owatonna, MN 55060

Dear Auditor Ihrke,

Your recent letter to the Office of the State Auditor (OSA) was referred to me. In it you explain that certain Steele County (County) citizens have submitted a petition to the County Board of Commissioners, seeking return of certain per diem payments made by the County to three of its commissioners. The petitioners state that the per diems in question were claimed without "written documentation" required by section 471.38 of Minnesota Statutes. The petitioners also seek removal of the three commissioners from office. You have asked whether the OSA will investigate the allegations in the petition.

Although the OSA cannot directly address the petitioners' requests for repayment of the per diems or removal of the commissioners, we can address the issue of documentation required to support a per diem claim under Minn. Stat. Sections 15.17 and 471.38, and we can provide the County with some guidance.

Background

The OSA has previously reviewed issues and made recommendations regarding the County's per diem payments to commissioners. In 2012, the OSA reviewed whether a County commissioner had received two per diem payments for attending a single meeting. The meeting involved a joint powers entity, and the commissioner had received one per diem payment from the joint powers entity and a separate per diem payment for the same meeting from the County. In a letter to the County dated July 13, 2012, we recommended that the County remove the joint powers entity from the list of meetings eligible for County per diem payments to avoid the possibility of commissioners receiving double per diem payments.

The petitioners current concerns relate to the documentation requirements related to per diem claims. Minnesota Statutes, Section 471.38 imposes requirements on any person claiming payment from the county. It requires that:

1. the claims must be in writing;
2. they must be itemized, to the extent the “ordinary course of business” allows for itemization; and
3. the claimant must sign a declaration saying that the claim is true and correct and that no part of it has been paid.

Section 15.17 of Minnesota Statutes states that public officers “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.” In the case of per diem claims, the “official” activity is the committee work that qualifies the commissioner to receive a per diem payment.

We have recommended that committee work be documented in the board minutes. This documentation would not be the responsibility of individual commissioners claiming a per diem; rather it would be provided by the county auditor, who takes the minutes, acting under the direction of the board as a whole.

Review of County’s Per Diem Documentation Practices

It appears that the County has been meeting the documentation requirements of section 471.38 with respect to per diem claims both before and after July 2014. The County’s practice has been to have commissioners submit their per diem claims in writing on a county form on which they set forth each individual activity that qualified for each per diem, along with the date of the activity. This form contains the declaration required by Minn. Stat. 471.38. In the “ordinary course of business” commissioners will not usually receive a receipt for undertaking the activity that qualifies them for a per diem payment; therefore, this form serves as the itemized claim required by the statute.

It appears from the board meeting minutes provided by the County and from our conversation that the board minutes now indicate when individual board members report back to the board regarding committee work they have performed. You indicated that the individual commissioners had made reports of committee work prior to July of 2014, but now you, as the officer responsible for the minutes, indicate in the minutes that these reports have been made, and these minutes are approved by the board. This additional documentation further corresponds with the requirements of section 15.17.

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Based on our review of the documents provided, the County appears to be in compliance with Minn. Stat. Sections 15.17 and 471.38, and we have no further recommendations regarding documentation of claims as required by these statutes.

Additional Issues

During our review, the OSA noted that the joint powers entity referenced in the OSA's July 2012 letter to the County has remained on the list of meetings eligible for a County per diem. Based on our conversations, I understand this to be an oversight and not a decision by the County to continue to pay per diems for commissioners' activity with respect to that joint powers entity. The OSA recommends that this oversight be corrected, both in the board minutes and on the County's web site.

Additionally, it appears that commissioner per diem claims are not being reviewed and approved by either the County board or by a County administrative official to whom the board has delegated this function. Section 384.13 of Minnesota Statutes requires that claims against the county may be paid only after being reviewed and approved by the county board. Section 375.18 of Minnesota Statutes allows a county board to delegate this authority to a county administrative official. The County should require that prior to payment all per diem claims be reviewed and approved by the County board or by a designated County administrative official under a proper delegation of authority.

I hope you find this information helpful. If you have any questions or concerns, please feel free to contact me.

Very truly,

/s/ David Kenney

David Kenney