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**TRANSMITTED VIA U.S. MAIL
AND ELECTRONIC MAIL**

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

Dear Auditor Ihrke,

The Office of the State Auditor (OSA) sent a letter to you on September 2, 2016, providing guidance regarding Steele County (County) commissioner per diems. In response to that letter, the OSA received additional communications from citizens that (1) noted an instance in January 2013, in which the County made a per diem payment for attendance at a joint powers board meeting, and (2) asked for a clarification regarding the OSA's conclusion that the County has been meeting per diem documentation requirements. This letter provides a summary of our further review and offers additional guidance and clarification on the topic of per diem payments.

Background

The OSA twice previously has reviewed issues and made recommendations regarding the County's per diem payments to commissioners. In 2012, the OSA reviewed whether a County commissioner had been receiving two per diem payments when attending meetings of a particular joint powers entity – one from the County and one from the joint powers entity. The OSA's July 13, 2012 letter noted that the County established a per diem of \$70.00 per day for all County-related meetings attended by County commissioners, and that the joint powers entity had set a per diem of \$125.00 for its meetings.¹ The OSA found that on three occasions, a County commissioner who attended the joint powers entity's meetings was paid both per diems for attending the same meeting. After the OSA's review, the commissioner repaid the County \$210 for the three County per diems he had received.

In order to avoid future situations resulting in double payments, the OSA urged the County not to pay per diems to commissioners when they attended meetings held by a

¹ Attachment A, July 13, 2012 OSA Letter to Steele County Auditor Ihrke and Steele County Coordinator Severson.

joint powers entity and were eligible to receive the joint powers entity's own, board-established per diems. To implement this suggestion, we recommended that the County remove those joint powers entities from the list of meetings eligible for County per diem payments.²

As noted above, the OSA issued another letter on the county per diem subject on September 2, 2016.³ In this letter, the OSA responded to concerns raised about the documentation needed to support County commissioners' claims to be paid a per diem. The OSA reviewed relevant County documentation in light of the requirements of Minn. Stat. §§ 471.38 and 15.17 and concluded that "[b]ased 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."

Additionally, the letter noted that claims for commissioner per diems should be reviewed and approved by the County board, unless the County board has delegated this authority to a County administrative official.⁴ On September 13, 2016, the County board passed a resolution specifically delegating the approval of commissioner compensation, including per diem payments, to the County Auditor.

September 2016 Concern

Following issuance of the September 2, 2016 letter, the OSA received information indicating that the County had paid a \$70.00 per diem to a commissioner for attendance at a meeting of a joint powers board. The joint powers board had established its own per diem payment amount of \$125.00 available to attendees.⁵

In response to this information and to address the concern of possible double-payments, the OSA reviewed per diem payments made by the joint powers entity from January 1, 2013, through December 31, 2015. Specifically, The OSA reviewed whether County commissioners receiving joint powers per diems for attending meetings of the joint powers board also received per diems from the County for the same meeting(s). The OSA found no instances during the reviewed time period in which a County commissioner received per diem payments from both the joint powers entity and from the County for the same meeting(s).

Although the payment of the County per diem rather than the joint powers per diem was contrary to the OSA's suggestion in its 2012 letter, that suggestion was made to help avoid the occurrence of double payments (which did not occur here) and did not reflect a legal requirement. Having concluded this additional review and finding that there was no

² *Id.*

³ Attachment B, September 2 2016, OSA Letter to Steele County Auditor Ihrke.

⁴ *Id.* See Minn. Stat. §§ 384.13 and 375.18.

⁵ The joint powers entity was the same joint powers entity addressed in the OSA's 2012 letter.

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double payment associated with the \$70.00 per diem brought to our attention, the OSA considers its review of this matter closed. The County board, however, is free to consider whether it should take or implement any additional actions or controls, consistent with Minnesota law, regarding handling of per diem claims and payments.⁶

The OSA recently has revised for additional clarity its Statement of Position entitled "County Commissioner Per Diem Payments." OSA statements of position should not be considered legal advice; they are prepared to provide an educational resource. The County should rely on its attorney for legal advice. For your convenience, a copy of the revised Statement of Position is enclosed.⁷

I hope you find this information helpful.

Sincerely,

/s/ Mark Kerr

Mark Kerr, J.D.
Special Investigations Director
Office of the State Auditor

Enclosures

cc. The Honorable Daniel McIntosh, County Attorney
The Honorable James Brady, County Board Chair

⁶ See Minn. Stat. § 373.02.

⁷ Attachment C.