

KANDIYOHI COUNTY AND CITY OF WILLMAR ECONOMIC DEVELOPMENT COMMISSION (EDC)
JOINT POWERS BOARD OF COMMISSIONERS ANNUAL MEETING

MINUTES

January 23, 2014
EDC Office, Willmar, MN

Present: Steve Ahmann, Denis Anderson, Jim Butterfield and Dean Shuck

Staff: Steven Renquist, Executive Director

Excused: Ron Christianson and Harlan Madsen

Guests: Tim Johnson, Willmar City Council member and Jim Ruff of Ruff & Company CPAs, Inc.

Media: Anne Polta, West Central Tribune

Secretarial: Nancy Birkeland, Legal & Administrative Assistants, Inc. (LAA)

Chairperson Denis Anderson called the meeting to order at approximately 11:31 a.m. Anderson informed the board the Willmar City Council asked if a substitute council member could replace Joint Powers Board Commissioners at meetings. Renquist stated the EDC's attorney previously gave an opinion that when a Kandiyohi County Board Commissioner sent a replacement, it was deemed improper as the EDC's Bylaws do not specifically allow Joint Powers Board Commissioners to send substitute representatives and they cannot vote. Nancy Birkeland stated Article IX of the Bylaws state the Bylaws may be amended or altered as provided for in paragraph 11 of the Joint Powers Agreement. Paragraph 11 of the Joint Powers Agreement states:

The Economic Development Commission may adopt such operating procedures as are necessary for its effective operation, and shall have bylaws to govern the operation of the Commission, which shall initially be adopted by a majority vote of all voting members. Thereafter, the bylaws and operating procedures may be amended at a regular meeting or a special meeting called on at least five days notice.

IT WAS MOVED BY Steve Ahmann, SECONDED BY Dean Shuck, that Joint Powers Board Commissioners may allow substitute representation from the Willmar City Council or Kandiyohi County Board of Commissioners, if a Joint Powers Board Commissioner cannot attend a Joint Powers Board meeting, subject to review and approval by the EDC's legal counsel.

MINUTES—

IT WAS MOVED BY Jim Butterfield, SECONDED BY Steve Ahmann, to approve the minutes of the November 21 meeting and December 17, 2013 special meeting of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board of Commissioners as e-mailed. All present voted in favor by roll call.

TREASURER'S REPORT— Steve Renquist presented the financial reports for periods ending November 30 and December 31, 2013.

IT WAS MOVED BY Jim Butterfield, SECONDED BY Steve Ahmann, to accept the Kandiyohi County and City of Willmar Economic Development Commission financial reports for periods ending November 30 and December 31, 2013, subject to audit. All present voted in favor by roll call.

Jim Ruff opined that when the audit process is started, he believes the budget will be a break even once the audit is done, especially in regard to the loans.

REPORTS

Economic development activities. Renquist distributed a list of contacts he has made (see attached) and reviewed those contacts with the board. The board was also furnished a copy of the 5-Year Goals updated as of January 9, 2014 (see attached). Renquist noted he is writing a new business plan for the Dairy Research Training and Education Facility. Steve Ahmann requested there be future discussions on the possibility of having a delegation of the taxing jurisdictions discuss matters that will have a fiscal impact on those jurisdictions prior to any negotiations being presented to the elected officials. Renquist informed the board Jean Spaulding is attending the Economic Development Association of Minnesota today.

UNFINISHED BUSINESS

Business Development Specialist position. Renquist reported the position was expanded from an Ag position to a Business Development Specialist per this board's direction (see job description attached). The application deadline is tomorrow and eight applications have been received to date. Renquist anticipates the new employee will work mainly with the communities and townships outside of Willmar. The board discussed the pros and cons of considering incentive pay for the new employee.

Requirements for recording board meetings. Renquist read the following email from attorney Mike Burgett as to recording board meetings.

The main reason to record, in my opinion, would be to assist the secretary in the procurement of accurate minutes associated with each meeting. There shouldn't be any sinister intent . . . (i.e., "I'm going to get you later!) . . . but perhaps that isn't realistic. Anyway, because there is no requirement to record, the practice can be implemented or cancelled at the preference of the governing body. So, absent future legislation that would specify otherwise, the EDC would not be 'locked in' to electronically record if a subsequent board wished to discontinue the practice.

If recording is going to be implemented by the current board, I would advise guiding its implementation toward being a "practice", rather than a "policy".

Renquist informed the board that closed sessions of the boards would also have to be recorded. Jim Ruff gave his opinion that recording minutes may inhibit discussion. The board's consensus was to continue the present practice of written minutes only.

There was no other unfinished business.

NEW BUSINESS

Amendment to Bylaws. Renquist presented proposed amendments to the Bylaws.

IT WAS MOVED BY Dean Shuck, SECONDED BY Jim Butterfield, to amend the Bylaws in the following areas:

Article I. Section 3. Registered Office. Delete "312 Fourth Street" and insert the current address to read: The registered office of the Commission shall be 333 Litchfield Avenue SW, Willmar, Minnesota.

Article II. Section 3. Meetings and Notice. Delete the word "monthly" in the second sentence so it will read: No notice, either to old or new members of the Board of Commissioners shall be required for such meeting or for any regular meeting of the commissioners fixed from time to time by resolution of a majority of the Board of Commissioners.

Article VIII. Section 1. Requests for Payment, Checks and Notes. Delete "the designated city of Willmar officials or by" in the first sentence and "city of Willmar officials or two" in the second sentence so the section will read: All requests for payments shall be reviewed and initialed by two board officers or agents as may from time to time be designated by resolution of the Board of Commissioners and all checks and notes of the board shall be signed by such board officers or agents as may from time to time be designated by resolution of the Board of Commissioners. All checks and notes shall require the signature of two designated board members or agents.

All present voted in favor by roll call.

Reserves. Jim Ruff was introduced and noted he was treasurer for the EDC's predecessors and has now been the EDC's auditor for several years and offers professional direction as needed. Ruff was present to clarify the reserves held by the EDC. Ruff noted the EDC's reserves were created from tax levies received that exceeded expenses and also monies transferred from the EDC's predecessors. Ruff reviewed the December Balance Sheet noting in particular the Equity section as to Reserved (restricted) Funds, Designated funds and Unreserved (unrestricted) Funds. Reserved or restricted indicates constraints have been placed on funds by outside parties, the board or the type or purpose of the monies, such as Invested in Capital Assets, Loan Receivable-HRA of Willmar and Tourism Development Reserve. Revolving Loan Fund-County of \$222,744 was restricted by the Kandiyohi County Board of Commissioners, must be used for revolving loans and must be returned to Kandiyohi County if the EDC is dissolved. Approximately \$350,000 is true unrestricted/unreserved monies. Because the EDC's income is based heavily on tax levy funds and the majority of its money is received in June or July, its first six months of cash flow comes from reserves. Per the State Auditor's Statement of Position (see attached), it recommends that government entities that rely on property taxes maintain an unrestricted fund balance of 35 to 50 percent of fund operating revenues or no less than five months of operating expenditures in their general fund. If reserves are used to meet the EDC's budget, that amount should be set aside and removed from the unreserved funds. The EDC should evaluate its present reserves and determine if funds need to be committed for the future. Ruff stated there is a fairly good history of the money trail coming to the EDC and the restrictions placed on any funds. As to the Christianson Systems grant/loan, the principal collected becomes the EDC's money and is restricted for revolving loans. The EDC cannot bond as it was not organized as an economic development authority. An economic development authority must have an odd number of board member. The EDC is unique in that it

has an equal number of board members. The board was furnished with a copy of attorney Mike Burgett's January 8, 2014 memo on reserve funds (see attached).

IT WAS MOVED BY Dean Shuck, SECONDED BY Steve Ahmann, to encumber \$50,000 of reserves for any deficit in the 2014 budget and \$50,000 for the 2015 budget and \$250,000 for operating capital. All present voted in favor by roll call.

Conflicts of Interest. Renquist informed the board a conflict of interest was brought up by a Joint Operations Board member as to voting on extending the EDC's current office lease. The EDC's legal counsel provided his opinion in the January 9, 2014 email provided to the board (see attached). The Joint Operations Board members who voted on the lease extension did not have any monetary interest in the results. Ahmann referred to the conflict of interest paragraph in the EDC's Policies and Procedures Manual per Minn. Stat. 118A and recommended board members abstain when it appears there may be a conflict. Anderson recommended any conflicts be disclosed by board members.

ANNUAL MEETING

Joint Operations Board members.

IT WAS MOVED BY Steve Ahmann, SECONDED BY Jim Butterfield, to accept the resignation of Richard Nordin from the Kandiyohi County and City of Willmar Economic Development Commission Joint Operations Board. All present voted in favor by roll call.

Replacements for Richard Nordin and Milan Schmiesing will be made at this board's April meeting. Dean Shuck informed the board that Harlan Madsen recommends this board interview potential members for the Joint Operations Board.

Adoption of 2014 standing committees and reappointment of committee/subcommittee members. Ahmann recommended individuals from the labor industry be included on EDC committees. Renquist noted committee members recommend individuals who may wish to serve on an EDC committee.

IT WAS MOVED BY Dean Shuck, SECONDED BY Jim Butterfield, to ratify the following standing committees and subcommittee for 2014 for the Kandiyohi County and City of Willmar Economic Development Commission:

- Agriculture and Renewable Energy Development (Ag)
- Business Retention and Expansion/Recruitment (BRE/R)
- BRE/R Technology Advisory Subcommittee
- Finance
- Marketing and Public Relations

and to ratify the reappointment of committee members who presently serve on committees and subcommittees as named on the attached list. All present voted in favor by roll call.

Regular meeting time, date and location.

IT WAS MOVED BY Dean Shuck, SECONDED BY Steve Ahmann, that the Kandiyohi County and City of Willmar Economic Development Commission (EDC) Joint Powers Board meet quarterly at 11:30 a.m. on the fourth Thursdays of January, April, July and October at the EDC office. All present voted in favor by roll call.

Official legal counsel. Chairperson Anderson informed the board that attorney Dean Anderson, who has been the EDC's legal counsel retired and recommended his partner, Mike Burgett. Ahmann asked that a request for proposal for legal counsel be discussed in the future.

IT WAS MOVED BY Dean Shuck, SECONDED BY Jim Butterfield, to appoint D. Michael (Mike) Burgett of Anderson & Burgett, Willmar, Minnesota, as the official legal counsel for the Kandiyohi County and City of Willmar Economic Development Commission. All present voted in favor by roll call.

Official legal newspaper.

IT WAS MOVED BY Steve Ahmann, SECONDED BY Dean Shuck, to select the *West Central Tribune* as the official legal newspaper for the Kandiyohi County and City of Willmar Economic Development Commission. All present voted in favor by roll call.

Approval of contracts.

IT WAS MOVED BY Dean Shuck, SECONDED BY Steve Ahmann, to approve the 2014 Employment Agreement between the Kandiyohi County and City of Willmar Economic Development Commission and Executive Director Steven Renquist.

IT WAS MOVED BY Jim Butterfield, SECONDED BY Steve Ahmann, to approve the 2014 Employment Agreement between the Kandiyohi County and City of Willmar Economic Development Commission and Assistant Director Jean Spaulding. All present voted in favor by roll call.

IT WAS MOVED BY Dean Shuck, SECONDED BY Jim Butterfield, to approve the contract between the Kandiyohi County and City of Willmar Economic Development Commission and Legal & Administrative Assistants, Inc. All present voted in favor by roll call.

Appointment of EDC Joint Operations Board liaison.

IT WAS MOVED BY Dean Shuck, SECONDED BY Steve Ahmann, to appoint Jim Butterfield as liaison to the Kandiyohi County and City of Willmar Economic Development Commission Joint Operations Board. All present voted in favor by roll call.

Election of 2014 officers.

IT WAS MOVED BY Dean Shuck, SECONDED BY Jim Butterfield, to elect Denis Anderson as chairperson of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board. All present voted in favor by roll call.

IT WAS MOVED BY Steve Ahmann, SECONDED BY Dean Shuck, to elect Jim Butterfield as vice chairperson of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board. All present voted in favor by roll call.

IT WAS MOVED BY Jim Butterfield, SECONDED BY Dean Shuck, to elect Steve Ahmann as secretary of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board. All present voted in favor by roll call.

IT WAS MOVED BY Jim Butterfield, SECONDED BY Steve Ahmann, to elect Dean Shuck as treasurer of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board. All present voted in favor by roll call.

Ahmann asked that staff's annual reports include a list of accomplishments and whether those accomplishments can be measured as to jobs created and the rates of pay of those jobs and how much time was dedicated by staff.

ADJOURNMENT—There being no further business, the meeting was adjourned at 1:26 p.m.

NEXT MEETING—The next regular board meeting is **11:30 a.m., Thursday, April 24, 2014**, at the EDC office.



Steve Ahmann, Secretary

APPROVED 4/24/2014:



Denis Anderson, Chairperson

Economic Development Commission

January 23, 2014

Executive Director Contacts:

Jennie-O Turkey Store

Daniel Groothuis

University of Minnesota

Dairy

Vet School, New Sweden

Mid Central Research and Outreach Facility

Avian Lab (Turkey R&D Center)

Medical Devices Center

Bio-Science Center

USDA Rural Development

Atwater

Raymond

New London – Jerry’s Family Grocery

New London – rural motel franchise

Sen, Koenen and Rep. Sawatzky

Highway 12 – Corridor

Highway 23 – Completion

Veterans Home

MN Dept. of Veterans Affairs

Bio-gas

BNSF RR

SWIF

Techne Corp – biomedical

Refuse burner

Jackpot Junction

Rice Hospital

ACMC & Family Practice

Airport marketing

Energy Innovation Corridor

Bio Pro Power

Ag Tech Innovation Center

Kandiyohi County and City of Willmar Economic Development Commission
5-Year Goals (2011-2016)
Updated January 9, 2014

Goal 1 – Create, recruit, retain and expand businesses in Kandiyohi County

Objective 1.1 – Develop, invest in, and support programs and activities that foster the retention and expansion of existing business plus the creation of a growth environment that allows the recruitment of new businesses, with a special emphasis on value added agriculture, renewable energy, bioscience and the MinnWest Technology Campus as a technology hub

Strategy 1.1.1 – Retention, expansion, and recruitment of businesses at the MinnWest Technology Campus

- Coordinate with MWTC Business Development staff with entrepreneurship opportunities
- Partner with MWTC in a Community Venture Network Membership
- Collaborate with MWTC for targeted business recruitment events and activities
- Develop materials for outreach and follow-up on leads generated that would fit the MWTC collaborative culture
- Support the Animal Science Venture Conference at the MWTC and the University of MN Office of Technology and Commercialization
- Support efforts to develop, engage, expand, and promote the Mid-Central Research and Outreach Center (MCROC)

Strategy 1.1.2 – Development of agriculture and renewable energy businesses

- Support the development of additional sources and uses for area food products
- Prioritize and target resources toward the recruitment, retention, and expansion of primary and secondary businesses in value added agriculture and agbioscience
- Additional movement to state designation as a Renewable Resource Development Zone
- Work with area partners to create a Bioscience Zone
- Attract State of Minnesota Dairy Research, Training and Consumer Education facility
- Continue development of Minnesota Turkey Research and Development facility

Strategy 1.1.3 – Business Retention and Expansion

- Develop and implement a business retention and expansion (BRE) survey program

- Create a database program that will leverage the BRE survey data and will collaborate with the Synchronist program

Strategy 1.1.4 – Leadership Development

- Actively promote and recruit a diverse and balanced representative group of established and emerging leaders from Kandiyohi County/Willmar to participate in the Blandin Community Leadership Program in September 2014; support their efforts upon completion of the program

Strategy 1.1.5 – Entrepreneurship

- Develop templates and resources along with Ridgewater College for successful entrepreneurship programs and training that can be delivered through the EDC website
- Collaborate with existing entrepreneurship resource providers in the region and statewide
- Actively support a champion for the creation of a co-working model for business development within the county

Strategy 1.1.6 – Workforce & Talent Development/Recruitment

- Launch the redesigned “Bring em Home” campaign in conjunction with the Vision 2040’s committee to attract new residents to the community.
- Identify through social media outlets graduates of Kandiyohi County schools for targeted messages through the “Home” campaign
- Develop strategic priorities in technology jobs development in conjunction with Ridgewater College
- Support existing efforts within the region led by Ridgewater College, Central Minnesota Jobs and Training Services, DEED, and other stakeholders

Strategy 1.1.7 – Economic development programs including WAM-BC, downtown development, and community development throughout Kandiyohi County

- Serve on WAM-BC Board of Directors to promote collaboration and EDC programs and services.
- Serve on WDC Board or Committee to promote collaboration and EDC programs and services.
- Provide outreach to city councils within the county to promote collaboration and EDC programs and services.

Strategy 1.1.8– Mapping of Industrial Development within Kandiyohi County for infrastructure and services

- Complete Shovel Ready process for Willmar’s Industrial Park.
- Assist other cities within the county in efforts to map their industrial properties and/or complete the Shovel Ready process.
- Contact service providers (utilities, broadband, telco’s) for cooperative mapping and trench programs for Kandiyohi County and City of Willmar.
- Work with county community officials and real estate professionals to create and maintain a compilation of available commercial and industrial property

Strategy 1.1.9 – Broadband Internet Access and Utilization

- Continue collaborative efforts through Blandin’s Broadband Initiative including the coordination of a Hackathon
- Coordinate with Connect MN to create an access map that will be utilized to educate community on existing infrastructure and build-out needs
- Convene a taskforce with user groups and providers to develop a public-private strategy utilizing best practices and attract resources for infrastructure funding

Objective 1.2 – Increase the availability of and /or access to debt and equity financing resources

Strategy 1.2.1 – Debt Financing

- Explore potential sources of capitalization for the EDC’s loan program and other business finance programs within the county
- Leverage resources from regional, state, and national financing programs

Strategy 1.2.2 – Equity Finance

- Assess the feasibility of a countywide angel investor fund or network; support development efforts as warranted
- Participate in active angel investor networks within the state

Objective 1.3 – Market Kandiyohi County to prospective businesses, residents, investors and site selectors

Strategy 1.3.1 – Marketing materials and tactics that promote business opportunities in Kandiyohi County

- Develop new printed marketing materials and a plan for targeted dissemination
- Enhance the EDC’s website and social media presence
- Re-create the recruitment campaign

Goal 2 – Improve, maintain and expand Kandiyohi County’s transportation infrastructure through increased collaboration

Objective 2.1 – Support efforts to improve, maintain, expand, and market our existing transportation infrastructure

Strategy 2.1.1 – Willmar Municipal Airport

- Support efforts of the City of Willmar to market the airport to existing and prospective businesses within the city/region
- Assist the City of Willmar with any funding opportunities to maintain, improve, or expand the existing facility
- Examine opportunities to create linkages that might expand the utilization of the airport

Strategy 2.1.2 – Railroad

- Assist efforts of BNSF, the City of Willmar and Kandiyohi County on all funding opportunities through the TIGER Federal Grant program, MNDOT and DEED for construction of a rail bypass west of Willmar
- Coordinate with BNSF, the City of Willmar and Kandiyohi County a design build for a rail-serviced Industrial Park loop for land west of the expanded Willmar Industrial Park
Coordinate with BNSF marketing outreach to rail serviced customers that are in need of expanded building development opportunities with the Willmar Industrial Park

Strategy 2.1.3 - Roads and Highways

- Engage the Hwy 23 Coalition to work with MnDOT on development of passing lanes on the Hwy 23 corridor from Willmar to I-90
- Utilize the resources of the Hwy 23 Coalition to advocate the completion of the planned 4-lane along Hwy 23 between New London, Paynesville and Richmond
- Engage MnDOT resources to promote ‘super two’ passing lanes between Willmar and Litchfield
- Determine viability of Highway 12 Coalition
- Work with Willmar element on improvement of Highway 12 through the city

Goal 3 – Promote and position Kandiyohi County (Willmar) as a regional medical center

Objective 3.1 – Coordinate annual medical community listening sessions

Objective 3.2 – Support efforts to develop a Veterans Home in Willmar

Objective 3.3 – Determine community attributes most attractive to medical professionals

Objective 3.3 – Coordinate workforce recruitment efforts specifically designed for the healthcare sector within the “Home” campaign

- Invite medical recruitment professionals from Rice Hospital, APMC, Family Practice Medical Center, Bethesda, and other providers to input and design a “Medical HOME” campaign

**Kandiyohi County and City of Willmar
Economic Development Commission (EDC)
Business Development Specialist**

Job Summary

The position is an active member of the Economic Development Team. It upholds the mission and core objectives of the EDC by:

- Identifying development needs and opportunities in Kandiyohi County
- Developing and implementing a marketing plan to advance the economies in the rural areas and the communities in Kandiyohi County
- Recognizing and advancing agribusiness, bio-business, value-added agriculture and renewable resource development as economic drivers in the future success of Kandiyohi County
- Promoting, retaining and expanding existing businesses in Kandiyohi County
- Facilitation of additional opportunities as observed

Job Specifications and Requirements

The applicant must demonstrate a trained or acquired ability to work with new and existing businesses in Kandiyohi County communities by:

- Serving on a team to design and implement effective economic development programs
- Providing communities with planning and visioning toward their goals
- Enhancing development by identification of and contacting business retention and growth opportunities
- Having highly developed organizational, planning and communications skills
- Having the ability to process guidelines and objectives into effective action plans
- Being able to understand financial reports, business plans and budgetary guidelines

Job Relationships

Responsible to: Executive Director

Work with: Assistant Director

Agribusiness and Renewable Energy Development Committee

Business Retention, Expansion and Recruitment Committee

Marketing Committee

Finance Committee

AMENDED BYLAWS

OF

KANDIYOHI COUNTY AND CITY OF WILLMAR ECONOMIC DEVELOPMENT COMMISSION

ARTICLE I.

The Commission

Section 1. Establishment. The Commission was established by Minnesota Legislative Statute, Kandiyohi County and city of Willmar Resolution.

Section 2. Name of Commission. The name of the Commission shall be the "Kandiyohi County and City of Willmar Economic Development Commission", hereafter called Commission.

Section 3. Registered Office. The registered office of the Commission shall be **333 Litchfield Avenue** ~~312 Fourth Street-SW~~, Willmar, Minnesota.

ARTICLE II.

Board of Commissioners

Section 1. Appointment of Commissioners. The property and business of the Commission shall be managed by its Board of Commissioners. The number, qualifications, terms and powers of the Board shall be provided for by the procedures and in the manner as provided for in the Joint Powers Agreement between the city of Willmar and county of Kandiyohi, and by the amendments thereto that may be hereafter adopted.

Section 2. Removal. Board members may be removed by the appointing board or boards for inefficiency or neglect of duty, or misconduct in office, a board member may be removed by the governing body that approves said member. The board member must be given a copy of the charges at least 10 days prior to a hearing at which the board member has the opportunity to be heard in person, or by counsel. When charges in writing have been preferred against a board member, pending final action thereon the governing body, who approved said member, may temporarily suspend the board member. If it is found that those charges have not been substantiated, the board member shall immediately be reinstated to the board. When any board member is removed, a record of the proceedings, together with the charges and findings thereon, shall be filed.

Section 3. Meetings and Notice. The Board of Commissioners shall meet quarterly, on the third Thursday of each third month. No notice, either to old or new members of the Board of Commissioners shall be required for such ~~monthly~~ meeting or for any regular meeting of the commissioners fixed from time to time by resolution of a majority of the Board of Commissioners. Other meetings of the Board of Commissioners may be held upon the call of the chairman or any

commissioner. Neither the business to be transacted at nor the purpose of any meeting need be specified in the notice of such meeting. Meetings may be conducted by telecommunications, so long as statutory notice provisions are followed and minutes of the meeting are produced.

Section 4. Quorum. At all meetings of the Board four members of the commission shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a quorum of the commissioners present at any meeting in which there is a quorum shall be the act of the Board of Commissioners.

Section 5. Order of Business. The Board of Commissioners may determine the order of business at their meetings.

Section 6. Duties. All commissioners shall perform the duties of a commissioner, including duties as a chairperson, co-chairperson or member of a standing or special committee of the Board.

ARTICLE III. Meetings

Section 1. Place. All meetings shall be held at the registered office of the Commission or at such place designated by the Board of Commissioners.

Section 2. Annual Meetings. An annual meeting shall be held in January of each year.

Section 3. Notice of Annual or Special Meetings. Public notice stating the place, day and hour of the annual or special meetings shall be published in the official newspaper of Kandiyohi County. In the case of adjournment of a meeting from time to time, no further notice of the adjourned meeting shall be necessary (if an announcement is made at the meeting where the adjourning is held specifying the place, day and hour of the adjourned meeting).

Section 4. Manner of Voting. The voting on all questions coming before the Commission shall be by roll call and the yeas and nays shall be entered upon the minutes of such meeting.

ARTICLE IV. Powers of Commissioners

Section 1. Other Powers. In addition to the powers and authorities conferred upon it by these Bylaws, the Board of Commissioners shall have the power to do all lawful acts necessary and expedient to the conduct of the business of this Board of Commissioners.

ARTICLE V.
Officers

Section 1. Officers. The Board of Commissioners, at its first meeting of each fiscal year, shall elect the following officers by a majority vote:

- a. a chairperson, who must be a member of the Board of Commissioners;
- b. a vice chairperson, who must be a member of the Board of Commissioners;
- c. a secretary, who need not be a member of the Board of Commissioners;
- d. a treasurer, who need not be a member of the Board of Commissioners; and

All officers shall hold office until their successor is elected, notwithstanding any earlier termination of their office or as a commissioner.

Section 2. Other Officers. The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and exercise such powers and perform such duties as shall be determined by the Board.

Section 3. Terms of Office. The officers of the Commission shall hold office for one year or until their successors are chosen and qualify in their stead. Notwithstanding an earlier termination of their office as commissioners, any officer elected or appointed by the Board of Commissioners may be removed by the affirmative vote of any majority of the whole Board of Commissioners with or without cause.

Section 4. Salaries. There shall be no salaries paid to the officers, agents or commissioners of the Board, except that the Board shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and disbursements in furtherance of the purposes set forth in the enabling resolution of the Board.

Section 5. Duties.

- a. Chairman. The chairman shall:
 - (1) be the chief executive officer of the Board;
 - (2) preside over all meetings of the Commissioners;
 - (3) have general active management of the affairs of the Board and shall see that all orders and resolutions of the Board are carried into effect;

- (4) execute all bonds, mortgages and other contracts; and
 - (5) be an ex officio member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of chairman of a joint powers board.
- b. Vice Chairman. The vice chairman shall, in the absence or inability of the chairman, perform the duties and exercise the power of the chairman and shall perform such other duties as the Board of Commissioners shall prescribe.
- c. Secretary. The secretary shall:
- (1) attend all sessions of the Board of Commissioners;
 - (2) record all votes and the minutes of all proceedings in a book kept for that purpose;
 - (3) perform like duties for the standing committees when required;
 - (4) give or cause to be given notice of all meetings of the Board of Commissioners, and shall perform such other duties as may be prescribed by the Board of Commissioners or chairman under whose supervision he/she shall be; and
 - (5) be sworn to the faithful discharge of his/her duty.
- d. Treasurer. The treasurer shall:
- (1) be sworn to the faithful discharge of his/her duty;
 - (2) have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements and books belonging to the Board and shall deposit all monies and other valuable effects in the name and to the credit of the Board, in such depositories as may be designated by the Board of Commissioners;
 - (3) disburse the funds of the Board as may be ordered by the Board making the proper vouchers for such disbursements and shall render to the chairman and commissioners at the regular meetings of the Board or whenever they may require it, an account of all transactions as treasurer of the financial condition of the Board;

- (4) pursuant to Minnesota Statutes § 469.096, Subd. 6, give bond to the state conditioned for the faithful discharge of official duties. The bond must be approved as to form and surety by the Board and filed with the secretary. The bond must be for twice the amount of money likely to be on hand at any one time, as determined at least annually by the Commission provided that the bond must not exceed \$300,000. The bond premium shall be paid by the Board.

Section 6. Notes and Bonds. None of the officers of the Board shall sign any notes or bonds for others.

Section 7. Vacancies. Any office which becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, may be filled by a majority vote of the commissioners then in office, although less than a quorum, choosing a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

Section 8. Executive Committee. The Board of Commissioners may, by unanimous affirmative action of the entire board, designate three or more of its number to constitute an executive committee which to the extent determined by unanimous affirmative action of the entire board shall have and exercise the authority of the board in the management of the business of the Board. Any such executive committee shall act only in the interval between meetings of the Board and shall be subject at all times to the control and direction of the Board.

ARTICLE VI. Personnel

Section 1. Executive Director. The Commission shall employ an Executive Director who shall have general supervision over the administration of its business and affairs, subject to the direction of the Board. The compensation of the Executive Director shall be determined by the Board. The duties of the Executive Director shall be as set forth in the Board's Policies and Procedures Manual and/or Personnel Manual.

Section 2. Additional Personnel. The Board may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the Board.

Section 3. Board Members. If any board member applies for a paid position with the Kandiyohi County and City of Willmar Economic Development Commission, that board member must resign from this Board.

ARTICLE VII.
Committees

Section 1. Standing Committees. The chairman may establish standing committees and appoint chairpersons, as needed, subject to the approval of the Board of Commissioners.

Section 2. Special Committees. The chairman may establish special committees and appoint chairpersons, as needed, subject to the approval of the Board of Commissioners.

Section 3. Composition and Duties. The composition and duties of the standing and special committees shall be as set forth in the Policies and Procedures Manual of the Board.

Section 4. Economic Development Operations Board. The Board shall establish an Economic Development Operations Board as provided for in paragraph 12 of the Joint Powers Agreement.

ARTICLE VIII.
Finances

Section 1. Requests for Payment, Checks and Notes. All requests for payments shall be reviewed and initialed by two board officers or agents as may from time to time be designated by resolution of the Board of Commissioners and all checks and notes of the board shall be signed by ~~the designated city of Willmar officials or by~~ such board officers or agents as may from time to time be designated by resolution of the Board of Commissioners. All checks and notes shall require the signature of two ~~city of Willmar officials or two~~ designated board members or agents.

Section 2. Fiscal Year. The fiscal year of the Board shall be the calendar year.

Section 3. Financial Statement. The Board's detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purpose of which the money on hand is to be applied, the Board's credits and assets, and its outstanding liabilities in a form required for the county's financial statements. The Board shall examine the statement together with the treasurer's vouchers. If the Board finds that the statement and vouchers are correct, it shall approve them by resolution and enter the resolution in its records.

Section 4. Directors' Annual Statement. The Board of Commissioners shall at each annual meeting and when otherwise called for by the vote of the commissioners, present a full and clear statement of the business and condition of the Board.

Section 5. Inspection of Books. Commissioners shall be permitted to inspect the financial records of the Board at all reasonable times.

ARTICLE IX.
Amendments

These Bylaws may be amended or altered as provided for in paragraph 11 of the Joint Powers Agreement.

ARTICLE X.
Dissolution

Upon the dissolution of the Board, the Board of Commissioners shall, after paying or making provision for the payment of all of the liabilities of the Board, distribute the remaining assets, one-half to the county of Kandiyohi, and one-half to the city of Willmar, both in the state of Minnesota.

ARTICLE XI.
Liability

There shall be no personal liability upon commissioners or members of the Board for obligations of the Board. There shall be no personal liability upon the commissioners for the good faith exercising of their official duties.

ARTICLE XII.
Funds

The funds of the Board shall be deposited in a bank or financial institution within the county of Kandiyohi, state of Minnesota, as may be established by the Board of Commissioners from time to time.

ARTICLE XIII.
Parliamentary Commission

The current edition of *Robert's Rules of Order Newly Revised* shall be the parliamentary authority where applicable and where there is no conflict between said rules and the Bylaws and enabling resolution of the Commission.

As ~~amended~~ adopted by the Board of Commissioners on January ____, 2014.

Secretary



REBECCA OTTO
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Statement of Position Fund Balances for Local Governments Based on GASB Statement No. 54

Background

Governmental Accounting Standards Board's (GASB) Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, defines the classifications of fund balance based on the focus of the constraints placed on the use of current fund balance. The Statement also identifies the governmental fund type definitions. This Statement of Position addresses only the fund balance classifications and reporting.

The requirements of GASB 54 are applicable to all local governments. Implementation was required for the first fiscal year ended June 30, 2011. However, most Minnesota local governments report on a calendar year. For those reporting on a calendar year, the first required year for implementation was the year ended December 31, 2011.

In governmental funds,¹ local government should identify fund balance separately based on a hierarchy of the constraints placed on the use of the financial resources within governmental funds. A local government will classify its fund balances into one of up to 5 classifications: nonspendable, restricted, committed, assigned, and unassigned. While some of the GASB 54 classifications are similar in nature to the classifications under pre-GASB Statement No. 54, the focus is different, and thus, what is classified into these classifications may be different.

Fund Balance Classifications/Definitions for Governmental Funds

The fund balances of a local government's governmental funds should be reported in the new classifications based on the definitions in the following table:

¹ Governmental fund reporting focuses primarily on the sources, uses, and balances of current financial resources and often has a budgetary orientation. The governmental fund category includes the general fund, special revenue funds, capital projects funds, debt service funds, and permanent funds. Codification of Governmental Accounting and Financial Reporting Standards § 1300.102.

Reviewed: July 2012
Revised: July 2012

2010-1003

This Statement of Position is not legal advice and is subject to revision.

An Equal Opportunity Employer

Fund Balance Reporting			
Classification	Definition	Examples	
Nonspendable	“Amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact.” ²	<ul style="list-style-type: none"> • Inventories, • Prepaid items, • Long-term receivables in the general fund, and • Permanent principal of endowment funds. 	
Restricted	“Fund balance should be reported as restricted when constraints placed on the use of resources are either: <ol style="list-style-type: none"> a. Externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or b. Imposed by law through constitutional provisions or enabling legislation.”³ 	<ul style="list-style-type: none"> • Restricted by state statute, • Unspent bond proceeds, • Grants earned but not spent, • Debt covenants, • Taxes dedicated to a specific purpose, and • Revenues restricted by enabling legislation. 	
Unrestricted	Committed	“Used for specific purposes pursuant to constraints imposed by formal action of the government’s highest level of decision-making authority.” ⁴	<ul style="list-style-type: none"> • The governing board has decided to set aside \$1M for a new city hall. • Property tax levies set for a specific purpose by resolution.
	Assigned	“Amounts that are constrained by the government’s intent to be used for specific purposes, but are neither restricted nor committed.” ⁵	<ul style="list-style-type: none"> • Governing board has set aside \$2 million for a county hospital and the county manager may amend this up to \$100,000. • Governing body delegates the authority to assign fund balance to the finance officer. • Governing board has appropriated fund balance often to balance next year’s budget.⁶ • Positive residual balances in governmental funds other than the general fund.
	Unassigned	Unassigned fund balance is the residual classification for the General Fund. This is fund balance that has not been reported in any other classification. The General Fund is the only fund that can report a positive unassigned fund balance. Other governmental funds would report deficit fund balances as unassigned. ⁷	

² GASB Statement No. 54, ¶ 6.

³ GASB Statement No. 54, ¶ 8.

⁴ GASB Statement No. 54, ¶ 10.

⁵ GASB Statement No. 54, ¶ 13.

⁶ See appropriated fund balance section of this document.

⁷ GASB Statement No. 54, ¶ 17.

Classifying Fund Balance

A local government should classify its fund balances based on the nature of the particular net resources reported in a governmental fund. The government would first start by identifying nonspendable net resources, followed by restricted, committed, assigned and lastly unassigned. This will classify a fund's net resources from those that have the most constraints placed on their use to the least. A fund's net resources also are affected by the spending policy of that government. A local government should determine the order of use of resources when expenditures are incurred. Are restricted resources used first? Or, if available for use, are unrestricted net resources (committed, assigned, or unassigned) used first? If a local government does not have an accounting policy that identifies the order of use of resources, then the net resources with the most constraints are used first.

Unrestricted Fund Balance

Unrestricted fund balance is the amount of fund balance left after determining both nonspendable and restricted net resources. The unrestricted fund balance is the amount of fund balance that a local government, itself, has placed constraints on its use (committed and assigned) and fund balance that does not have any specific purpose identified for the use of those net resources (unassigned). Unrestricted fund balance, therefore, includes the committed, assigned, and unassigned classifications. Committed and assigned fund balance represent resources set aside by the government to fund specific purposes. The two classifications differ in the formality of the action required to set aside the net resources.

The government's highest level of decision-making authority is required to commit available fund balance to a specific purpose. Once the action has been taken, the committed funds cannot be used for any other purpose unless the commitment is rescinded by the same type of action that previously committed the funds. The action taken to commit the funds must be taken prior to the end of the fiscal year, but the specific amount may be determined in the subsequent period.

The authority to assign may be delegated to an official other than the governing body. Unlike committed fund balance, the action taken to assign fund balance may be made after year end. In governmental funds other than the general fund, the assignment must follow the government's intent for the specific purpose of the individual funds. Therefore, all remaining positive fund balances in the special revenue, debt service, and capital projects funds are classified as assigned.

Unassigned fund balance represents the remaining unrestricted fund balance in the general fund after identifying fund balance that has been committed or assigned. Deficits in fund balances of other governmental funds are reported as unassigned. Assignments should never cause a deficit in unassigned fund balance to occur.

Stabilization Arrangements: Restricted/Committed vs. Unassigned

Many local governments currently set aside part of fund balance for emergencies, working capital, cash flows, revenue shortages, or other contingencies. The authority to set aside these amounts usually comes from ordinance or resolution. The GASB calls these types of funds

“stabilization arrangements.” For a government to be able to set aside these types of funds as restricted or committed, they need to specifically define when these amounts may be used and specify a situation that cannot be expected to occur routinely. For example, identifying funds to be accessed “in an emergency” does not sufficiently detail the circumstance or condition that must be met for the funds to be considered committed. To commit these funds, the government needs to be more specific in defining an emergency. If the arrangement meets these requirements, it would be considered a specific purpose and reported as either restricted or committed, depending on the source of the constraint. Stabilization arrangements that do not meet the requirements should be reported as part of unassigned fund balance in the general fund.

Appropriated Fund Balance

Usually a local government only classifies fund balances at year end for financial reporting purposes. Thus only current, and not future, net resources are classified. Typically, the subsequent year’s budgeted expenditures are expected to be paid from the subsequent year’s revenues and not the current reporting year’s ending fund balances. On occasion, local governments will “deficit” budget, or in other words, budget more expenditures than anticipated revenues and drawdown beginning fund balance for the subsequent year. An appropriation of existing fund balance to eliminate a projected budgetary deficit in the subsequent year's budget in an amount no greater than the projected excess of expected expenditures over expected revenues satisfies the criteria to be classified as an assignment of fund balance.⁸

Recommendations

Adoption of Comprehensive Fund Balance Policy

The GASB’s Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, identifies fund balance accounting policies that a local government may have or should consider. The Office of the State Auditor recommends that each local government establish/approve a formal comprehensive fund balance policy relating to accounting and financial reporting of governmental fund balances. A local government’s fund balance policy could address the following areas:

- Minimum fund balance
- Order of resource use
- Stabilization arrangements
- Committing fund balance
- Assigning fund balance

Minimum Fund Balance

The Office of the State Auditor recommends that local governments determine and establish in their fund balance policy a desired minimum level of unrestricted fund balance to maintain in their general fund and other significant governmental funds. The local government’s governing

⁸ GASB Statement No. 54, ¶ 16.

body should keep revenue streams in mind when determining a minimum level of fund balance for their policy. Often a local government's revenue stream is not evenly distributed throughout the year. A local government will need sufficient beginning fund balances to pay expenditures until these revenues are received. For example, funds that rely heavily on property taxes must maintain sufficient financial resources until the next tax revenue collection cycle. Funds that rely on state appropriations and grants should consider the timing of those payments. Also, local governments need to maintain a prudent level of financial resources to protect against a forced service level reduction or having to raise taxes and fees because of temporary revenue shortfalls or unpredicted one-time expenditures.

Other considerations include the predictability of revenues and the volatility of expenditures. A local government may need higher levels of unrestricted fund balance if significant revenue sources are subject to unpredictable fluctuations or if operating expenditures are highly volatile, such as greater expenditures in the early part of the year. The availability of resources in other funds and the potential drain on the general fund resources from other funds could affect the necessary level of minimum unrestricted fund balance. The availability of resources in other funds may reduce the amount of unrestricted fund balance needed in the general fund, just as deficits in other funds may require that a higher level of unrestricted fund balance be maintained in the general fund.

After establishing a minimum level of unrestricted fund balance, the policy should provide for both a time frame and a specific plan for increasing or decreasing the level of unrestricted fund balance. If the actual unrestricted fund balance is not consistent with the policy, a plan should be developed by the governing body that will allow for compliance with the desired minimum level. The fund balance policy should include a provision for a regular review of the sufficiency of the minimum fund balance level.

Order of Resource Use

The Office of the State Auditor recommends that local governments include in their comprehensive fund balance policy the normal order of resource use. The policy should identify which fund balance resources (restricted or unrestricted) are normally used first when an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available. Also, for unrestricted fund balance, the local government should identify the order in which committed, assigned, or unassigned amounts are spent when an expenditure is incurred for purposes for which amounts in any of those unrestricted fund balance classifications could be used.

Stabilization Arrangements

The Office of the State Auditor also recommends that local governments consider establishing a stabilization arrangement for emergency situations in their comprehensive fund balance policy. The policy should establish the amount to be set aside, identify the types of nonroutine emergencies/situations that would meet the need for use of stabilization funds, and clearly state that the amount set aside may only be used for the identified emergency situations.

Committing Fund Balance

The Office of the State Auditor also recommends that a local government's governing body identify in its comprehensive fund balance policy its process for committing fund balance to a specific purpose. The policy could identify the local government's highest level of decision making authority, what formal action is required to commit fund balance, and what specific purposes normally will require committing resources.

Assigning Fund Balance

Furthermore, the Office of the State Auditor recommends each local government that decides to delegate the authority to assign fund balance for a specific purpose include in their comprehensive fund balance policy the body or official authorized to assign amounts to a specific purpose and the types of specific purposes that may be assigned by that delegated body or official. The policy should also specify how the amounts for such assignments are arrived at and whether the governing body will set the assignments annually or will set up a process to make the assignment based on the guidelines established by the governing body.

Appropriate Fund Balance Levels

The Office of the State Auditor recommends that, at year-end and/or at other key times of the year, local governments that rely significantly on property taxes maintain an unrestricted fund balance of approximately 35 to 50 percent of fund operating revenues or no less than five months of operating expenditures in their general fund and special revenue funds. This amount of unrestricted fund balance should provide the local government with adequate funds until the next property tax revenue collection cycle. The adequacy of unrestricted fund balance should be assessed based on an individual local government's own circumstances. If the local government's unrestricted fund balance is less than or greater than the recommended level, the local government should be able to explain the reason for the difference.

According to the Minnesota Department of Education, Minnesota school districts, unlike most local governmental units, experience timing of receipts from local property tax levies, state aids, and federal aids that provide a more reliable flow of cash to fund operations. Therefore, a recommended unrestricted fund balance for school districts may be less than the amounts recommended above for other local governmental units. Each school district should determine the appropriate level of unrestricted fund balance based on the school district's circumstances.

Local governments should also consider taking a position on the level of unrestricted fund balance in other funds that have unrestricted revenues. In setting an appropriate level, the local government should consider any long-term forecasting/planning issues to avoid the risk of placing too much emphasis on the level of unrestricted fund balance at any one time.

MEMO

To: Steve Renquist

From: Mike Burgett, Anderson & Burgett, PLLC

Date: January 8, 2014

RE: Reserve Funds Establishment and Use by the EDC

Overview of the Formation of the EDC

The Minnesota Legislature enacted a bill during its 2003 session which authorized Kandiyohi County to exercise the powers of a city under § 469.090 to § 469.107. Further, the bill authorized Kandiyohi County and the City of Willmar to enter into a joint powers agreement pursuant to § 471.59 to exercise the powers common to the city and county under § 469.1090 to § 469.107 *in a manner to be determined by a majority of the Kandiyohi county board and the Willmar city council.*

That bill also identified the joint powers entity as a political subdivision of the state with the power to certify a tax levy to the county auditor.

What followed this legislation was the creation of the joint powers agreement between Kandiyohi County and the City of Willmar that is in effect today and which, upon its execution, marked the formation of the entity known as the Kandiyohi County and City of Willmar Economic Development Commission (“EDC”), which is operating with the full authority of a statutory EDA under § 469.090 to § 469.107. (Note: it appears that Alexandria went through a very similar process at the same time to create the Alexandria Area Economic Development Commission.)

First, a look at HRA Reserve Funds

Legislation does not expressly prohibit or permit the establishment of reserves by Housing and Redevelopment Authorities, nor does it establish minimum reserves. But clearly they are understood to be a normal, prudent component of the operations of an HRA and the legislature leaves it to individual HRAs to determine the appropriate level of reserves for its operations. The only guidance offered by the legislature to HRAs for reserve funds lies in the provision granting authority to HRAs to invest reserve funds in certain ways. Specifically:

§ 469.012 Subd. 1r: An authority may invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control...

Clearly, specific legislation permitting reserves to be held by an HRA is not needed – otherwise it would be found within the HRA statute. But it isn't because it is widely understood that reserve funds would be established by HRAs. Would the legislature give specific authority to an HRA to invest reserve funds in the manners it has enumerated if the HRA was not even authorized to establish reserve funds? That would be absurd. In the same way, the legislature did not enumerate minimum reserves that need to be established by HRAs. It is left to the individual entity to exercise prudent practices in establishing its reserves.

Reserve Funds at the EDC

As is the case with HRAs, the legislature has been silent about whether a reserve can or cannot be established by EDCs and what minimum reserves need to be. However, State law does permit, but does not require, the enabling body of an EDC (in this case the City Council and the Kandiyohi Board of Commissioners) to limit the powers of the EDC through its enabling resolution (in this case, through the Joint Powers Agreement) in a number of ways as set forth in § 469.092. More specifically, when it was created the Joint Powers Agreement “**could**” have included the following limiting language (from Minn. Stat § 469.092 subd.1(2)):

“except when previously pledged by the authority, the city council [or, in this case, the Joint Powers Board] may by resolution require the authority to transfer any portion of the reserves generated by activities of the authority that the city council [in this case, the Joint Powers Board] determines is not necessary for the successful operation of the authority to the debt service fund of the city [in this case, the City and the County], to be used solely to reduce tax levies for bonded indebtedness of the city [in this case, the City and the County].”

As was the case with HRAs, would the legislature give the enabling body of the EDC the option to limit the power of the EDC by requiring it to divest itself of a portion of its reserve funds *if the EDC wasn't even authorized to establish reserve funds?* Once again, that would be absurd.

As you're aware, there is no such limiting language contained in the Kandi/Willmar Joint Powers Agreement. Accordingly, unless an Amendment is made to the existing Joint Powers Agreement, there is no authority which would allow reserve funds to be diverted away from the EDC.

It is worthy of noting that, even if there was limiting language in the Joint Powers Agreement or Bylaws that addressed reserve funds, the Joint Powers Board could only direct the disbursement of reserves to the extent that they are not already pledged. With the EDC being obligated to the County for certain funds currently held in reserve, a significant portion of the existing “reserve funds” cannot be allocated to the debt service funds of the city/county.

It is also worthy of noting that the Willmar City Council, by itself, does not have the ability to direct reserve funds of the EDC. Nor does the Kandiyohi County Board of Commissioners. For that matter, the Operations Board does not have authority to determine the use of reserve funds. The only body that could influence the use of reserve funds is the Joint Powers Board. It has chosen not to.

There is no additional legislation that compels or directs the use of reserve funds held by the EDC. Any suggestion to the contrary would be a seriously misconstrued reading and interpretation of state law.

From: Mike Burgett [<mailto:dmichaelb@anburlaw.com>]
Sent: Thursday, January 09, 2014 8:34 AM
To: Steve Renquist
Subject: Conflict of Interest

Steve,

The second issue Jean raised when she and I spoke on Tuesday related to an allegation of a conflicts of interest on a vote for a one year lease.

On issues of voting, conflict, etc, the first place to look for any organization is its governing documents (Constitution, Bylaws, Articles of Incorporation, etc). In the case of the EDC, the Joint Powers Agreement identifies that the Joint Powers Board requires four votes to pass a motion. Aside from that, guidance is pretty light - particularly with regard to the Operations Board. As you're aware, on issues that the Bylaws do not address, the Bylaws direct the reader to Robert's Rules.

Robert's Rules makes it very clear that a voting member cannot be compelled TO VOTE, nor can a voting member be compelled NOT TO VOTE. Robert's Rules does indicate that a voting member should abstain if there is a conflict (defined as a direct personal or pecuniary interest with respect to the motion being considered), but the voting member cannot be forced not to vote. If a vote occurs in spite of a real conflict, that member's vote cannot be invalidated (absent a court order). In theory, there could be disciplinary consequences administered by the body or even personal liability administered by the court if it can be show that the conflicted voter breached a duty of loyalty... but that would occur only in the most egregious of circumstances.

Note that Robert's Rules requires there to be a DIRECT personal or pecuniary interest - not merely an indirect interest. Clearly, that's a much more difficult standard to prove.

There should be some thought put to the issue of what constitutes a passed vote at the Operations Board level. I have not seen it defined anywhere. My limited research within Robert's Rules thus far points toward "a majority of the voters", as opposed to "a majority of the body" as a default for passing a motion if governing documents do not indicate otherwise. That would allow motions to more easily pass at the Operations Board level if there are absences or abstentions. If that is the desired protocol, it can either be defined by an amendment to the Bylaws being passed by the Joint Powers board, or the status quo can stay in place if my preliminary research is confirmed after further review of Robert's Rules. In other words, nothing would need to be done.

Let me know if you have thoughts, comments, questions, or concerns.

Thanks!

Mike

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469.098 CONFLICT OF INTEREST.

Subdivision 1. **Disclosure; criminal penalty.** (a) Before taking an action or making a decision which could substantially affect the commissioner's or an employee's financial interests or those of an organization with which the commissioner or an employee is associated, a commissioner or employee of an authority shall:

(1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest; and

(2) submit the statement to the commissioners of the authority.

(b) The disclosure under paragraph (a) shall be entered upon the minutes of the authority at its next meeting. The disclosure statement must be submitted no later than one week after the employee or commissioner becomes aware of the potential conflict of interest. However, no disclosure statement is required if the effect on the commissioner or employee of the decision or act will be no greater than on other members of the business, profession, or occupation or if the effect on the organization with which the commissioner or employee is affiliated is indirect, remote, and insubstantial.

(c) A potential conflict of interest is present if the commissioner or employee knows or has reason to know that the organization with which the commissioner or employee is affiliated is, or is reasonably likely to become, a participant in a project or development which will be affected by the action or decision.

(d) Any individual who knowingly fails to submit a statement required by this subdivision or submits a statement which the individual knows contains false information or omits required information is guilty of a misdemeanor.

Subd. 2. **Effect of disclosure; criminal penalty.** (a) If an employee has a potential conflict of interest, the employee's superior shall immediately assign the matter to another employee who does not have a potential conflict of interest.

(b) A commissioner who has a potential conflict of interest shall not attempt to influence an employee in any matter related to the action or decision in question, shall not take part in the action or decision, and shall not be counted toward a quorum during the portion of any meeting of the authority in which the action or decision is to be considered.

(c) Any individual who knowingly violates this subdivision is guilty of a misdemeanor.

Subd. 3. **Conflicts forbidden; criminal penalty.** A commissioner or employee of an authority who knowingly takes part in any manner in making any sale, lease, or contract in the commissioner's or employee's official capacity in which the commissioner or employee has a personal financial interest is guilty of a misdemeanor.

Subd. 4. **Agent or attorney.** For one year after termination of a position as a commissioner or employee of an authority, no former commissioner or former employee of an authority shall appear personally before any court or governmental department or agency as agent or attorney for anyone other than the authority in connection with any proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the authority is substantially interested, and with respect to which the commissioner or employee took any action or made any decision as a commissioner or employee of the authority at any time within a period of one year prior to the termination of that position.

Subd. 5. **Limitations.** With respect to each program established by the authority to provide financial assistance or financing for real property other than rental assistance programs, an employee or commissioner may not receive such financial assistance or financing more than once.

Subd. 6. **Injunction.** The county attorney may seek an injunction in the district court to enforce the provisions of this section.

Subd. 7. **Exceptions.** The exceptions in section 471.88 apply to this section.

History: *1987 c 291 s 99; 2008 c 197 s 1*

of the source of all receipts, as well as the nature, purpose and authority of all expenditures. The treasurer is responsible for filing a detailed financial statement with the secretary at least once a year at times set by the EDA. Quarterly reports may also be filed. The treasurer is also responsible for the acts of the assistant treasurer. The assistant treasurer has the powers and duties if the treasurer is absent or disabled. (Minn. Stat. § 469.096, Subd. 4).

The EDA must obtain a treasurer's bond conditioned for the faithful discharge of official duties. The bond must be approved as a form and surety by the EDA and filed with the secretary. The bond must be for twice the amount of money likely to be on hand at one time, as determined at least annually by the EDA provided that the bond may not exceed \$300,000 (Minn. Stat. § 469.096, Subd. 6)

The EDA may choose to have the secretary and the assistant treasurer position filled by a non-board member (Minn. Stat., § 469.096, Subd. 2).

Public Money

EDA money is public money.

Checks

An EDA check must be signed by the treasurer and one other officer named by the EDA in a resolution. The check must state the name of the payee and the nature of the claim that the check is issued for.

Financial Statement

The EDA's detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the EDA's credits and assets, and its outstanding liabilities in a form required for the City's financial statements. The EDA shall examine the statement together with the treasurer's vouchers. If the EDA finds that the statement and vouchers are correct, it shall approve them by resolution and enter the resolution in its records. (Minn. Stat. § 469.051).

Compensation and Reimbursement

A Commissioner, including the president, shall be paid for attending each regular or special meetings in an amount to be determined by the City Council. (Minn. Stat., § 469.095, Subd. 4). In addition to receiving pay for meetings, the Commissioners may be reimbursed for actual expenses incurred in doing official business of the EDA. All money paid for compensation or reimbursement must be paid out of the EDA's budget.

Conflict of Interest

A Commissioner or employee of an EDA shall not acquire any financial interest, direct or indirect, in any project or in any property included or planned to be included in any project sponsored by the EDA. EDA Commissioners or employees may not have any financial interest,

direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project (Minn. Stat., § 469.098).

The following is a list of exceptions when an EDA may contract for goods or services with a Commissioner or officer of the EDA who has a financial interest in a project. Approval of this action must be passed by a unanimous vote of the EDA with the affected Commissioner abstaining from the vote on the resolution (Minn. Stat., § 471.88).

1. When an officer or Commissioner is employed by a bank or savings association that serves as the EDAs depository or as a source of borrowing, and that Commissioner has an interest either direct or indirect, no restrictions apply. However, if a Commissioner or officer does have a direct or indirect interest as a director or an employee of the bank or savings association, he or she must make that disclosure and enter it into the minutes of the EDA. This disclosure serves as notice of the Commissioner's interest and does not need to be made on future transactions with that designated financial institution.
2. When a Commissioner of the EDA is employed by a bank that is engaged in making loans or performing trust services involving real or personal property affected by any plan of the EDA, there is no restriction that applies to the loans made or trust services performed by the Commissioner's bank if he or she discloses the nature of the loans or trust services of which the Commissioner has personal knowledge. This disclosure must be entered in the minutes of the EDA.
3. If the EDA has designated an official newspaper, or publication where it publishes its public notices and minutes, and a Commissioner has an interest in the paper.
4. If the EDA enters into a contract with a cooperative association where a Commissioner is a shareholder or stockholder, but not an officer or manager.
5. A contract for which competitive bids are not required by law and where the amount does not exceed \$5,000.
6. Contracts for goods or services when consideration does not exceed \$5,000 in any year and the sealed bid process is used and the contracting governmental unit has a population of less than 1,000.
7. When an EDA Commissioner is engaged in or employed by a firm that is in the business of importing or exporting or general trade, the EDA may enter into business transactions with the Commissioner or the Commissioner's employer provided that the Commissioner abstains from voting on any resolution that sets rates affecting shippers or users of an EDA-owned facility. (Minn. Stat. § 471.88)

Ethics Law

Changes made in the 1994 Ethics in Government Act not only affect state legislators but also local officials. The definition of a local official is "a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision". Minn. Stat. § 10A.01 Subd. 22 goes on to state that local officials are those who



2014 COMMITTEES AND MEMBERS

Agriculture and Renewable Energy Development (Ag)

Arvind Auluck-Wilson
Rollie Boll*
John Duevel
Jon Folkedahl

Ian Graue
Kevin Halvorson
Larry Konsterlie
Dan Lippert

Tim Miller
Steve Nelson
Wallace Nelson
Keith Poier

Bruce Reuss
Dan Tepfer

Business Retention and Expansion/Recruitment (BRE/R)

Robert Carlson*
Beverly Dougherty*
Jim Ellingson

Roger Imdieke
Tom Lindemann
Les Nelson

Bruce Peterson*
Ranae Rahn
Jeff Vetsch

BRE/R Technology Advisory

Dean Bouta

Kathy Dillon

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Justin Schnichels

Russ Weeks
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Mike Negen

Julie Redepenning
Joanna Schrupp

*indicates EDC Joint Operations Board member



The Kandiyohi County and City of Willmar Economic Development Commission (EDC) hereby enters into this employment agreement with Steven C. Renquist, who agrees to serve in a full-time capacity as Executive Director. The EDC offers to furnish the following:

1. An annual salary of \$79,500 payable biweekly.
2. Full single health insurance coverage through PreferredOne Insurance Company and payment of up to \$722.50 per month toward the Employee's premium. If the employee desires dependent coverage it shall be offered under the program with the employee paying the additional cost.
3. Contribution and enrollment in the State of Minnesota Public Employee Retirement Association (PERA).
4. An annual vacation of 20 days. The employee may accumulate up to 2 years worth of vacation (240 hours) prior to the extra being lost at calendar year end. After 15 years of service, the annual vacation shall be increased to 25 days. If the Employee retires, resigns or terminates without receiving the vacation due him that year, he shall be paid for such vacation, not to exceed twice his annual allotment of accumulated vacation.
5. Paid holidays shall be according to those listed in the EDC's Policies and Procedures Manual.
6. Flexible Work Schedule Guideline. It is acknowledged the Executive Director will occasionally be called upon to work more hours than the normal work day. It is therefore acknowledged and expected that he may reduce the hours worked on subsequent days at his discretion. This will not affect vacation or sick time. This will allow transferring a paid holiday with a different work day.
7. Sick pay is earned at a rate of 8 hours of sick leave, with pay, for each month of service and shall be cumulative to a maximum of 820 hours. In the event of retirement or resignation, accumulated sick leave will be compensated at a rate of 50% of hours accumulated to a maximum of 240 hours. The Executive Director will be allowed up to 3 days of leave in the event of death to a member of his immediate family—the leave will be deducted from the sick-leave account.
8. Either party may terminate this agreement by giving the other party not less than 30 days written notice of their intention to so terminate, however if the EDC elects to terminate and that termination is not for cause, then the Executive Director shall be entitled to:
 - a. One half year's salary payable in a lump sum of 13 biweekly installments at the EDC's discretion.

- b. Continuation of health insurance until new insurance is obtained, but no longer than 6 months.
- 9. A monthly stipend of Five Hundred Twenty-five Dollars (\$525) for mileage expenses shall be paid. This is intended to reimburse the Executive Director for the cost of owning, maintaining and insuring a vehicle and to compensate for mileage. The Executive Director will be responsible for all of his vehicle cost and must fully insure his vehicle. The Executive Director shall keep track of his own mileage for tax reporting purposes.
- 10. The Executive Director shall provide receipts for all expenses to be reimbursed on a monthly basis.

This agreement shall be in full force and effect commencing January 1, 2014 through December 31, 2014 and shall automatically be renewed from year to year thereafter unless modified by agreement of the parties hereto.

Approved and accepted: January _____, 2014

Steven C. Renquist

KANDIYOHI COUNTY & CITY OF WILLMAR
ECONOMIC DEVELOPMENT COMMISSION

Approved and accepted: January _____, 2014

By: _____
Denis Anderson, Chairperson
Joint Powers Board of Commissioners

Kandiyohi County
& City of Willmar
Economic Development Commission



**EMPLOYMENT AGREEMENT
ASSISTANT DIRECTOR**

The Kandiyohi County and City of Willmar Economic Development Commission (EDC) hereby enters into this employment agreement with Jean Spaulding (Employee), who agrees to serve in a full-time capacity as Assistant Director. The EDC hereby offers to furnish the following:

1. An annual salary of \$65,984 payable twice monthly (biweekly).
2. Full single health insurance coverage through PreferredOne Insurance Company and payment of up to \$722.50 per month toward the Employee's premium. If the Employee desires dependent coverage it shall be offered under the program with the Employee paying the additional cost.
3. Contribution and enrollment in the State of Minnesota Public Employee Retirement Association (PERA).
4. The Employee will accumulate vacation at a rate of 120 hours per year. The Employee may accumulate up to 2 years worth of vacation (240 hours) prior to the extra being lost at calendar year end. If the Employee retires, resigns or terminates without receiving the vacation due to her that year, she shall be paid for such vacation, not to exceed twice her annual allotment of accumulated vacation.
5. Paid holidays shall be according to those listed in the EDC's Policies and Procedures Manual.
6. Flexible Work Schedule Guideline. It is acknowledged the Employee will occasionally be called upon to work more hours than the normal work day. It is therefore acknowledged and expected that the Employee may reduce the hours worked on subsequent days at her discretion. This will not affect vacation or sick time. This will allow transferring a paid holiday with a different work day.
7. Sick pay is earned at a rate of 8 hours of sick leave, with pay, for each month of service and shall be cumulative to a maximum of 820 hours. In the event of retirement or resignation, accumulated sick leave will be compensated at a rate of 50% of hours accumulated to a maximum of 240 hours. The Employee will be allowed up to 3 days of leave, in the event of death to a member of the Employee's immediate family—the leave will be deducted from the sick-leave account.
8. Either party may terminate this Agreement by giving the other party not less than 30 days written notice of their intention to so terminate
9. The Employee shall be reimbursed for any expenses incurred while conducting EDC business. Mileage shall be reimbursed at the rate allowed by the IRS. Employee shall provide receipts for all reimbursed expenses on a monthly basis.

This agreement shall be in full force and effect commencing January 1, 2014 through December 31, 2014 and shall automatically be renewed from year to year thereafter unless modified by agreement of the parties hereto.

Approved and accepted: January _____, 2014

Jean Spaulding

KANDIYOHI COUNTY & CITY OF WILLMAR
ECONOMIC DEVELOPMENT COMMISSION

Approved and accepted: January _____, 2014 By:

Denis Anderson, Chairperson
Joint Powers Board of Commissioners

CONTRACT FOR SERVICES

This contract is effective January 1, 2014, and is made by and between KANDIYOHI COUNTY AND CITY OF WILLMAR ECONOMIC DEVELOPMENT COMMISSION (hereinafter "EDC") and LEGAL & ADMINISTRATIVE ASSISTANTS, INC. (hereinafter referred to as "LAA").

RECITALS:

1. EDC is engaged in economic development in Kandiyohi County, Minnesota, and at times desires to have administrative support services performed for it.
2. LAA agrees to perform these administrative support services for EDC under the terms and conditions set forth herein.

In consideration of the mutual promises set forth herein, it is agreed by and between the EDC and LAA as follows:

Section 1 Description of Work

The work to be performed by LAA includes all services generally performed by LAA in its usual line of business including, but not limited to, transcription, word processing, bookkeeping, meeting preparation including mailing notices, registration and arranging for meetings, record and type minutes for requested meetings, filing and any and all administrative duties as needed and requested.

Section 2 Payment

EDC will pay LAA for services to be performed under this contract at the following rates: \$35.00 per hour for administrative support services; \$40.00 per hour for bookkeeping services; and \$52.50 per hour for services requested before 8:30 a.m., after 5 p.m. and weekends.

LAA reserves the right to increase these rates by giving one month's written notice to the EDC's Executive Director.

Section 3 Relationship of Parties

The parties intend that this contract will create an independent contractor/client relationship. The EDC is interested only in the results achieved, and the conduct and control of the work will lie solely with LAA. LAA is not to be considered an agent or employee of the EDC for any purpose, and shall not serve in a volunteer capacity on any committee under the governance of the EDC. As an independent contractor, it is understood that LAA's employees are not entitled to any of the benefits the EDC may provide its employees. In addition, LAA shall be responsible for its own expenses. It is further understood that the EDC does not agree to use LAA exclusively, and LAA is free to contract for similar services to be performed for other parties while under contract with EDC.

**Section 4
Confidentiality**

LAA agrees all information between EDC and *LAA* provided directly or indirectly in reports of work done, file information, interoffice memoranda and correspondence, and any other information acquired or gained by *LAA* as a direct result of *LAA*'s assignment to provide services under and pursuant to any ongoing contractual relationship shall, for all times and purposes, be regarded by *LAA* as strictly confidential and held by *LAA* in complete confidence and solely for EDC's benefit and use and shall not be used by *LAA* for any purpose outside of work requested by EDC and shall not directly or indirectly disclose contents to any person whatsoever without the express written permission of EDC.

**Section 5
Liability**

LAA covenants to hold EDC harmless from any and all liability for state or federal income tax withholding, state or federal workers' compensation payments, unemployment, social security or other tax liabilities or obligations that may be imposed. *LAA* agrees to provide indemnification to EDC and be responsible therefor as said obligations may apply to an independent contractor.

LAA shall hold EDC harmless from, provide indemnification for, and waive all claims against EDC that *LAA* may now have or may subsequently acquire for workers' compensation or personal injury, unemployment insurance and/or compensation, or otherwise under the laws of the state of Minnesota or the United States. *LAA* understands it is not covered by EDC's workers' compensation insurance, and as such, *LAA* may be required to obtain its own insurance coverage.

**Section 6
Duration**

Either party may cancel this contract upon 45 days written notice; otherwise, the contract shall continue from the date hereof.

IN WITNESS WHEREOF, the parties have executed this agreement at Willmar, Minnesota, on the day and year first above written.

KANDIYOHI COUNTY AND CITY OF WILLMAR
ECONOMIC DEVELOPMENT COMMISSION

LEGAL & ADMINISTRATIVE ASSISTANTS, INC.

By: _____
Denis Anderson, Chairperson
Joint Powers Board of Commissioners

By: _____
Nancy Birkeland
Chief Executive Officer