



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

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FOR RELEASE February 9, 2012

Auditor of State David A. Vaudt today released a reaudit report on the City of Fort Dodge, Iowa for the period July 1, 2009 through June 30, 2010. The reaudit also covered certain items applicable to the reaudit of the fiscal year ended June 30, 2006 previously performed and the years ended June 30, 2009 and 2011. The reaudit was performed at the request of citizens pursuant to Chapter 11.6(4)(a)(3) of the Code of Iowa.

The reaudit report addressed concerns regarding tax increment financing (TIF) actions and activities, including TIF transfers and TIF certification. Vaudt recommended the City proceed with disbursing the TIF balances committed by the City for the Riverfront Trails project and ensure future TIF activities, transfers and certifications are consistent with Chapter 403 of the Code of Iowa.

Other issues included review of the City's actions pertaining to the Fire Department command vehicle purchase. Vaudt noted the City appeared to be in compliance with its purchasing ordinance but should have rescinded initial actions taken in regard to this purchase.

Vaudt also addressed concerns pertaining to the Gwendolyn E. Scharfenberg Bequest transferred to the W.H. Johnston Foundation, including related investments subsequently made by the Foundation. The City subsequently entered into a 28E agreement with the Foundation to address these concerns.

The City responded favorably to the recommendations included in the reaudit report. A copy of the reaudit report was filed with the Webster County Attorney for review and information and as a follow-up from the fiscal year 2006 reaudit.

A copy of the reaudit report is available for review in the City Clerk's Office, in the Office of Auditor of State and on the Auditor of State's web site at <http://auditor.iowa.gov/specials/1020-0904-T00Z.pdf>.

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CITY OF FORT DODGE
AUDITOR OF STATE'S REPORT ON REAUDIT
FOR THE PERIOD
JULY 1, 2009 THROUGH JUNE 30, 2010

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City of Fort Dodge

Officials

| <u>Name</u> | <u>Title</u> | <u>Term Expires</u> |
|------------------------------|----------------|---------------------|
| (Before January 2010) | | |
| Terry Lutz | Mayor | Jan 2010 |
| Cynthia Litwiller | Mayor Pro Tem | Jan 2010 |
| Matt Bemrich | Council Member | Jan 2010 |
| Richard Inman | Council Member | Jan 2010 |
| Curt Olson | Council Member | Jan 2010 |
| Dan Payne | Council Member | Jan 2010 |
| Don Wilson | Council Member | Jan 2010 |
| Dave Flattery | Council Member | Jan 2012 |
| (After January 2010) | | |
| Matt Bemrich | Mayor | Jan 2014 |
| David Flattery | Mayor Pro Tem | Jan 2012 |
| Margy Halverson-Collins | Council Member | Jan 2012 |
| Kelly Hindman | Council Member | Jan 2012 |
| Curt Olson | Council Member | Jan 2012 |
| Don Wilson | Council Member | Jan 2012 |
| Andy Fritz | Council Member | Jan 2014 |
| Barney Patterson | Council Member | Jan 2014 |
| David Fierke | City Manager | Indefinite |
| Barb Barrick | City Clerk | Resigned Nov 2010 |
| Michelle Hefley | City Treasurer | Indefinite |
| Maurice Breen | Attorney | Deceased March 2011 |

City of Fort Dodge



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Auditor of State's Report on Reaudit

To the Honorable Mayor
and Members of City Council:

We received a request to perform a reaudit of the City of Fort Dodge (City) under Chapter 11.6(4)(a)(3) of the Code of Iowa. As a result, we performed a review of the fiscal 2010 audit report and workpapers prepared by the City's certified public accounting firm to determine whether the CPA firm may have addressed any or all of the specific issues identified in the request for reaudit during the annual audit of the City. Based on this review and our review of the preliminary information available, we determined a partial reaudit was necessary to further investigate specific issues identified in the request for reaudit. Accordingly, we have applied certain tests and procedures to selected accounting records and related information of the City for the period July 1, 2009 through June 30, 2010 and the fiscal years ended June 30, 2009 and June 30, 2011. We also inquired and performed procedures for certain items applicable to the previously performed fiscal year 2006 reaudit of the City which is available at <http://auditor.iowa.gov/reports/0620-0904-T00Z.pdf>.

The procedures we performed are summarized as follows:

1. We selected and reviewed certain fiscal year 2010 transfers for purpose and propriety.
2. We reviewed City Council minutes to identify and review City Council discussion and action taken pertaining to the purchase of a Fire Department command vehicle.
3. We inquired about the City's policies and procedures pertaining to competitive bidding and obtained copies of the City's purchasing policy.
4. We obtained and reviewed copies of bid documents and related transactions pertaining to the purchase of the Fire Department command vehicle.
5. We inquired about the current status of the findings included in the fiscal year 2006 reaudit of the City pertaining to potential conflicts of interest, the City's tax increment financing (TIF) trust accounts and the Gwendolyn E. Scharfenberg Bequest.
6. We obtained and reviewed City policies pertaining to potential conflicts of interest and determined whether the City currently utilizes a request for proposal process in securing engineering services rather than a request for qualifications.
7. We obtained and reviewed City records pertaining to the City's disposition of certain TIF trust accounts.
8. We obtained and reviewed the City's TIF certification documents as of December 1, 2010 and the Webster County Auditor's reconciliation forms for each TIF district within the City to determine whether the City's certified TIF debt less the City's cash on hand agreed with the Webster County Auditor's reconciliation.

9. We requested and reviewed correspondence pertaining to the status and disposition of the City's Gwendolyn E. Scharfenberg Bequest funds held by the W.H. Johnston Foundation.

In addition to the above items, the petitioners requested our review of the circumstances pertaining to the former City Clerk's departure and related settlement agreement. We interviewed certain City officials and staff and also reviewed City Council minutes to identify and review City Council discussion and action taken pertaining to the former City Clerk's departure and related settlement agreement. Our review of this matter, including the City's settlement agreement pertaining to the former City Clerk's departure, did not disclose any findings.

Based on the performance of the procedures described above, we identified instances of non-compliance and have developed various recommendations for the City. Our recommendations and the instances of non-compliance are described in the Detailed Findings of this report. Unless reported in the Detailed Findings, items of non-compliance were not noted during the performance of the specific procedures listed above.

The procedures described above are substantially less in scope than an audit of financial statements made in accordance with U.S. generally accepted auditing standards, the objective of which is the expression of an opinion on financial statements. Accordingly, we do not express an opinion. Had we performed additional procedures, or had we performed an audit of the City of Fort Dodge, additional matters might have come to our attention that would have been reported to you. A copy of this reaudit report has been filed with the Webster County Attorney for review and information and as a follow-up from the fiscal year 2006 reaudit.

We would like to acknowledge the assistance extended to us by personnel of the City of Fort Dodge. Should you have any questions concerning any of the above matters, we shall be pleased to discuss them with you at your convenience.


DAVID A. VAUDT, CPA
Auditor of State


WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

November 28, 2011

Detailed Findings

City of Fort Dodge

Detailed Findings

July 1, 2009 through June 30, 2010

- (A) Tax Increment Financing (TIF) Actions and Activities – As previously reported in the fiscal year 2006 reaudit of the City (reaudit), the City has two TIF districts, Downtown Urban Renewal Area and Industrial Park Urban Renewal Area.

In November 2000, the City created two urban renewal tax increment revenue trust accounts, pursuant to subsection 2 of Chapter 403.19 of the Code of Iowa. The resolution created two trust accounts within the Industrial Park Urban Renewal Area Tax Revenue Fund, identified as the Industrial Development Tax Increment Revenue Trust Account and the Riverfront Improvement Tax Increment Revenue Trust Account. The funds in these trust accounts are to be used only for urban renewal projects and activities within the Industrial Park Urban Renewal Area and may not be transferred to any other City fund or account.

Chapter 403.19 of the Code of Iowa provides a municipality shall certify indebtedness to the County Auditor. Such certification makes it a duty of the County Auditor to provide for the division of property tax is to generate dollars to repay the certified indebtedness. There is nothing in Chapter 403.19 of the Code of Iowa which allows a municipality to set aside property tax divided for tax increment purposes for future urban renewal projects. Chapter 403.22 of the Code of Iowa requires indebtedness incurred is to be certified to the County Auditor and then the divided property tax is to be used to pay the principal of and interest on that indebtedness. In addition, Chapter 403.19(5)(b) requires the City to certify the amount of reductions to the County Auditor resulting from reduction in debt or for any other reason.

The underlying concern of the fiscal year 2006 reaudit finding was, and continues to be, whether the City had, in fact, collected tax increment revenue in excess of the debt certified at the time the trust accounts were established and whether the trust account balances had been appropriately considered in the City's annual TIF certifications to the County Auditor. Chapter 403 of the Code of Iowa has since been revised and the TIF certification process and related forms have been redesigned to help preclude entities from collecting TIF revenue in excess of the amount of TIF debt which has been certified.

The City did not reduce the 2009 TIF debt certification to the County Auditor for the balances in the trust accounts as recommended in the fiscal year 2006 reaudit report, but instead intends to use the funds held in the trust accounts for project costs.

At its July 12, 2010 meeting, the City Council approved two resolutions dedicating funds in the Industrial Trust Account and the Riverfront Trust Account for the Riverfront Trails Project. The resolutions indicated funds from the Industrial Trust Account, estimated at \$241,000 as of June 30, 2010, and funds from the Riverfront Trust Account, estimated at \$739,000 as of June 30, 2010, for the redevelopment of the Riverfront can be utilized for such activities. The resolutions also indicated the City expected the project to be bid in December 2010, with construction to begin in the spring of 2011. However, the project was delayed and, as of June 30, 2011, the City continues to carry balances of \$242,958 in the Industrial Trust Account and \$524,680 in the Riverfront Trust Account. City staff represented the City expects to disburse the funds in the trust accounts by the end of calendar year 2011.

The balances reported by the former City Clerk as of June 30, 2010 totaled \$242,109 in the Industrial Trust Account and \$522,847 in the Riverfront Trust Account. According to the July 12, 2010 resolution, the estimated balance in the Industrial Trust Account approximated the actual balance reported by the former City Clerk. However, the estimated balance of \$739,000 varied significantly from the actual balance of \$524,680 reported by the former City Clerk. We did not attempt to determine the reason for the significant variance.

City of Fort Dodge

Detailed Findings

July 1, 2009 through June 30, 2010

Recommendation – The City should have adjusted its requests for additional tax increment revenue in the 2009 TIF debt certification to the Webster County Auditor for the balances held in the trust accounts. As previously noted, there is nothing in Chapter 403.19 of the Code of Iowa which allows a municipality to establish a trust fund and set aside property tax divided for tax increment purposes for future urban renewal projects.

At this point, due to timing of the next TIF debt certification due December 1, 2011 and the status of the Riverfront Trails project, the balances will eventually be disbursed and, therefore, eliminated. However, once the existing balances are fully disbursed, the City should close these trust accounts and refrain from using tax increment financing revenue for direct payment of project costs. In the future, consistent with Chapter 403.19 of the Code of Iowa, indebtedness incurred is to be certified to the County Auditor and then the divided property tax is to be used to pay the principal of and interest on that indebtedness.

The City should review and determine the reasons for the variance between the TIF balances reported by the City compared to the estimated balance included in the City's July 2010 resolution to ensure the balances are properly reported and the project is adequately funded. If necessary, the City should meet with the Webster County Auditor to review and reconcile the City's TIF account balances and related TIF indebtedness to determine whether the City needs to decertify indebtedness in its next TIF certification.

Response – The Industrial Trust Account and Riverside Trust Account will be permanently closed upon the payment of both fund balances to the Army Corp of Engineers for the Riverfront Trails Project. The City expects to expend the trust funds by the end of January 2012.

The June 30, 2010 TIF cash balances have been reconciled to the City's July 2010 resolution.

Conclusion – Response accepted.

- (B) TIF Transfers and Certification - The City approves an annual resolution for an internal advance to the Special Revenue, TIF Fund for administrative costs related to TIF and certifies this as debt to the Webster County Auditor. However, for fiscal year 2011, the resolution was not prepared or approved and the City did not certify administrative costs in its 2010 TIF debt certification to the Webster County Auditor. To correct this, the City approved a resolution advancing \$150,000 for fiscal year 2011 and 2012 administrative costs. Resolution 11-06-098 states, in part:

“It is hereby directed that One Hundred Fifty Thousand Dollars (\$150,000) be advanced from the General Fund (the “General Fund Advance”) in order to cover the Personnel Expenses. The General Fund Advance shall be repaid to the General Fund, out of future incremental property tax revenues received with respect to the Urban Renewal Areas. The General Fund Advance shall not bear interest.”

In addition, the City's resolution advancing \$40,000 for fiscal year 2010 administrative costs required the advance to be repaid in one installment on June 1, 2011. However, the advance was not repaid until June 30, 2011.

Recommendation - The City should ensure the amounts advanced for administrative costs are certified in the 2011 TIF debt certification to the Webster County Auditor. Documentation of actual administrative costs should be maintained to support the advance and timely repayments should be made as required by the City Council resolution.

City of Fort Dodge

Detailed Findings

July 1, 2009 through June 30, 2010

Response – The City certified all administrative cost in its 2011 TIF certification. Documentation of actual administrative costs will be maintained to support the advance and timely repayments will be made as required by Council resolution.

Conclusion – Response accepted.

- (C) Fire Department Command Vehicle Purchase – City ordinance number 2109 establishing procedures for the obligation and expenditure of municipal funds includes competitive bid procedures. Section IX(b) regarding informal competitive bids, required for equipment purchases between \$5,000.01 to \$44,999.99, states, in part:

"All informal purchases whenever possible shall be based upon direct mail request, or email request, to all bidders on the bidders' list for the item being bid, but at least three competitive bidders requesting sealed bids be submitted to the requester by a designated date. Newspaper advertisement is not required. Upon arrival of that date, said bids shall be opened, listed and forwarded along with a recommendation to the City Council for awarding."

Section IX of the ordinance also states, in part:

"Materials, supplies and equipment will generally be awarded to the lowest responsible bidder. Except where otherwise prohibited by State Code, the City reserves the right to award the bid in the best interest of the City and waive any specifications and technicalities in the process requirements.

When the award is not given to the lowest bidder, a full and complete statement for the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction.

If preference is to be given to the local bidder, such preference must be included in the specifications to bidders. Such preference shall not be in excess of 2%..."

If preference was not included in the specifications and there is a tie between lowest responsible bidders and the bids received are for the same total or unit price, quality and service being equal, the contract shall be awarded to the local bidder."

On April 27, 2009, the City Council considered four bids for a Fire Department command vehicle. The two lowest bids received included a bid from Fort Dodge Ford, a local dealer, for \$26,956, which included a towing package but no wiring bundle, and a bid from Karl Chevrolet, Ankeny, Iowa, for \$27,133, which included a towing package and wiring bundle. The Council approved the bid from Karl Chevrolet in the consent agenda on April 27, 2009.

On May 6, 2009, the City Manager issued a memo to the Mayor and City Council informing them, subsequent to the April 27, 2009 City Council meeting, Fort Dodge Ford offered to add the wiring package at no extra cost, resulting in the lowest priced vehicle with all needed specifications. In his memo, the City Manager's recommended action stated, "The Council can move to reconsider the authorization made on April 27 for item 5y (consent agenda item) and move to purchase the Expedition from Fort Dodge Ford." It was unclear how the change in the 2009 bid transpired.

On May 11, 2009, the City Council moved the vehicle purchase from the consent agenda for further review and discussion. As a result of the issues involved, the City Council voted to indefinitely table the purchase of the Fire Department command vehicle. However, the City Council did not rescind its vote on April 27, 2009 approving the bid from Karl Chevrolet and we found no evidence the City Council action was ever reversed.

City of Fort Dodge

Detailed Findings

July 1, 2009 through June 30, 2010

Approximately one year later, on May 24, 2010, the City Council considered four bids for a Fire Department command vehicle with similar specifications to the vehicle bid in 2009. The two lowest bids received included a bid from Fort Dodge Ford, a local dealer, for \$27,511 and a bid from Stivers Ford, Waukee, Iowa, for \$26,976, which was \$535 less than the bid from Fort Dodge Ford but within the City's 2% local bid preference permitted under City ordinance number 2109. The year long delay in purchasing the vehicle was due, in part, to the need to reallocate funds for the vehicle purchase.

The son of the owners of Fort Dodge Ford is a member of the City's Board of Adjustment. However, we found no evidence to indicate any potential conflict of interest in regard to this transaction.

Recommendation – In the final analysis, the City appears to have complied with City ordinance number 2109. Although the City Council voted to table the vehicle purchase, the City Council should have taken action to rescind its vote on April 27, 2009 approving the bid from Karl Chevrolet. In the future, the City Council should be sure actions are taken, including rescinding prior actions, if applicable, and the minutes should document all actions taken.

Response – The prior City Attorney advised that indefinitely tabling a purchase was the same as rescinding it. The Council acted upon this advice with the intent of rescinding the purchase of the Fire Department command vehicle from Karl Chevrolet. In the future, the Council will explicitly rescind prior actions, if applicable, and the minutes will document the actions taken.

Conclusion – Response accepted.

- (D) Gwendolyn E. Scharfenberg Bequest to the Fort Dodge Public Library – As previously reported in the fiscal year 2006 Reaudit, the Fort Dodge Public Library was named as a beneficiary in the last will and testament of Gwendolyn E. Scharfenberg (Bequest).

Chapter 384.20 of the Code of Iowa states, in part, “A city shall keep accounts which show an accurate and detailed statement of all public funds collected, received, or expended for any city purpose, by any city officer, employee or other person and which show the receipt, use, and disposition of all city property.”

A letter of advice issued by the Iowa Attorney General dated April 22, 2008 states, in part:

“... I do not believe that a city library board may simply donate funds received from private donors to a private non-profit organization to use and invest as the nonprofit organization sees fit. Unless the library board retains the ability to oversee expenditures and to demand return of the funds in the event that future trustees do not agree with that delegation of control over the funds, the transaction violates the public purpose and non-delegation principles discussed above. Further, even if safeguards are put in place to assure ongoing oversight and control, I believe that the funds continue to be ‘public funds,’ subject to the deposit and investment standards contained in Code sections 12B and 12C (of the Code of Iowa) and that the funds must be earmarked and spent for the purpose for which the gift was given. A 28E agreement may provide a vehicle to facilitate joint public and private influence over the use of gifts received by a governmental body, by incorporating ongoing public oversight and accountability to the joint undertaking.”

City of Fort Dodge

Detailed Findings

July 1, 2009 through June 30, 2010

As of June 30, 2011 and the date of this report, the W. H. Johnston Foundation (Foundation) continues to hold the remaining proceeds from the Bequest. The City and Foundation have not entered into a 28E agreement and the Foundation has not remitted the remaining proceeds of the Bequest to the City, including all income derived from the investment of the Bequest.

The previous and current City Attorney have continued to pursue this issue. The current City Attorney has drafted a Memorandum of Understanding (MOU) between the City and the Foundation, including proper investment of these public funds in accordance with Chapter 12B of the Code of Iowa. The MOU has not yet been finalized. However, we do not believe an MOU would meet the requirements of a 28E agreement in accordance with the Iowa Attorney General's letter of advice and Chapter 28E of the Code of Iowa.

Recommendation – Based upon the Iowa Attorney General's letter of advice, the proceeds and related income from the Gwendolyn E. Scharfenberg Bequest are public funds. A 28E agreement, as described in the advice letter, does not exist. Until a 28E agreement is finalized, the City should recover the remaining proceeds of the Gwendolyn E. Scharfenberg Bequest held by the Foundation, including all income derived from the investment of the Bequest from the time it was turned over to the Foundation. In addition, the City should require an immediate accounting for these public funds from the date of the gift.

Response – The Council approved a 28E agreement with the W.H. Johnston Foundation on November 28, 2011 which was subsequently approved by the Foundation and properly filed with the Iowa Secretary of State.

Conclusion – Response accepted.

City of Fort Dodge

Staff

This reaudit was performed by:

Susan D. Battani, CPA, Director
Selina V. Johnson, CPA, Senior Auditor II

A handwritten signature in black ink that reads "Andrew E. Nielsen". The signature is written in a cursive style with a large initial "A" and "N".

Andrew E. Nielsen, CPA
Deputy Auditor of State