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July 31, 2020

Shakopee Public Utilities Commission
President Debra Amundson
255 Sarazin Street
Shakopee, MN 55379

Re: Investigation

Dear President Amundson and Commission Members:

You asked our office to investigate allegations made against certain employees and practices of the Shakopee Public Utilities Commission ("SPUC"). The scope of our investigation was to investigate:

1. Violations of the state salary cap law for two, possibly three, SPUC employees;
2. The use of "Commission-Only" agenda packets in violation of open meeting laws; and
3. The altering of a state report submitted for Commission approval and the withholding of information from Commission members.

During the course of the investigation, we analyzed hundreds of documents, minutes of meetings, emails, processes and protocols, listened to 24 closed session cassette tapes, interviewed 2 SPUC employees (Utilities Manager John Crooks and Finance Director Renee Schmid) and 1 SPUC Board member (Debra Amundson), as well as held several informal conversations with SPUC legal counsel (Kaela Brennan) and the Shakopee City Attorney (Jim Thomson).

It should be highlighted that during our interviews, all interviewees were very open, forthcoming and credible. No one appeared to withhold information or resist any questions. In fact, both SPUC employees provided follow up information upon request, including documents that we did not know existed. While their memories may not have always been clear, we were able to extrapolate sufficient information from each of them, accompanied by all of the other data provided, to

produce this investigative report. In addition, the SPUC employee (Greg Drent) who gathered our data and responded to our requests was exemplary. He was prompt, helpful and thorough. We appreciate everyone's cooperation during this investigation.

Based on the information we received and reviewed, we make the following findings of fact and conclusions:

1. The SPUC Utilities Manager exceeded the salary cap for the years 2017-2019 and he will exceed the salary cap in 2020 unless corrective action is taken. The Finance Director would have exceeded the salary cap in 2020 had she not retired in July. No other employees have exceeded the salary cap.
2. The use of "Commission-Only" packets for regular meetings that contain public data that is not accessible to the general public is a violation of the Open Meeting Law.
3. There was likely no intentional alteration of the Pay Equity Report Graph in the 2020 submission documents to the Minnesota Management & Budget Office, and the withholding of certain reports from Commission members is not a violation of the law.

We will explain the facts and findings regarding each allegation below and then offer recommendations to move forward.

QUESTION 1

VIOLATIONS OF THE STATE SALARY CAP LAW

It has been alleged that there were violations of the salary cap law by up to 3 SPUC employees. The salary cap law is codified at Minn. Stat. § 43A.17 subd. 9 (a), which states the following:

The salary and the value of all other forms of compensation of a person employed by a political subdivision of this state, excluding a school district, may not exceed 110 percent of the salary of the governor as set under section 15A.082, except as provided in this subdivision. For purposes of this subdivision, "political subdivision of this state" includes a statutory or home rule charter city, county, town, metropolitan or regional agency, or any other political subdivision, but does not include a hospital, clinic, or health maintenance organization owned by such a governmental unit.

There is no dispute that the SPUC is a political subdivision of the state, as a municipal public utilities commission created by the City of Shakopee in 1950 through its authority granted by Minnesota law. Therefore, SPUC must comply with the restrictions of this statute.

The Governor's salary cap limit is available on the Minnesota Management & Budget (MMB) Office website and is updated each year. (see **Exhibit A**) Below is a chart showing the Governor's Compensation Limit compared to Crooks' base salary, as approved in his contract.

Effective Date	Compensation Limit	Crooks' Base Salary
1/1/2020	\$178,782	\$200,000
1/1/2019	\$175,621	\$190,000
1/1/2018	\$171,338	\$175,500
1/1/2017	\$167,978	\$166,000
1/1/2016	\$165,333	\$150,000
1/1/2015	\$165,003	\$143,546
1/1/2014	\$162,245	\$136,710
1/1/2013	\$160,639	\$130,200
1/1/2012	\$157,181	\$124,000
1/1/2011	\$151,866	\$116,000

On its face, it appears that Crooks exceeded the salary cap simply looking at his base salary in 2018, 2019 and he will again exceed it in 2020. However, that is not Crooks' total salary number. The statute goes on to state that other forms of compensation are also considered part of salary, which includes his Commission secretary pay, his car allowance, bonuses, and deferred compensation. We used actual payroll records to determine what Crooks was paid each calendar year and then we added in the other forms of compensation pursuant to statute, and we were able to determine Crooks' Total Salary, which is represented in the following table:

Effective Date	Compensation Limit	Crooks' Base Salary	Crooks' Total Salary
1/1/2020	\$178,782	\$200,000	TBD
1/1/2019	\$175,621	\$190,000	\$197,386
1/1/2018	\$171,338	\$175,500	\$183,135
1/1/2017	\$167,978	\$166,000	\$173,654
1/1/2016	\$165,333	\$150,000	\$161,034
1/1/2015	\$165,003	\$143,546	\$151,336
1/1/2014	\$162,245	\$136,710	\$139,935
1/1/2013	\$160,639	\$130,200	\$137,157
1/1/2012	\$157,181	\$124,000	\$137,346
1/1/2011	\$151,866	\$116,000	\$139,935

As you can see, Crooks exceeded the Governor's salary cap in 2017, 2018 and 2019. A complete analysis of Crooks' total salary calculation can be found at **Exhibit B**.

For the last 10 years, the Commission has always discussed Crooks' salary in a closed session. Sometimes the agenda would call it a performance evaluation; sometimes it was identified as a compensation and wage analysis work session; sometimes it was discussed during a review of the utility manager's contract; and sometimes it would occur at a goals and objectives work session.

Each one of these agenda items where his salary was discussed was a closed session. At every closed session, Crooks was present at some point although he was usually asked to leave the meeting and then called back so the Commission could inform him of his raise.

The commissioners relied heavily on information provided by Crooks during these closed sessions and rarely questioned his data. However, they appeared to recognize in a couple of meetings that there was something amiss with his salary increases, yet they could not quite identify the issue. It appears that the Commission attempted to raise the salary cap question at a closed meeting in March 16, 2016, as they were discussing Crooks' salary. *One of the commissioners asked Crooks if the public sector has to consider any other public entities when looking at his salary.* Crooks responded that the Commission "looked at it last time and determined that Mark (referring to Mark McNeill, the Shakopee City Administrator) was underpaid and that the Commission was concerned more about the perception in similar type positions." It appears that Crooks interpreted the question as not being related to the salary cap but instead he was focused on a comparison of his salary with that of the City Administrator, which had been made during an August 2012 salary discussion. He was either unaware of the salary cap statute or did not recognize the question being asked. At that time in 2016, however, he was still under the salary cap, with a base salary of \$150,000.

The Commission appeared to again question his salary increases in a February 21, 2017 closed session, when one of the commissioners mentioned with surprise that with his raise, Crooks would make more than the City Administrator and County Administrator.¹ The Commission seemed to feel that something was not quite right with his salary, but again, could not identify the issue.

In 2017, after Crooks' performance evaluation and after receiving the information regarding Crooks' raise for payroll purposes, Finance Director Schmid brought the issue of the salary cap to Crooks' attention. (see **Exhibit C**) Schmid included the League of Minnesota Cities' (LMC) memo on the Governor's salary cap law and a copy of the statute in her email to Crooks. The LMC memo identified the types of compensation that must be included in a position's salary, including car allowance and employer contributions to PERA. Crooks replied that he would start the waiver protocol.

The law allows a political subdivision to request an exception to the statutory salary cap, commonly called a *waiver*, if it is determined that the position requires special expertise necessitating a higher salary to attract or retain a qualified person. (Minn. Stat. § 43A.17 subd. 9(e)) According to Schmid, Crooks set up a meeting with legal counsel at the McGrann Shea law firm to discuss the salary cap. (see **Exhibit D**) SPUC Attorney Kaela Brennan confirmed that such

¹ In 2019, Scott County received a waiver for the County Administrator's salary. The approved salary for the County Administrator in 2019 was \$178,242, which was only \$2,621 over the salary cap. The commissioners also pointed out that based on the information provided by Crooks in the closed session that the Rochester utilities manager would make \$200,000 in 2017. It is very unlikely that the information regarding the Rochester utilities manager's salary was accurate, since the City of Rochester first applied for a waiver in 2019, which authorized a salary of \$189,625, not the \$200,000 salary that was reported to the Commission in 2017.

a meeting occurred in July of 2017 and the meeting involved her partner Doug Carnival, Crooks and Schmid. Attorney Brennan was not aware of the meeting at the time and did not attend. Attorney Brennan's understanding is that the focus of the meeting was on the waiver process. Schmid and Crooks stated that Doug Carnival advised against applying for the waiver because he did not believe it would be approved. Attorney Brennan said her partner's recollection was a little different and that the waiver discussion never reached a conclusion because other avenues were being pursued at the legislature to change the salary cap law. No waiver application has ever been submitted by the SPUC for the Utilities Manager position.

A complete listing of all requests and approvals for local government waivers is attached as **Exhibit E**.

According to Schmid, starting in early 2017, a "spreadsheet" (see **Exhibit F**) was developed and has been "used since that time to monitor the cap based on interpretation of the statute." According to Schmid, she and Crooks developed the spreadsheet together. According to Crooks, Schmid did the breakdown of the compensation limits and the calculations. According to the emails provided by Schmid (see **Exhibits G, H and I**), it is more likely that they were both involved.

It was not until February 4, 2019, for what appears to be the first time, that Crooks disclosed the Governor's salary cap law to the Commission during his closed session salary discussion, even though he had been aware of its potential implications since 2017. Crooks stated:

As you know, there's an issue in the State of Minnesota that government workers not making uh what is it, not 110% of what the Governor has or whatever and I'm fine. We're within that range by the time you take out vacation and sick time and stuff but we're getting up toward that level.

No one on the Commission questioned his statement or requested verification. One commissioner stated that they were happy that Crooks was proactive on compensation and being competitive in the market. That same commissioner then said: "The Governor makes what? 210, 220?" Clearly, the Commission had no idea what the salary cap number *actually* was.

According to Schmid, she raised the salary cap issue with Crooks *again* on February 8, 2019 and *again* on February 7, 2020 (see **Exhibits G and H**). Crooks responded with his own calculations to confirm he was under the salary cap. Schmid did what she could to inform Crooks of the potential issue, but ultimately, she deferred to Crooks on the final calculation.

The way the spreadsheet determines Crooks total salary is as follows: It starts with Crooks' base pay per his contract, adds his secretary pay, car allowance and deferred compensation. The formula then *subtracts* the value of his vacation and sick leave. Using this math, Crooks has justified that he has been staying under the salary cap each year since 2017. It should be noted that even using his calculations, for 2020, it shows him under the cap by the slimmest of margins = \$43.54. The only way Crooks is able to stay under the salary cap for 2020 is by reducing his deferred compensation from \$2,000 to \$1,200 (see **reduction in last column of def. comp. at Exhibit F and see Exhibit I**).

It appears that no one at SPUC consulted with Attorney Brennan or her partner Doug Carnival after developing the spreadsheet. Brennan said she was unaware of its existence until it was brought to her attention as she assisted with the preparation of a letter to the State Auditor in response to an inquiry by the Shakopee City Administrator to the State Auditor raising questions about SPUC's compliance with the salary cap law. Schmid said the auditors, berganKDV looked at it in their field work 2 or 3 years ago and never "flagged" it.

As part of our investigation, we spoke with Steve Wischmann, CPA and Audit, Forensic and Risk Services Partner at berganKDV, the SPUC auditor. Wischmann has worked on the SPUC audit himself for 10 years. He was familiar with the salary cap issue and said that he had seen the spreadsheet in the past, but did not raise it as a concern because he had no reason to question the calculation provided by the Finance Director until this year. Then, in April 2020, it was brought to their attention by Schmid. The timing of raising the concern was problematic only because berganKDV had just submitted its Final Audit Report dated March 19, 2020 and was scheduled to present it at an SPUC meeting on May 4, 2020. The conclusion in the March report, on page 65, stated that there was nothing that came to their attention that caused them to believe that the Commission failed to comply with any legal requirements or State Auditor guidelines. (see **Exhibit J**)

Then, on May 1, the Office of State Auditor submitted its response to the SPUC. Due to the timing of the State Auditor's opinion, berganKDV did not have time to amend its Final Audit prior to the May 4 meeting. The Commission continued the hearing for the Audit Report until such time as berganKDV could analyze the State Auditor's opinion and incorporate it into its Audit Report. An additional page was added to a revised Final Audit Report, dated May 18, 2020, with a finding of potential noncompliance on the compensation limit and a recommendation to seek a legal opinion. (see **Exhibit K**)² While it seems odd that the auditor would not identify the potential salary cap issue in the 2017 or 2018 audits based on Crooks' base salary alone, they were provided with what they believed to be credible information (the spreadsheet) that explained the formula and why the total salary did not exceed the salary cap. Wischmann stated that he has always found Schmid to be direct and honest and had no reason to question her analysis in the spreadsheet.

Why is there such confusion on the calculations required for salary cap compliance? The statute states as follows:

(c) Deferred compensation and payroll allocations to purchase an individual annuity contract for an employee are included in determining the employee's salary. ... other forms of compensation which must not be included in a determination of an employee's total compensation for the purposes of this subdivision are:

(1) Employee benefits that are also provided for the majority of all other full-time employees of the political subdivision, *vacation and sick leave allowances*,

² It should be noted that this supplemental page was not included in the May 18, 2020 Commission packets. It was obtained directly from Wischmann who said he sent it to both Crooks and Schmid prior to the May 18 meeting.

health and dental insurance, disability insurance, term life insurance, and pension benefits or like benefits the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986.

Minn. Stat. § 43A.17 subd. 9(c)(1). (emphasis added)

On its face, an employee might think it would be acceptable to deduct *monetary balances* for vacation and sick leave, when the statute states not to include “vacation and sick leave *allowances*” when calculating salary. To an employee, vacation and sick leave have monetary value which can be significant if able to cash them out upon cessation of employment. However, *while employed* these benefits have no monetary value for purposes of salary. They are simply a benefit during the term of employment. In fact, SPUC sick leave balances, according to the 2012 SPUC Employee Handbook, have no cash value at all, so it makes no logical sense to convert these hours to dollars and then subtract them from salary. Vacation balances have some monetary value; however, SPUC employees are only allowed a cash payout upon termination of employment. And at that point, the cash value would be *added to* salary, not *subtracted from* it.

We agree with the State Auditor’s opinion (see **Exhibit L**) and the Attorney General’s Opinion referenced within that opinion that support the position that vacation and sick leave are part of the terms of employment, similar to the extra two days of “personal holidays” that every SPUC employee receives. These types of benefits are just that – extra perks. They neither add financial value to salary at the time of use – the week-long fishing trip or Disney World vacation – nor should they be deducted from it. Because we agree with the State Auditor, the overpayment made to Crooks needs to be addressed. When asked what SPUC should do if the conclusion was reached that he exceeded the salary cap, Crooks said he would “true it up.”

As requested, we also reviewed the salary information for Schmid and the calculation is as follows:

Actual Base Pay (payroll records)	\$162,962.09
Car Allowance	\$3,300.00
Def. Comp.	\$2,000.00
Total Compensation	\$168,262.09
Gov. Salary Cap	\$175,621.00
Under/Over Salary Cap	(\$7,358.91)

Schmid did not exceed the salary cap in 2019 or any prior years.³ While her salary in 2020 *would have* exceeded the salary cap (\$175,269.05 base pay + benefits for a total salary of \$180,569.05), because she retired in July 2020, she did not exceed the salary cap. No other employees came near the salary cap limit.

³ A recent article in the local Shakopee newspaper stated the following: “Schmid, according to her 2019 employment contract, earned a base salary of \$175,845, plus a \$275 per month car allowance, which — according to the League of Minnesota Cities — is generally considered part of the position’s overall salary. With her car allowance, Schmid’s 2019 salary was \$179,145.” The article is wrong on both accounts – Schmid does not have an employment contract and payroll records indicate she was actually paid \$162,962.09 in 2019. Therefore, she did not exceed the salary cap.

Recommendations:

- a. The SPUC Utilities Manager's 2020 salary must be reduced so that he will be paid under the salary cap for the calendar year 2020. This will require an amendment of Crooks' employment contract, but since his salary violates the law, it should not be negotiable.
- b. An independent audit must be performed to calculate the exact amount of salary that was overpaid for the years 2017-2019.
- c. The Commission must develop a repayment plan (i.e. a short-term payment plan, lump sum payment, reduction in future salary) for the reimbursement of the overpayment for the years 2017-2019 with the SPUC Utilities Manager.
- d. The Commission must report the overpayment to PERA so that the appropriate course of action can be taken to correct the overpayment pursuant to their protocol.
- e. There are likely tax implications for both the employer and the employee. A tax attorney or CPA should be consulted on how to address any overpayment of taxes.
- f. SPUC's insurance carrier (LMCIT) should be notified as they may want to take the lead on the audit or other action steps.

QUESTION 2
THE USE OF "COMMISSION-ONLY" AGENDA PACKETS

The next question that was raised was whether the use of Commission-Only packets violates the Open Meeting Law. Minn. Stat. § 13D.01 subd. 6 requires the following as it relates to agenda packets:

Subd. 6. Public copy of members' materials.

(a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

- (1) distributed at the meeting to all members of the governing body;
- (2) distributed before the meeting to all members; or
- (3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

(b) This subdivision does not apply to materials classified by law as other than public as defined in chapter 13, or to materials relating to the agenda items of a closed meeting held in accordance with the procedures in section 13D.03 or other law permitting the closing of meetings.

The process for assembling the SPUC packets was memorialized in writing due to staffing changes in the spring of 2020 and the process follows a strict protocol. (see **Exhibit M**) Each department manager submits his or her agenda materials to Crooks who meticulously assembles and approves the packets for every meeting. There are 3 versions of the packets for each meeting:

1. There is an “official packet” for the SPUC records, which is kept in a storage/file room,
2. There is an “original packet” which has original signatures on it, which is kept in Crooks’ office, and
3. There is a “Commission-Only” packet which is not always different from the official packet, but there are times when it contains additional information. The Commission-Only packets are also kept in Crooks’ office.

Crooks determines when and what *additional information* is necessary for the Commission-Only packets. It is clearly stated in the process protocol at bullet point 7: “John will let you know if there are documents that should be distributed only to Commissioners – scanned and posted to password protected portion of the website.”⁴

Agendas and packets for each meeting dating from 2018 – present are posted on the SPUC website. There is a tab for **Commission** in the menu at the top of the Home page, which contains drop down categories labeled *Agendas*, *Commissioner’s*, *Minutes*, *Packets*, and *Videos*. The *Commissioner’s* tab is password protected, but access to it reveals Commission packets listed for each meeting. In my interview with President Debra Amundson, she indicated that she was unaware that Commission packets under this tab were any different than the packet available to the general public. She never compared the two versions, nor would she have reason to do so, since it was clear that this tab is where the Commissioners were intended to find their meeting packets. When comparing meeting packets from the “*Packets*” drop down tab versus the “*Commissioner’s*” drop down tab, it revealed that from 2018-2020 when the meetings included an agenda item for a closed session, the Commission-Only packets contained additional material not available in the official packet, for 5 out of 8 meetings.⁵

⁴ When the packet protocol process documents were sent to our office, there were several different versions of it, some more detailed than others. There was an email from Crooks in one of the versions in which Crooks stated:

“There are 2 important changes that I was not aware of.

- 1- Bullet point 7, on Jenn’s procedures was taken off
- 2- The language about the warrant list was added, bullet points 10-11

I became aware of these two changes on May 28, as I was preparing documents for legal review... I also added back the language in bullet point 7 in the original Commission meeting protocol instructions as they NOW are written.”

This email comment from Crooks is mentioned only to point out that Crooks did not try to conceal the existence of the Commission-Only packets or its protocol process. In fact, he wanted to ensure this part of the process was reinserted on the list and he identifies himself as the sole gatekeeper of the information included in the Commission-Only packet.

⁵ Only meeting packets from the years 2018-2020 are on the website, so we did not do a complete comparison of all Commission-Only versus official meeting packets from prior years.

The additional material in the Commission-Only packets often included information such as salary comparative data from the professional utility organizations, analyses and compilations by Crooks of his compensation history, compensation committee recommendations, the salary data of all employees and Crooks' signed contract. On occasion, instead of adding the material to the Commission-Only packet, Crooks would hand his additional material directly to the commissioners during the closed meeting and then add that material later to the Commission-Only packet that was kept in his office. Members of the public were never privy to this additional information.

There were 3 regular meetings between 2018-2020 where the Commission-Only packet had more information than the official packet, and these meetings or agenda items did not involve a closed session. These meetings were:

- March 18, 2019 goals and objectives work session agenda item, which included 7 additional pages regarding progress on past goals, as well as recommendations for future goals.
- October 21, 2019 compensation subcommittee recommendations and resolution approving wages agenda item, which contained 2 additional pages reflecting the actual compensation of each employee/position.
- February 3, 2020 wage and contract terms agenda item (utility manager contract), which contained Crooks' 7-page contract (the official packet only contained the resolution approving the contract).

All of the additional materials in the Commission-Only packet for these 3 meetings should have been included in the official packet that is available to the general public, both on the website and at the meeting. This practice of providing additional information in the Commission-Only packet for these regular meetings and not making this additional material available to the public, is a violation of the Open Meeting Law.

It should be mentioned that there are times that the Commission-Only packets rightly contained nonpublic data that was specifically related to closed sessions. For example, Crooks correctly withheld his performance evaluation materials from the official packet as that material was related to the closed meetings.

The problem is that there were also many closed meetings during the last 10 years *which should have been open* and therefore, any written material related to those meetings should have been made available to the public.

I present the following examples from recordings of the closed sessions:⁶

- May 21, 2012, there was a closed session to discuss the terms of Crooks' employment contract with Crooks present in the room. Crooks described the focus of the contract discussion in the introduction to the meeting, when he said he wanted to "clean it up." The only topic of discussion during this meeting were contract terms, not performance. Discussion of his contract is not an exception to the open meeting law and should have been discussed at an open meeting. All written material should have been available to the public.
- August 13, 2012, there was a closed session presumably under the performance evaluation category, but the discussion again solely focused on the terms and conditions of Crooks' contract, not his performance. Discussions included his bonus, mileage reimbursement, car allowance, salary, salary range as well as many other contract terms. Contract discussions are not an exception to the open meeting law and should have been discussed at an open meeting. All written material should have been available to the public.
- March 16, 2016 and April 18, 2016 there were closed sessions that were described as a salary wage range adjustment for all employees, but the focus of the meeting was almost entirely on Crooks' wage range, salary history, etc. There was general discussion about employee salaries as well. Wages and wage ranges are not a proper subject matter for a closed session and should be discussed at an open meeting. All written material should have been available to the public.

For meetings that pre-date 2018, it is unknown what was presented to the commissioners as a separate Commission-Only packet versus the official packet. Crooks' understanding of the Open Meeting Law/Data Practices Act was that all written material for any closed session was nonpublic under Minn. Stat § 13D.01 subd. 6(b), which is why he presented it under separate cover. The problem is that if the meetings did not qualify as a closed meeting exception, then the meeting should have been open and the materials related thereto, should have been made public. Crooks admitted in a closed session meeting in 2015 that the salaries and wages discussion was "sort of public but confidential." That is not an accurate statement. Salaries and wages are public data, not confidential data and must be discussed in open session. He continued in this same closed session to state that he didn't know how to talk about confidential employee matters with the Commission to make sure everyone stays informed. Unfortunately, there is not always an exception to close a meeting to discuss uncomfortable topics, like Crooks' raise or other employee salaries or sensitive employee matters. None of the employees are in a union, so closing a meeting

⁶ As the Commissioners are likely aware, the closed sessions are recorded. Cassette tapes of these closed session were provided to us, thankfully accompanied by a cassette player. While only one of the tapes was almost "eaten" during play-back, another tape malfunctioned during its original recording and there was a memo wrapped around this tape acknowledging that the recorder malfunctioned so that portions of the meeting were unintelligible. While equipment malfunctions occur on occasion, purchasing a digital recorder so that closed session recordings can be downloaded to a computer, server, or other permanent data storage location, is strongly recommended.

to discuss labor negotiations, which is an allowable exception to close a meeting, is not relevant to the SPUC.

Recommendations:

- a. The use of “Commission-Only” packets must be limited to the rare occasions when nonpublic data is required to be shared with the commissioners in advance of a meeting. Another alternative would be for SPUC to forego the practice of Commission-Only packets and distribute nonpublic data during a closed meeting and then collect it immediately after the meeting.
- b. Annual training must occur with SPUC staff and Commissioners regarding the Open Meeting Law and Data Practices Act. Our investigation showed that there are many misconceptions and misunderstandings of these laws among SPUC staff and commissioners. All relevant members of the organization would benefit from training, including administrative support staff, department managers and Commission members.

QUESTION 3
ALTERING OF PAY EQUITY REPORTS AND WITHHOLDING CERTAIN REPORTS
FROM THE COMMISSION PACKETS

The final question raised surrounds the Pay Equity Reports: Whether or not one report was altered in 2020 and whether it is appropriate to withhold certain reports from the Commission.

Since the Local Government Pay Equity Act was passed in 1984, every 3 years, all government employers must submit a Pay Equity Report to MMB identifying employees and their salaries as they exist on the date of the report. The reports must be submitted on 3 year intervals.

Minn. Stat. § 471.992 subd. 1 of the Local Government Pay Equity Act states:

... every political subdivision of this state shall establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in order to eliminate sex-based wage disparities in public employment in this state.

The purpose of the Act has nothing to do with a compensation limits compliance (even though MMB is the same office that calculates the salary cap limit), but solely serves the purpose of monitoring gender equity in the compensation of government employees. After a Pay Equity Report is submitted, MMB determines compliance and either responds with a Notice of Non-Compliance, accompanied by the reasons for the failure and a grace period to correct any deficiencies, or a Notice of Compliance Certificate indicating the employer has successfully met the requirements of the Act. There are various ways that a jurisdiction might fail the test and penalties are assessed for not correcting the failure once it has been identified.

The reporting data that must be submitted to MMB is not subject to manipulation by the government employer. The employer enters the employee information and the MMB program “spits out” uniform reports and graphs that anticipates whether the employer will either pass or fail. According to Schmid, the report forms sometimes change from year to year, depending on updates at MMB, but the reports are not created, drafted or changed by the government employer.

When our office requested the Pay Equity Report data from the SPUC, we were provided with complete sets of reports for the past several years, which included the following documents:

- Compliance Report
- Predicted Pay Report Graph and Data
- Job Class Data Entry Certification List
- Pay Equity Implementation Report (the document to be signed by the Commission President)
- Notice to post for the employees

When asked about the process for who determines what is included in the Commission packet when it is on an agenda for approval, Schmid outlined these steps:

- Finance Director requests Utilities Manager to add pay equity report to Commission agenda in January as Commission approval and sign off by Commission President is needed to complete submission to State of Minnesota by deadline of 1/31/2020.
- Finance Director drafts cover memo to Utilities Manger (sic) to be included in Commission packet and reviews reports available with Utilities Manager who provides direction on what to include. Agenda item packet has typically included:
 - Cover Memo
 - Compliance Report
 - Predicted Pay Report Graph
 - Pay Equity Implementation Report (to be signed by Commission President)

It is noteworthy that the Job Class Data Entry Certification List, which identifies all employees and their salaries, is typically not included in the Commission packet. As stated earlier, Crooks carefully controls the agenda packets and what they contain. Schmid stated that she takes all of the Pay Equity Reports to Crooks and Crooks determines which reports to include in the Commission packet. She did not recall having a discussion with Crooks as to which reports to include or omit.

The Local Government Pay Act points employers to the Minnesota Rules to provide direction on how employers comply with submitting documents to MMB. While there is no requirement in the Minnesota Rules that *all* of the Pay Equity Report forms be submitted to the governing body prior to being sent to MMB, Minnesota Rules 3920.0300 states as follows:

Subp. 4. Verifications.

The report must include a statement signed by the chief elected official or, if none, the chief appointed official of the jurisdiction verifying that:

- A. all information in the report is accurate and complete to the best of the jurisdiction's knowledge;
- B. the governing body of the jurisdiction has reviewed and approved the report;
- C. the job evaluation system used by the jurisdiction meets the criteria in subitems (1) and (2):
 - (1) the job evaluation system is based on the skill, effort, responsibility, and working conditions normally required in the performance of the work; and
 - (2) the same job evaluation system is used for determining comparable work value for all classes of employees in the jurisdiction; and
- D. the report includes all classes of employees over which the jurisdiction has final budgetary approval authority. (emphasis added)

The Commission relies on the memo prepared by the Finance Director which generally states that all of the data has been reviewed and she recommends approval of submission to MMB. It is not required that all of the reports be included in the Commission packet for the Commission to review and approve. Omitting one report or another from the Commission packet is not a violation of any *law* or *rule* as long as there is sufficient data for Commission to review. The Commission could request additional documentation, but it is understandable that it would be difficult for them to ask for a report that they did not know existed. Our conclusion is that there was no violation of the law by omitting one of the pay equity reports from the Commission packets.

The allegation that someone intentionally removed the word "salary" from the Predicted Pay Report Graph appears to be a red herring. Schmid affirmatively stated without hesitation that she did not alter the report. She cannot recall if the word "salary" was on the report when she submitted the reports to Crooks. She believes the report simply printed that way when it was "spit out" from the MMB website. In addition, the word "salary" was included on the Predicted Pay Report Graph for prior reporting years. She is entirely credible in her recollection and recitation of the events. Our conclusion is that there was no intentional alteration of a report simply because the word "salary" did not appear on the Predicted Pay Report Graph.

Recommendation:

Moving forward, all Pay Equity Reports, including the Job Class Data Entry Verification List should be included in the Commission packets for the Commission's review. By including all of the reports, the Commission and the President, can confirm that the information is accurate before approving and signing it.

OTHER ISSUES

The Commission asked us to identify any other issues that arose during the course of the investigation. We raise the following issues that the Commission may want to consider addressing:

OPEN MEETING LAW

As stated earlier, there is lack of knowledge and understanding regarding the Open Meeting Law as evidenced by our interviews with Crooks, Schmid, and President Amundson. This is not a new problem. After listening to the tapes, there appears to be the same lack of knowledge with every Commission over the last 10 years, specifically as it relates to closed sessions. We listened to the cassette tapes of the closed sessions that were provided to us. We know these were closed sessions, not because they were identified during the tape recording as such, but because they were provided to us when we requested the tapes related to performance evaluations. These tapes are kept in Crooks' office, who has the only access to them, so it is clear that Crooks considered all of these meetings a legally closed meeting under the category of a "performance evaluation."⁷

For 2013 there were 3 closed meeting tapes. The first meeting was held in March, which Crooks introduced on the tape as a discussion of his performance with the explanation that a separate salary discussion would be held at a later date. This March meeting is appropriately closed meeting for purposes of discussing Crooks' performance evaluation. Minn. Stat. § 13D.05 subd. 3:

Subd. 3. What meetings may be closed.

(a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

What is unclear is whether the meeting was closed correctly, since the tape was started after the meeting was closed and the meeting minutes do not reflect enough information to determine if it was appropriately closed. The reasons for closing a meeting must be stated on the record, citing the statutory reference, and describing the subject matter to be discussed. (Minn. Stat. §13D.01 subd. 3) Closing a meeting to discuss the performance evaluation of Crooks, for example, should appropriately occur when a commissioner states on the recording as follows:

"Motion to close the meeting pursuant to Minnesota Statute Section 13D.05 subd. 3 to conduct the performance evaluation of the Utilities Manager."

⁷ It is troubling that Crooks is the sole keeper of the closed session cassette tapes. While it is understandable that access to them should be limited, there should be at least 2 department managers who have access to this protected data. For example, when we requested these tapes, Crooks provided them to our contact at SPUC who then provided them to us. According to meeting minutes, it seems like there are at least 2 cassette tapes missing of closed meetings, but we have no way of verifying.

This process was never followed on any of these “performance evaluation” tapes.

The April 13, 2013 and the May 20, 2013 meetings were solely held to discuss Crooks’ contract terms, salary range, and bonuses. While a bifurcated performance evaluation might have seemed like a good idea to separate the performance discussion in March (correctly closed) from the salary discussion in April and May, discussions solely about contract terms, salary, and bonuses must occur at an open meeting.

The agenda item listed as “wages and compensation analysis” was in reality a discussion of Crooks’ salary. The topic on the agenda as a “goals and objectives” work session, somehow only discussed Crooks’ salary. These agenda topics are not legally permissible reasons to close a meeting. None of these meetings that related to Crooks’ salary should have been held in closed session. As awkward as it is to discuss contractual terms, raises, salaries, etc., it must be done at an open meeting.

While much less significant, it is noteworthy that during many of these meeting that were closed for “performance evaluations,” the Commission wandered off topic and discussed projects, historic employee issues, accidents, utility rates, relationships with various people at the City of Shakopee and even discussions about how to have brainstorming sessions and whether they could be open or closed meetings. These are all topics worthy of Commission conversations, but not during a meeting that was *closed* pursuant to state law to conduct a performance evaluation of the Utilities Manager.

Recommendation

All administrative staff members, department managers, and commissioners should attend training regarding the Open Meeting Law. All of the interviewees admitted they have never been trained on this important subject. The League of Minnesota Cities offers training seminars and webinars and this resource should be explored immediately.

DATA PRACTICES ACT

As discussed earlier, there is great confusion about what is public and what is nonpublic data. Unfortunately, when asked who the Data Compliance Officer is for Data Practices Act requests, Crooks said, “Well, ... I suppose that is me.” Every government organization must have a Data Practices Policy, in which it identifies a Data Compliance Officer. Crooks was unaware if the organization has such a document, policy or designated officer.

This uninformed response on how to navigate Data Practices requests became even more apparent when Crooks made a Data Practices request following his interview with our office and instead of going to the SPUC as an “organization” through its President to request certain data, he requested the data from the commissioners themselves. This is completely inappropriate. If given the request, the President would have routed the request to Attorney Brennan to assist with compiling the data, reviewing it to separate the public from nonpublic data and then responding with the data to Crooks. Crooks should not have approached the commissioners themselves to retrieve the

requested data, expect them to know the difference between public and nonpublic data and then respond to him with the data.

There were many closed sessions that revealed that commissioners and Crooks were confused about what information, including Crooks' contract, was public data. At one point, Crooks stated that salary and wages are not public data. At two other meetings, the commissioners did not know if Crooks' contract should be approved on a regular meeting agenda.

Crooks, Schmid and President Amundson all admitted they have not had any training on the Data Practices Act. This fact is just as troubling as the lack of training on the Open Meeting Law. As a government agency, SPUC collects massive amounts of data. Data is classified as public data, nonpublic data and confidential data. These classifications all carry significant legal meaning that is likely unknown by the keepers of the data, which includes every member of the organization.

Recommendation

All staff members, department managers, and commissioners should attend training regarding the Data Practices Act. All of the interviewees admitted they have never been trained on this important subject. The League of Minnesota Cities and the Department of Administration offer training seminars and webinars and these resources should be explored immediately.

COMPENSATION STUDY

On every closed session tape, it was clear that the commissioners relied heavily on information provided by Crooks regarding appropriate levels of compensation for the positions in the organization. He called it a "salary survey" in 2015, but it was done internally, based on information provided by Crooks, given to Schmid, who produced a report. Most government agencies do not conduct this type of compensation analysis internally as there is an appearance of self-interest and bias. Most units of government seek an objective firm to audit their compensation structure and policies to provide the governing body clear direction and instruction on where it lies in comparison to other similarly situated organizations, as well as offer recommendations on right-sizing salaries.

It was very apparent that since he was promoted to Utilities Manager, in 2011, Crooks has been laser-focused on compensation, specifically his own, but also for others within the organization. He alone provides the Commission with comparative compensation information every year during his salary discussion, providing volumes of numbers and data to the commissioners. On several occasions, the commissioners voiced their confusion with Crooks' calculations and utility company salary comparisons, both public and private. Crooks would offer an apology at the beginning of most of the discussions, stating how he hates bringing up his salary every year, but he was passionately concerned about his wage range and how it must continue moving or he would be "topped out." It was surprising to us that some commissioners did not recall hearing the same speech from Crooks year after year about the history of his salary and request for an increase.

Recommendation

The Commission should consider undergoing an independent compensation study for the entire organization to determine if its salaries are appropriately positioned within its comparable marketplace and provide a path for ensuring the SPUC stays on track with its salaries. The Commission may take the Utilities Manager additional data into account for his salary, but it should not be the sole source of reliable information when determining his compensation.

CONSULT WITH LEGAL COUNSEL

While listening to the closed sessions, it was frequently apparent that there was general confusion and misunderstandings between the Commission and Crooks about contract terms that should have involved legal counsel. One of the commissioners stated that he used a sample contract *form* from the internet as a template for Crooks' contract. There was also confusion about the amount of his existing base salary from year to year, both by Crooks as well as by the Commission. This confusion on contract terms continued between the Commissioners and Crooks in these closed sessions without legal input or clarification and could have been avoided with legal consultation.

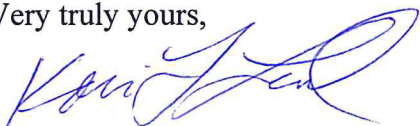
There are many other occasions when the organization could have benefited from general legal advice. Government agencies have so many different facets to their organizations that require legal oversight. This cannot be underscored. *All* of these issues raised in this investigation, while they maybe could not have been completely avoided, certainly would have benefited from legal review.

Recommendation:

Invite legal counsel into your regular meetings, special meetings, contract negotiations and always into your closed meetings. There is value in seeking advice, input, and review from legal counsel.

Thank you for the opportunity to provide, prepare and present this report. We will be available to respond to questions at your upcoming meeting.

Very truly yours,



Korine Land

Local Government Compensation Limits by Year

Local Government

Effective Date	Compensation Limit*	CPI-U Increase
01/01/2020	\$178,782	1.8%
01/01/2019	\$175,621	2.5%
01/01/2018	\$171,338	2.0%
01/01/2017	\$167,978	1.6%
01/01/2016	\$165,333	0.2%
01/01/2015	\$165,003	1.7%
01/01/2014	\$162,245	1.0%
01/01/2013	\$160,639	2.2%
01/01/2012	\$157,181	3.5%
01/01/2011	\$151,866	1.2%
01/01/2010	\$150,065	0.0%
01/01/2009	\$150,065	3.7%
01/01/2008	\$144,711	3.5%
01/01/2007	\$139,817	1.3%
01/01/2006	\$138,023	4.3%
08/01/2005	\$132,333	--

EXHIBIT A

*Unless increased in accordance with Minnesota Statute 43A.17 Subd. 9(e)

John Crooks

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Base Pay (per contract)	116,000.00	124,000.00	130,200.00	136,710.00	143,546.00	150,000.00	166,000.00	175,500.00	190,000.00	200,000.00
Actual Pay	116,000.06	118,461.56	130,056.88	135,534.72	143,335.60	153,034.22	162,884.68	175,134.63	189,386.49	
Commission Secretary Pay	1,500.00	1,500.00	1,500.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400
Car Allowance	3,600.00	3,600.00	3,600.00		3,600.00	3,600.00	3,600.00	3,600.00	3,600.00	3,600.00
Def. Comp.	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	1,200.00
Lump Sum Payment	4,040.00	11,784.62					2,769.23			
Total Compensation	127,140.06	137,346.18	137,156.88	139,934.72	151,335.60	161,034.22	173,653.91	183,134.63	197,386.49	207,200.00

Gov. Salary Cap	151,866.00	157,181.00	160,639.00	162,245.00	165,003.00	165,333.00	167,978.00	171,338.00	175,621.00	178,782.00
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Under/Over Salary Cap	(24,725.94)	(19,834.82)	(23,482.12)	(22,310.28)	(13,667.40)	(4,298.78)	5,675.91	11,796.63	21,765.49	28,418.00
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Est. Total Amount Over Salary Cap 2017- 2019	\$39,238.03
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EXHIBIT B

+ New mail

Include messages from:

- ☒ Entire mailbox
☐ Current folder (Sent Items)
☐ Current folder and subfolders

Show these messages:

- ☐ All
☐ Older than a week
☐ Older than a month
☒ Older than a year

Favorites

- ▲ Schmid, Renee
▲ Inbox 1394
EBILL
LIFE INSURANCE
Drafts [25]
Sent Items
Deleted Items 447
Junk E-mail
Notes
RSS Feeds

crooks 2016

SENT ITEMS

CONVERSATIONS BY DATE ▼

All Unread To me Flagged



Mail Calendar People Tasks

Schmid, Renee ▼



Wage Contract and Salary Cap



← REPLY

↶ REPLY ALL

→ FORWARD



Crooks, John

Thu 3/2/2017 5:07 PM

Inbox

Mark as unread

To: Schmid, Renee;

We can start the waiver protocol when I get back to the office. Should be procedural...

John



Crooks, John

Thu 3/2/2017 5:00 PM

Inbox

Mark as unread

Sure...we can pull it.

John



Schmid, Renee

Thu 3/2/2017 4:52 PM

Sent Items

Mark as unread

📎 1 attachment

GovernorsSa
~.pdf

John –

There may be an issue with the wage contract that is on the agenda. Per the LMC information on salary cap, the definition of compensation under the cap would include the \$2,000 deferred comp contribution from SPU as well as your mileage allowance. This would put you over the governor cap amount. Please see the attached info from the LMC. Please let me know if we need to pull this from the agenda.

Renee

Renee Schmid

Director of Finance and Administration
Shakopee Public Utilities
PO Box 470
255 Sarazin Street
Shakopee, MN 55379
(952)233-1522 Direct (952)445-7767 Fax



Crooks

1 of 2

EXHIBIT C - 1



INFORMATION MEMO

Governor's Salary Cap Law

Local governments cannot pay employees more than 110 percent of the governor's salary without a waiver from the state. State statute and attorney general opinions have discussed the inclusion of overtime, vacation/sick time, deferred compensation, insurance contributions, pensions, and car allowances in the calculation of an employee's salary.

RELEVANT LINKS:

[Minn. Stat. § 43A.17 subd. 9.](#)
[MN Mgmt & Budget: Local Government Salary Cap and Salary Waiver Process.](#)

[Minn. Stat. § 43A.17, subd. 9.](#)

[Minn. Stat. § 43A.17, subd. 1.](#)

[Minn. Stat. § 43A.17, subd. 9\(c\).](#)

[Minn. Stat. § 43A.17, subd. 9\(c\) \(1-3\).](#)

I. Limits on compensation

State law limits the amount of compensation political subdivisions may pay employees. Under the current law, statutory and home rule charter city employees may be paid 110 percent of the governor's salary. Adjustments are made annually based on the Consumer Price Index. Effective Jan. 1, 2017, the compensation limit is \$167,978. For reference, the 2016 compensation limit was \$165,333, and the 2015 limit was \$165,003.

The statutory limitation applies to "salary and the value of all other forms of compensation." Salary is defined as "hourly, monthly, or annual rate of pay including any lump-sum payments and cost-of-living adjustment increases." Employer-provided deferred compensation payments and payroll allocations to purchase an individual annuity contract for an employee are also included as salary. All other direct and indirect forms of compensation that are not specifically excluded must be included in determining an employees' total compensation.

Payments excluded from compensation include the following:

- Employee benefits that are also provided for the majority of all other full-time employees of the political subdivision.
- Vacation and sick leave allowances.
- Health and dental insurance.
- Disability insurance.
- Term life insurance.
- Pension benefits or like benefits, the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986.
- Dues paid to organizations that are of a civic, professional, educational, or governmental nature.
- Reimbursement for actual expenses incurred by the employee, which the governing body determines to be directly related to the performance of job responsibilities.
- Relocation expenses paid during the initial year of employment.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. § 43A.17, subd. 9\(e\).](#)

[MN Mgmt. and Budget: Local Government Compensation Limits by Year.](#)

[Minn. Stat. § 43A.17, subd. 1.](#)

[Minn. Stat. § 43A.17 subd. 9.](#)

[29 C.F.R. 541.604 \(Fair Labor Standards Act\).](#)

[A.G. Op. 161b-12 \(Aug. 4, 1997\).](#)

[OSA Statement of Position "Car Allowance and Mileage Reimbursement."](#)

II. Waiver process

Cities may request a waiver from the commissioner of Minnesota Management & Budget to pay an employee in excess of 110 percent of the governor's salary. The city must show the position requires special expertise necessitating a higher salary to attract or retain a qualified person. The commissioner reviews each waiver request against the salary rates of other positions with similar responsibilities in the state and nation, and must notify the Legislative Coordinating Commission to receive the commission's advisory recommendation on the waiver. The waiver is tied to a position, versus a specific employee. Thus, once a person leaves a position any previously awarded waiver remains in effect for that position when hiring a new employee. Once a city has received a waiver for a position, additional annual increases can be given based on the Consumer Price Index without the request of a new waiver. As of January 1, 2016, existing waivers will increase by 0.2%

III. Common concerns

A. Overtime and the salary limit

The statutory subdivision defining salary excludes payments due to overtime worked. However, the subdivision that creates the salary compensation limit does not include overtime in the list of specific exceptions. The common practice is to not consider overtime as compensation in determining the salary limit, but each city should get specific advice from its city attorney.

Most city employees reaching the salary cap are exempt employees who are generally not paid overtime. However, a city can pay overtime to an exempt employee pursuant to an employment contract or personnel policy that permits an exempt employee to receive overtime compensation for hours worked beyond the normal job requirements.

B. Allowances

Officials sometimes receive a "cash allowance" for the personal use of a car, an "expense allowance," or a "housing allowance" regardless of actual expenses. Generally these forms of compensation are considered part of the position's salary. However, reimbursement for "actual expenses incurred" by the employee, such as mileage reimbursements for travel on official business, should not be included as salary. If an employee receiving a cash allowance for use of a car tracks his or her mileage, that cash allowance may arguably be excluded from the salary cap.

RELEVANT LINKS:

Minn. Stat. § 43A.17, subd. 9(c) (3).

A.G. Op. (Nov. 21, 2005).

A.G. Op. 161b-12 (Aug. 4, 1997).

A.G. Op. 161b-12 (Aug. 4, 1997).

C. Calculating benefit cost

For purposes of calculating the cost of a benefit that must be included as salary to the employee, the value of other forms of compensation is the annual cost to the political subdivision.

D. Insurance differentials

Some cities may allow their management team a higher insurance contribution for health insurance than other employees receive. There are likely a couple of different ways to look at whether cities must count the difference as salary for calculating the cap. Some cities believe any contribution by the city toward benefits exceeding what other employees receive is included in salary. Other cities interpret the employer's contribution as excluded, regardless of the amount, since there is no language "provided to a majority of other employees" included with the health and dental insurance exclusion language in the statute.

The attorney general has stated that the benefit does not have to be equal to be excluded because it is a common practice for employers to award benefits at different levels based on factors such as longevity or position held. Since this is a matter of interpretation, cities are strongly encouraged to work with their city attorney and city auditor regarding what additional compensation, if any, in the way of benefits is appropriate for employees.

Federal health care reform is likely to make unequal payments to highly compensated employees problematic in the future. Therefore, cities should review this practice with the city attorney.

E. Accrued leave payouts

Upon termination of the employment relationship, unused vacation and sick time may be paid to the employee without being included in the salary limit. An employment contract that allows the employee to cash in accrued vacation or sick time during the employment relationship is compensation that must be included in the salary determination as a "lump sum payment."

F. Life insurance exclusions from the salary cap

The value of term life insurance is specifically excluded from the employee's salary by statute. Split-dollar life insurance policies and other types of life insurance would be considered compensation and must be included in the employee's salary. In a split-dollar life insurance policy, the city and the employee share the cost and the benefit of the policy.

RELEVANT LINKS:

Minn. Stat. § 43A.17, subd. 9(c) (1-3).

G. Contributions to employee post-employment health savings accounts

City contributions to the employee's post-employment health savings account are not likely counted toward the salary cap limit. Such contributions would probably be covered by the exemption for "pension benefits or like benefits, the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986."

Minn. Stat. § 43A.17, subd. 9(c).

H. Which pension benefits should be included in the employee's salary?

Employer contributions to any deferred compensation plans should be included as salary. Common types of deferred compensation plans for city employees include 403(b), 457(b), or 457(f) plans. Employee contributions are not considered salary because they have already been counted as salary received from the employer and therefore should not be counted twice.

Minn. Stat. § 353.028, subd. 3.

I. PERA and city managers

A city may contribute to a deferred compensation plan or the PERA-administered defined contribution plan for a city manager who elects to be excluded from membership in the PERA general employees retirement plan. The city may contribute up to the amount the city manager would receive as an employer contribution if the city manager were a member of the general employees retirement plan.

Minn. Stat. § 356.24.

The city's contribution would not be included for salary cap calculation purposes, but any agreement must be in writing. If contributing to a deferred compensation plan, the program must be administered by the Minnesota State Retirement System or meet the requirements of section 457 of the Internal Revenue Code of 1986, as amended. While the law allows a city to contribute up to one-half the amount allowed by the Internal Revenue Code on a dollar-for-dollar matching basis, only the amount that is in lieu of a PERA contribution can be excluded from the salary cap.

RELEVANT LINKS:

IV. Conclusion

The salary cap law continues to change. For many years, the state Legislature has enacted and amended the law that limits the maximum amount of money a public employee may earn. Numerous amendments and revisions make for a complicated statute. Best practice suggests careful consultation with the city attorney for current law and guidance on specific salary limits.

Korine Land

From: Schmid, Renee <rschmid@shakopeeutilities.com>
Sent: Thursday, July 9, 2020 5:49 PM
To: Korine Land
Subject: Re: Additional Questions
Attachments: Salary Cap emails.pdf

Korine -

See my answers below.

From: Korine Land <KLand@levander.com>
Sent: Friday, July 3, 2020 10:51 AM
To: Schmid, Renee
Subject: Additional Questions

Renee -

I have some follow-up questions for you in regard to the salary cap data. I am trying to determine who had knowledge of this information prior to Feb. 2020 so please respond with that in mind.

1. Prior to Feb. 2020, identify all of the people involved in preparing/approving/reviewing the attached compensation limit analysis attached.

Response: Renee Schmid and John Crooks. See attached emails regarding this topic over time. I raised a concern on John's contract amount on 3/2/2017 and provided information on the LMC's info on the salary cap. John set up meetings to review the statute and options with Doug Carnival at Mcgrann Shea. My understanding from that meeting that John was also having conversation with MMUA members on how this was handled at other utilities. Based on review of the statute, the spreadsheet was developed in early 2017 and used since that time to monitor the cap based on interpretation of the statute.

2. Prior to Feb. 2020, identify all of the people with whom you have shared this document.

Response: Renee Schmid, John Crooks, BerganKDV field auditor

1. Prior to Feb. 2020, identify all of the people with whom you have had conversations about the salary cap.

* Response: John Crooks, Meetings/Conference calls with John Crooks and Doug Carnival at McGrann Shea

Thank you so much for your assistance. It is appreciated.

Kori

Korine L. Land
Attorney
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
Phone: (651) 451-1831
Direct Dial: (651) 361-8582
Fax: (651) 450-7384
E-mail: kland@levander.com<mailto:kland@levander.com>

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Requests/approvals for waiver from the local government compensation limit

LCC Subcommittee on Employee Relations

January 5, 2019

	Date considered	Notes	Appointing Authority	Position	Current comp	Requestor's estimate of market rate	Request	Compensation recommended by Subc	Comp rec as % of gov salary	MMB/DOER action	Date of MMB/DOER action
1	9/26/1997	(1)	HCMC	CEO	107,112	> 200,000	176,200	176,200	146%	176,200	10/16/97
2	9/26/1997	(1)	HCMC	COO	98,982	> 150,000	136,200	136,200	113%	136,200	10/16/97
3	9/26/1997		HCMC	CFO	93,276	> 130,000	121,200	No waiver	NA	No waiver	10/16/97
4	12/13/1999	(2)	MetroTransit	General Manager	114,288	156,862	156,200	156,200	130%	156,200	1/11/00
5	12/13/1999	(2)	MAC	Executive Director	114,239	165,000	167,000	156,200	130%	156,200	1/11/00
6	2/22/2000	(3)	Douglas Cty Hospital	CEO	112,670	186,100	175,000	120% of governor	NA	\$155,000	3/17/00
7	11/15/2000		Metro Transit	Asst General Manager	114,288	135,000	150,750	150,750	125%	150,750	11/21/00
8	11/15/2000		Monticello-Big Lake Hosp.	Executive Director	114,231	189,400	189,400	145,000	121%	145,000	11/21/00
9	11/15/2000		Hennepin County	County Administrator	114,288	163,266	165,000	165,000	137%	165,000	11/21/00
10	11/15/2000		Hennepin County	Dep Administrator	114,288	130,626	145,000	131,000	109%	131,000	11/21/00
11	11/15/2000		Hennepin County	Asst Admin-Hum Svcs	114,288	135,477	135,000	125,000	104%	125,000	11/21/00
12	11/15/2000		Hennepin County	Asst Admin-Pub Works	114,288	134,606	135,000	125,000	104%	125,000	11/21/00
13	12/18/2000		City of Minneapolis	Assist City Coordinator	109,632	126,454	121,763	126,000	105%	126,000	12/26/00
14	12/18/2000		City of Minneapolis	City Attorney	114,288	116,424	130,381	116,000	96%	116,000	12/26/00
15	12/18/2000		City of Minneapolis	ED, Convention Center	100,464	101,288	134,590	119,000	99%	119,000	12/26/00
16	12/18/2000		City of Minneapolis	City Coordinator	114,288	150,079	138,215	138,000	115%	138,000	12/26/00
17	12/18/2000		City of Minneapolis	Chief of Police	114,288	116,449	130,851	116,000	96%	116,000	12/26/00
18	12/18/2000		City of Minneapolis	Chief, Fire Dept	101,460	110,124	118,316	No waiver	NA	No waiver	12/26/00
19	12/18/2000		City of Minneapolis	Comm of Health	101,724	114,874	118,629	No waiver	NA	No waiver	12/26/00
20	12/18/2000		City of Minneapolis	Dir Human Resources	103,812	103,106	117,532	No waiver	NA	No waiver	12/26/00
21	12/18/2000		City of Minneapolis	Dir of Planning	101,460	104,555	118,316	No waiver	NA	No waiver	12/26/00
22	12/18/2000		City of Minneapolis	Dep Dir, Pub Works	89,880	98,960	122,233	No waiver	NA	No waiver	12/26/00
23	12/18/2000		City of Minneapolis	Finance Officer	114,979	109,431	123,800	No waiver	NA	No waiver	12/26/00
24	12/18/2000		City of Minneapolis	Chief Info Officer	114,288	101,934	130,966	No waiver	NA	No waiver	12/26/00
25	12/18/2000		City of Minneapolis	City Engineer	114,288	111,384	138,118	No waiver	NA	No waiver	12/26/00
26	12/18/2000		City of Minneapolis	Dir Employee Svcs	109,188	81,396	121,273	No waiver	NA	No waiver	12/26/00
27			Rice Memorial Hospital	CEO	113,908	210,600	210,600	160,000	133%	160,000	3/29/01
28	2/1/2002		Dakota County	County Administrator	114,288		142,000	118,900	99%	118,288	2/2/02
29	2/1/2002		St. Louis County	County Administrator	116,722		125,000	118,900	99%	118,288	2/20/02
30	3/18/2002		Rochester Public Utility	General Manager	114,288	165,000	130,000	130,000	108%	122,000	4/11/02
31	4/25/2002		District One Hospital-Faribault	CEO	114,661	191,000	160,000	160,000	133%	155,000	5/6/02
32	6/28/2002		Hutchinson Area Health Care	Cert. Reg. Nurse Anesth.	125,549	150,000	155,000	135,000	112%	135,000	7/26/02
33	6/28/2002		Mercy Hospital, Moose Lake	Cert. Reg. Nurse Anesth.	120,288	150,000	135,000	135,000	112%	135,000	7/26/02
34	8/26/2002		City of Rochester	City Administrator	114,288	141,400	125,000	130,000	108%	120,000	9/12/02
35	8/26/2002		City of St. Louis Park	City Manager	114,288	131,389	131,389	130,000	108%	116,600	9/12/02
36	8/26/2002		City of Minnetonka	City Manager	114,288	145,111	145,111	130,000	108%	116,600	9/12/02
37	8/26/2002		Minneapolis Public Library	Executive Director	103,796	135,000	135,000	130,000	108%	130,000	11/26/02

38	8/26/2002	Local Gov't Information Systems	Executive Director	114,288	161,775	150,000	130,000	108%	120,000	9/12/02
39	(2)	City of Bloomington	City Manager	117,288	132,046	144,000			120,000	1/13/03
40	(2)	City of Hutchinson	Utilities Commission Mgr	114,300		135,000			No waiver	1/13/03
41	(2)	Olmsted County	County Administrator	114,971		121,064			122,000	1/13/03
42	(2)	Olmsted County	Public Works Director	113,600		120,569			No waiver	1/13/03
43	(4)	Olmsted County	Compensation plan						No waiver	1/13/03
44	(2)	Anoka County	County Administrator	114,282	144,737	144,737			130,000	1/13/03
45	(2)	Anoka County	Human Svcs Div Mgr	114,282	130,324	132,277			116,600	1/13/03
46	(2)	Anoka County	Fin & Cntrl Svcs Div Mgr	107,063	133,060	119,245			No waiver	1/13/03
47	(2)	Dakota County	County Administrator	118,288	158,000	146,600			130,000	1/13/03
48	(2)	Regions Hospital	VP, Regulated Hosp Partner	184,100		240,000			220,000	1/13/03
49	(2)	Regions Hospital	VP, Patient Care Svcs	140,490		200,000			143,000	1/13/03
50	(5)	Ramsey County	County Manager	114,288		140,000			No waiver	8/19/03
51	(6)	City of Minneapolis	Chief of Police	116,000	142,000	142,000			135,000	12/22/03
52	3/5/2004	Ramsey County	County Manager	114,288	144,000	140,000	140,000	116%	No waiver	3/23/04
53	3/5/2004	Washington County	County Administrator	114,282	135,800	135,000	130,000	108%	No waiver	3/23/04
54	(7)	Hennepin County	Library Director	114,288	134,178	130,000			No waiver	4/12/04
55	(8)	Olmsted County	Chief Financial Officer		153,500	124,000			No waiver	1/26/2005
56	(8)	Olmsted County	Public Works Director			not stated			No waiver	1/26/2005
57	(9)	Duluth Seaway Port Authority	Executive Director	114,287	136,000	150,000			No waiver	7/1/2005
58	(10)	Hennepin County	Library Director	144,711		160,000			No waiver	11/3/2008
59	(6)	Metropolitan Airports Commission	Executive Director	200,095	274,412	240-280,000			240-280,000	12/17/2015
60	(6)	City of Edina	City Manager	165,003	223,412	173,250			170,285	12/17/2015
61	(6)	City of Plymouth	City Manager	164,936	175,000	175,000			170,626	5/3/2016
62	(6)	City of Eagan	City Manager	166,344	175,000	173,600			170,626	
63	(6)	City of Eden Prairie	City Manager	165,333	175,000	170,000			170,000	10/13/2016
64	(6)	Duluth Port Authority	Executive Director	165,333	225,971	217,488			217,488	2/21/2017
65	(6)	Washington County	County Administrator	165,333	204,259	204,259			189,428	2/21/2017
66	(6)	Washington County	Deputy County Administrator	160,985	178,418	178,418			170,485	2/21/2017
67	(6)	City of Woodbury	City Administrator	165,333	173,589	171,946			170,626	2/21/2017
				167,978	185,564-	200,000	No		200,000	
68	11/30/2017	City of Minneapolis	Police Chief		215,270		recommendation			12/7/2017
				167,978	149,234-	184,139	No		180,000	
69	11/30/2017	City of Minneapolis	Ex Dir: Planning & Dev		180,250		recommendation			12/7/2017
				165,764	169,855-	196,011	No		186,677	
70	11/30/2017	City of Minneapolis	Director: Public Works		203,298		recommendation			12/7/2017
				177,317	207,286-	200,000	No		200,000	
71	11/30/2017	City of Minneapolis	City Coordinator		216,300		recommendation			12/7/2017
				173,355	187,526-	190,000	No		190,000	
72	11/30/2017	City of Minneapolis	City Attorney		216,300		recommendation			12/7/2017
				167,978	161,048-	187,217	No		185,000	
73	11/30/2017	City of Minneapolis	Asst Coordinator: Info Technolog		195,700		recommendation			12/7/2017
				164,854	169,146-	185,000	No		185,000	
74	11/30/2017	City of Minneapolis	Asst Coordinator: Finance		212,180		recommendation			12/7/2017

75	11/30/2017	City of Minneapolis	Asst Coordinator: Convention Ce	173,355	159,913- 181,280	190,344	No recommendation	180,000	12/7/2017
76	11/30/2017	Minneapolis Park and Recreation Board	Superintendent	166,958	194,399	194,399	No recommendation	194,399	12/7/2017
77	11/30/2017	City of Eden Prairie	City Manager	170,000	182,543- 186,000	175,100	No recommendation	173,356	12/7/2017
78		City of Rochester	City Administrator	176,822	224,700	242,795		194,750	1/5/2019
79		City of Rochester	General Mgr: Rochester Power	176,822	322,294	226,990		189,625	1/5/2019
80		Dakota County	County Manager	176,820	228,438	228,438		198,794	1/5/2019
81		Dakota County	Deputy County Manager	NA	203,962	203,962		178,914	1/5/2019
82		Hennepin County	Chief Financial Officer	171,338	192,842	190,000		190,000	1/5/2019
83		Hennepin County	Chief Human Resources Officer	171,338	200,191	190,000		190,000	1/5/2019
84		Hennepin County	Chief Information Officer	171,338	216,518	190,000		190,000	1/5/2019
85		Hennepin County	County Administrator	220,471	243,117	244,000		250,100	1/5/2019
86		Hennepin County	Assistant County Administrator	176,821	211,175	212,000		217,300	1/5/2019
87		Hennepin County	Director, Human Services	171,338	188,946	190,000		190,000	1/5/2019
88		Hennepin County	Director, Pubic Health	171,338	188,946	190,000		190,000	1/5/2019
89		Metropolitan Council	Chief Financial Officer	171,330	174,400	185,000		190,000	1/5/2019
90		Metropolitan Council	Chief Information Officer	171,330	174,400	185,000		190,000	1/5/2019
91		Metropolitan Council	Deputy General Manager	171,330	250,607	225,000		230,625	1/5/2019
92		Metropolitan Council	General Manager: Metro Transit	208,712	347,500	290,000		297,250	1/5/2019
93		Metropolitan Council	General Manager: Env Services	171,330	257,530	230,000		235,750	1/5/2019
94		Metropolitan Council	Regional Administrator	171,330	213,500	240,000		246,000	1/5/2019
95		Metropolitan Council	General Counsel	171,330	188,600	185,000		190,000	1/5/2019
96		Ramsey County	County Manager	171,338	224,413	222,621		220,375	1/5/2019
97		Ramsey County	Deputy County Manager (4)	171,338	179,274	199,963		195,775	1/5/2019
98		Scott County	County Administrator	171,338	221,620	180,583		178,242	1/5/2019
99		St. Louis County	County Administrator	176,819		215,000		188,600	1/5/2019

(1) The dollar amount recommended by the Subcommittee and adopted by DOER includes up to \$1,200 in stability pay.

(2) No action taken by Subcommittee within 30 days. Considered positive recommendation under 43A.17.

(3) The Subcommittee's recommendation was expressed as a percent of the governor's salary, which equaled \$144,364. DOER's decision was expressed as \$ amount.

(4) The County requested a waiver for its compensation plan. The statute provides for waivers for individual positions only.

(5) Request submitted 6/18/03, and declined by DOER 8/19/03. DOER did not consult the Subcommittee, since not required if commissioner intends to decline request.

(6) No action taken by Subcommittee within 30 days. Considered under 43A.17 as no recommendation. DOER approve increase 12/22/03

(7) Request submitted 2/19/04, and declined by DOER 4/12/04. DOER did not consult the Subcommittee, since not required if commissioner intends to decline request.

(8) Request submitted 12/13/04, and declined by DOER 1/26/05. DOER did not consult the Subcommittee, since not required if commissioner intends to decline request.

(9) Request submitted 2/22/05 and declined by DOER 7/1/2005. DOER did not consult the Subcommittee, since not required if commissioner intends to decline request.

(10) Request submitted 10/1/2008, and declined by DOER 11/3/2008. DOER did not consult the Subcommittee, since not required if commissioner intends to decline request.

			175500 166000									3/13/2020 3/6/2020		
Projected Salary with Commission Secretary			Projected Salary with Commission Secretary			2019			2020					
	2016	2017		2017	2018		% Change			% Change				
	Current	Proposed	% Change					Proposed						
Base Pay	157,000.00	166,000.00	5.7%	166,000.00	175,500.00	5.7%		190,000.00	8.3%	200,000.00	5.3%	200,000.00		
Commission Secretary Pay	2,400.00	2,400.00	0.0%	2,400.00	2,400.00	0.0%		2,400.00	0.0%	2,400.00	0.0%	2,400.00		
Car Allowance	3,600.00	3,600.00	0.0%	3,600.00	3,600.00	0.0%		3,600.00	0.0%	3,600.00	0.0%	3,600.00		
Def Comp	2,000.00	2,000.00	0.0%	2,000.00	2,000.00	0.0%		2,000.00	0.0%	2,000.00	0.0% *	1,200.00	600	
	165,000.00	174,000.00	5.5%	174,000.00	183,500.00	5.5%		198,000.00	7.9%	208,000.00	5.1%	207,200.00		
Less Vacation Allowance - 5 Weeks	(15,096.15)	(15,961.54)	5.7%	(15,961.54)	(16,875.00)	5.7%		(18,269.23)	8.3%	(19,230.77)	5.3%	(19,230.77)		
Less Sick Leave Allowance - 12 Days	(7,246.15)	(7,661.54)	5.7%	(7,661.54)	(8,100.00)	5.7%		(8,769.23)	8.3%	(9,230.77)	5.3%	(9,230.77)		
Compensation	142,657.69	150,376.92	5.4%	150,376.92	158,525.00	5.4%		170,961.54	7.8%	179,538.46	5.0%	178,738.46		
2017 Compensation Limit		167,978.00		167,978.00	171,338.00			175,621.00	2.5%	178,782.00	1.8%	178,782.00		
(Under)/Over Compensation Limit		(17,601.08)		(17,601.08)	(12,813.00)			(4,659.46)		756.46		(43.54)		

Currently contriubtes \$100/month
? On pension deductions for governor cap

Projected Salary without Commission Secretary			Projected Salary without Commission Secretary		
	Current	Proposed	% Change		
Base Pay	157,000.00	166,000.00	5.7%	166,000.00	176,126.00
Car Allowance	3,600.00	3,600.00	0.0%	3,600.00	3,600.00
Def Comp	2,000.00	2,000.00	0.0%	2,000.00	2,000.00
	162,600.00	171,600.00	5.5%	171,600.00	181,726.00
Less Vacation Allowance - 5 Weeks	(15,096.15)	(15,961.54)	5.7%	(15,961.54)	(16,935.19)
Less Sick Leave Allowance - 12 Days	(7,246.15)	(7,661.54)	5.7%	(7,661.54)	(8,128.89)
Compensation	140,257.69	147,976.92	5.5%	147,976.92	156,661.92
2017 Compensation Limit		167,978.00		167,978.00	
(Under)/Over Compensation Limit		(20,001.08)		(11,316.08)	

+ New mail

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crooks 2019

SENT ITEMS

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Schmid, Renee ▼



Salary/Comp Budget

← REPLY

↩ REPLY ALL

→ FORWARD

...



Schmid, Renee

Tue 2/12/2019 10:38 AM

Sent Items

Mark as unread

To: Crooks, John;

John –

Just to cover yourself, I think letting them know that this is over the budgeted amount for your position but there is room in the budget due to a delay in filling the position in water.

Renee

← ↩ →



Crooks, John

Fri 2/8/2019 1:56 PM

Inbox

Mark as unread

Renee,

I just met with Lon and he has stated the earliest we would hire the Meter Tech position would be April 1 and not March 1. This results in a salary savings of \$4633. The difference with my salary was \$3973. This would cover the difference and would stay within the approved budget. If you think appropriate, I can run this by the Sub-Committee and obtain approval.

John

Crooks

1 of 2 ▲ ▼

EXHIBIT G - 1

New mail

crooks 2019

SENT ITEMS

CONVERSATIONS BY DATE

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- ▲ **Inbox 1393**
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- Deleted Items 447**
- Junk E-mail
- Notes
- RSS Feeds



Mail

Calendar

People

Tasks

Schmid, Renee



Tape Recording Issue

REPLY

REPLY ALL

FORWARD

...



Schmid, Renee

Fri 2/8/2019 8:13 AM

Sent Items

Mark as unread

To: Crooks, John;

The compensation committee specifically approves compensation and travel is separate as part of the operating budget. I think you need to discuss this with them.



Crooks, John

Fri 2/8/2019 8:08 AM

Inbox

Mark as unread

Renee,

I did the calculations Monday evening to ensure there is not an issue with the Governor's salary cap. I will be under by \$4500. As far as the \$4000 difference in the salary budget, I would think it can come from my travel budget as I will only be attending the APPA National Conference this year. Would that work?

John



Schmid, Renee

Fri 2/8/2019 8:04 AM

Sent Items

Mark as unread

John -

This is over the budgeted amount of \$186,027 in the 2019 budget. How do you want to handle this?



Crooks, John

Fri 2/8/2019 7:51 AM

Inbox

Mark as unread

From: Aaron Weyer <aweyer428@hotmail.com>
Sent: Thursday, February 7, 2019 2:46 PM
To: Crooks, John <jcrooks@shakopeeutilities.com>
Subject: Re: Tape Recording Issue

John,
 Sorry I didn't get to this before now. Yes. \$190,000 was the salary the Commissioners agreed upon. It's actually the last calculation on my phone's calculator ;-)
 Thanks,
 Aaron

From: Crooks, John <jcrooks@shakopeeutilities.com>
Sent: Wednesday, February 6, 2019 1:06 PM
To: Aaron Weyer
Subject: Tape Recording Issue

Crooks

1 of 10

EXHIBIT G - 2

Schmid, Renee

From: Schmid, Renee
Sent: Friday, February 7, 2020 2:58 PM
To: Crooks, John
Subject: RE: 2020 UM Contract - Confidential

John –

I came down at 2:30 to your office to discuss but you were not there. With the audit starting on Monday, I am not sure I will have much time next week for discussion so here is my response to your email.

This Commission Secretary amount has been included in the spreadsheet for the last 5 years in terms of how we have calculated this limit. I pulled the League of Minnesota Cities information on the salary cap and it says: The statutory limitation applies to “salary and the value of all other forms of compensation”. “All other direct and indirect forms of compensation that are not specifically excluded must be included in determining an employee’s total compensation”. This was the basis for how we put together the spreadsheet to perform the analysis as to whether the cap limit is being met. Why would we have included the Commission secretary amount in the past years and not now?

Do you have something from the league or the state that speaks to not including the Commission Secretary compensation? Help me understand this change.

Thanks.

Renee

From: Crooks, John
Sent: Friday, February 7, 2020 9:34 AM
To: Schmid, Renee <rschmid@shakopeeutilities.com>
Subject: RE: 2020 UM Contract - Confidential

The Commission Secretary responsibilities are considered separate from my salary, as it is an Commission elected/appointed position and would not be required to be the SPU Utilities Manager.

John

From: Schmid, Renee <rschmid@shakopeeutilities.com>
Sent: Friday, February 7, 2020 9:29 AM

To: Crooks, John <jcrooks@shakopeeutilities.com>

Subject: RE: 2020 UM Contract - Confidential

What about commission pay at 2400?

From: Crooks, John

Sent: Friday, February 7, 2020 9:01 AM

To: Schmid, Renee <rschmid@shakopeeutilities.com>

Subject: RE: 2020 UM Contract - Confidential

Governor's Salary Cap = 178782

salary – 200000

Car allowance – 3600

457 – 2000

Total compensation – 205600

Subtract 25 vacation days – 19230

Subtract 12 sick days - 9230

Total – 28460

$205600 - 28460 = 177140$

From: Schmid, Renee <rschmid@shakopeeutilities.com>

Sent: Friday, February 7, 2020 8:48 AM

To: Crooks, John <jcrooks@shakopeeutilities.com>

Subject: RE: 2020 UM Contract - Confidential

John –

Can you help me review the limits in place. By my calcs, this would be over by \$756.46.

Renee

From: Crooks, John

Sent: Friday, February 7, 2020 8:34 AM

To: Schmid, Renee <rschmid@shakopeeutilities.com>

Subject: 2020 UM Contract - Confidential

Good Morning,

With the approval of Resolution #1266 – *Regulating Wage and Contract Terms*, the SPU Commission granted me a salary increase of 5.26%. This will increase my base salary from \$190,000 to \$200,000. I will have the original contract signed by the Commission President at the February 21 Commission meeting.

John

Schmid, Renee

From: Menke, Cindy
Sent: Wednesday, April 1, 2020 8:52 AM
To: Crooks, John; Schmid, Renee
Cc: Kratochvil, Tyra
Subject: RE: Payroll

Hi John & Tyra

Tyra there is a form in my file cabinet (top drawer) in the back on the left side for MN Def. comp. changes. It looks like the one that Tyler just filled out and you gave to me for payroll. Could you give that to John?

Give me a call Tyra if you can't find it.

Thanks

Cindy

*Cindy Menke
952-233-1508
Shakopee Public Utilities
255 Sarazin St.
Shakopee, MN 55379*

From: Crooks, John
Sent: Wednesday, April 1, 2020 8:49 AM
To: Schmid, Renee <rschmid@shakopeeutilities.com>; Menke, Cindy <cmenke@shakopeeutilities.com>
Subject: RE: Payroll

Thanks for the reminder.

Cindy,

What paperwork would I need to fill out to change my deferred compensation deduction?

Thanks,
John

From: Schmid, Renee <rschmid@shakopeeutilities.com>
Sent: Wednesday, April 1, 2020 8:27 AM
To: Crooks, John <jcrooks@shakopeeutilities.com>
Subject: Payroll

Just a reminder that in with the salary cap you were going to review your 457 contribution amounts. You will need to email Cindy this week if you want to make a change.

Renee Schmid

Director of Finance and Administration
Shakopee Public Utilities
PO Box 470
255 Sarazin Street
Shakopee, MN 55379
(952)233-1522 Direct (952)445-7767 Fax
(612)965-0911 Mobile

Schmid, Renee

From: Kratochvil, Tyra
Sent: Wednesday, April 1, 2020 8:58 AM
To: Menke, Cindy; Crooks, John; Schmid, Renee
Subject: RE: Payroll

Got, it. I will give it to John right now.

*Tyra Kratochvil
Accounting Specialist
Shakopee Public Utilities
952-345-2478*

From: Menke, Cindy
Sent: Wednesday, April 1, 2020 8:52 AM
To: Crooks, John <jcrooks@shakopeeutilities.com>; Schmid, Renee <rschmid@shakopeeutilities.com>
Cc: Kratochvil, Tyra <tkratochvil@shakopeeutilities.com>
Subject: RE: Payroll

Hi John & Tyra

Tyra there is a form in my file cabinet (top drawer) in the back on the left side for MN Def. comp. changes. It looks like the one that Tyler just filled out and you gave to me for payroll. Could you give that to John?

Give me a call Tyra if you can't find it.

Thanks

Cindy

*Cindy Menke
952-233-1508
Shakopee Public Utilities
255 Sarazin St.*

Shakopee, MN 55379

From: Crooks, John
Sent: Wednesday, April 1, 2020 8:49 AM
To: Schmid, Renee <rschmid@shakopeeutilities.com>; Menke, Cindy <cmenke@shakopeeutilities.com>
Subject: RE: Payroll

Thanks for the reminder.

Cindy,

What paperwork would I need to fill out to change my deferred compensation deduction?

Thanks,
John

From: Schmid, Renee <rschmid@shakopeeutilities.com>
Sent: Wednesday, April 1, 2020 8:27 AM
To: Crooks, John <jcrooks@shakopeeutilities.com>
Subject: Payroll

Just a reminder that in with the salary cap you were going to review your 457 contribution amounts. You will need to email Cindy this week if you want to make a change.

Renee Schmid

Director of Finance and Administration
Shakopee Public Utilities
PO Box 470
255 Sarazin Street
Shakopee, MN 55379
(952)233-1522 Direct (952)445-7767 Fax
(612)965-0911 Mobile

Minnesota Legal Compliance

Independent Auditor's Report

Board of Commissioners
Shakopee Public Utilities Commission
Shakopee, Minnesota

We have audited, in accordance with auditing standards general accepted in the United States of America, the financial statements of each major fund of the Shakopee Public Utilities Commission, Shakopee, Minnesota, as of and for the year ended December 31, 2019, which collectively comprise the Commission's basic financial statements and have issued our report thereon dated March 19, 2020.

In connection with our audit, nothing came to our attention that caused us to believe that the Commission failed to comply with the provisions contracting and bidding, deposits and investments, conflicts of interest, claims and disbursements, and miscellaneous provisions sections of the Minnesota Legal Compliance Audit Guide for other Political Subdivisions, promulgated by the State Auditor pursuant to *Minnesota Statutes* § 6.65. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the Commission's noncompliance with the above referenced provisions.

This report is intended solely for the information and use of those charged with governance and management of the Commission and the State Auditor and is not intended to be, and should not be, used by anyone other than these specified parties.

Bergan KDV, Ltd.

St. Cloud, Minnesota
March 19, 2020

**Shakopee Public Utilities Commission
Schedule of Findings and Responses
on Legal Compliance**

CURRENT YEAR POTENTIAL LEGAL COMPLIANCE FINDING:

Compensation Limit:

Subsequent to our March 19, 2020 auditors report date but prior to our report issuance, it came to our attention that the calculated compensation limit for one Commission employee, after adding vacation and sick leave accruals previously deducted from the calculation, potentially exceeds 110 percent of the salary of the governor as noted in Minnesota Statutes Section 43A.17. Vacation and sick leave deductions potentially are not allowable deductions in the salary cap calculation.

We recommend a legal opinion be obtained to verify the compensation calculation and related vacation and sick leave adjustments, and that the Commission implement a corrective action plan for the potential findings from the legal opinion.

Corrective Action Plan:

The Commission will obtain a legal opinion on the compensation calculation and implement a corrective action plan to address any potential findings.



JULIE BLAHA
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

May 1, 2020

VIA EMAIL

Ms. Debra Amundson
President
Shakopee Public Utilities Commission
P. O. Box 470
255 Sarazin Street
Shakopee, Minnesota 55379-0470

Re: Interpretation of Minnesota Statutes, Section 43A.17

Dear Ms. Amundson,

Recently you wrote to the State Auditor asking for validation of the approach taken by the Shakopee Public Utilities Commission (Shakopee PUC) to determine whether a public employee's compensation falls within the statutory compensation limit in accordance with Minn. Stat. 43A.17. Specifically, you indicated that the Shakopee PUC has been subtracting an amount of money related to vacation and sick time from public employee salaries before determining whether the employee's compensation falls below the compensation limit.

We cannot give you legal advice. For that, you should consult with your own attorney. However, I can share with you that the Office of the State Auditor (OSA) does not agree with the approach you outline.

In your letter, you state that the Shakopee PUC has been subtracting sick and vacation leave from an employee's salary when determining compensation limits under Minn. Stat. Section 43A.17. For simplicity sake, I will refer to "vacation leave" to encompass both sick and vacation leave, as the analysis is the same for both. Although you have not specified whether the amount of salary you are subtracting is based on the value of vacation that accrues annually to an employee or the amount of salary the employee continues to receive when actually taking vacation leave, it is our conclusion that neither of these amounts should be subtracted from an employee's salary when applying the compensation limit calculation under Minn. Stat. Section 43A.17.

Before setting forth the OSA's view of Section 43A.17 with respect to the vacation issue, I want to make sure we start from a common understanding of "vacation." "Vacation," or a vacation leave benefit, is simply permission from one's employer to be absent from work and still receive one's salary. During the employment relationship, "vacation" is not an amount of money owed by the employer to the employee. Rather, it is a right of the employee not to be at work but still receive their salary. Thus, for the time period an employee is "on vacation" or "takes vacation," that employee receives their salary without interruption as if they had been working. They are not receiving extra compensation on top of their salary.

For the purposes of calculating whether compensation falls within the statutory limit, Minn. Stat. Section 43A.17, Subd. 1, provides a definition of "salary" as follows:

As used in subdivisions 1 to 9, "salary" means hourly, monthly, or annual rate of pay including any lump-sum payments and cost-of-living adjustment increases but excluding payments due to overtime worked, shift or equipment differentials, work out of class as required by collective bargaining agreements or plans established under section 43A.18, and back pay on reallocation or other payments related to the hours or conditions under which work is performed rather than to the salary range or rate to which a class is assigned (Emphasis added).

The salary an employee receives while using vacation leave should not be viewed as anything other than a component of the employee's salary. Using vacation leave does not increase or reduce the employee's annual rate of pay. In order to qualify to receive one's annual salary, one must either show up for work or use vacation leave. Since using vacation leave does not change one's annual salary, the approach of subtracting a portion of the actual annual salary just because it was received when an employee was on vacation would result in using a figure that does not fit the definition of "salary" under Section 43A.17.

The section of Minn. Stat. 43A.17, Subd. 9, quoted in your letter does not address the calculation of salary; rather, it addresses those additional benefits (or "other types of compensation") that need to be *added* to salary in order to arrive at a total compensation amount which is subject to limit by this statute. The section you refer to, Subdivision 9(c) (1), carves out a list of "other types of compensation" that do not have to be added to salary to arrive at the overall compensation amount subject to the statutory limit. The exclusion list includes "vacation allowance," which is vacation that accrues and that can be carried forward. If your inquiry has to do with "vacation allowance," this provision makes it clear that you do not have to add the value of such allowance as additional compensation on top of the employees' annual salary. This is different than saying you can subtract the value from the salary.

There is one circumstance in which the value of accrued vacation does need to be added to the compensation calculation. Some employers allow employees the opportunity to surrender accrued vacation for a cash payment at the end of the fiscal year. At this point, an employee's accrued vacation changes from a right to be absent from work without losing pay to a cash

Ms. Debra Amundson
May 1, 2020
Page 3

payment. Since that cash payment no longer constitutes vacation leave (i.e., permission to be absent from work), it is no longer a component part of receiving an annual salary, but an amount paid that increases one's salary. The Minnesota Attorney General has found that cashed-out vacation leave should be added to salary, stating: "Thus we believe that the vacation cash-out payments described should be considered salary for purposes of section 43A.17." (Op. Atty. Gen. August 4, 1997, 161b-12 at page 5.)

To summarize, based on Minn. Stat. Section 43A.17, as well as applicable Attorney General Opinions, the OSA's reading of the law with respect to the treatment of vacation taken or accrued in calculating overall compensation is this:

- (1) Salary paid to an employee while using vacation leave should not be subtracted from the calculation of salary or overall compensation.
- (2) The value of vacation allowances accrued and carried forward to the next year should not be added to annual salary or included in "other forms of compensation."
- (3) If, prior to leaving employment, an employee is allowed to and does convert unused vacation leave as a cash payout, that payout should be added into the calculation of salary.

Finally, it may be useful also to consider the implications of interpreting Minn. Stat. Section 43A.17 in such a way as to call for subtracting vacation leave taken or earned from salary. Under such a theory, a public employee could have an annual salary twice that permitted by Minn. Stat. Section 43A.17 and simply take or earn six months of vacation. At the end of the year, the employee would have collected salary twice the amount permitted by law without violating a statute enacted specifically to restrict the compensation of public employees. Likewise, a public employee could have an annual salary three times the statutorily-permitted amount if the employee accrued or took eight months of vacation. Minnesota Statutes, Section 645.17 requires statutes be interpreted in a manner that does not produce absurd or unreasonable results; this would appear to be an absurd and unreasonable result.

I hope you find the above information helpful.

Very truly,

/s/David Kenney

David Kenney

June 5 2020
(OFFICIAL)

Commission Meetings:

- First and third Mondays each month (if a holiday falls on a Monday, the meeting will be on the following Tuesday)
- Thursday / Friday before the Monday meetings start getting the packets together
- John Crooks and Commission President will set the agenda
 - John will email President with proposed agenda – looking for review and approval
 - Approved by President – becomes tentative agenda – approved in its current form.
- Friday – Agenda becomes official and is posted.
 - Make 11 copies of Agenda
 - Laminate 2 Agenda copies and post at both entrances of the building on the magnetic board.
 - Fax to Shakopee City Hall and Shakopee Valley News – keep fax sheets and the agenda that was faxed in the official file. Make a note of the date and time faxed.
- Minutes – John gives a DRAFT of the minutes to whoever is covering Commission packets for review (Tyra or Cindy). Proofread through the Minutes draft copy from John & provide corrections / changes & give DRAFT back to him.
- Once reviewed, the minutes are sent by John in a Word document via email to person covering packets (Tyra or Cindy) and then that person prints the Minutes on letter size **BOND PAPER** and gives to John to sign. He will give it back to you right away and you can make copies of it now.
- John will let you know if there are documents that should be distributed only to Commissioners – scanned and posted to password protected portion of the website.
- Once Renee approves and sign the Warrant for this packet, make copies of Warrant and that one copy will go in order with the Packet according to Agenda.
- Compile the Packet in order according to the approved Agenda. John will put the items that are on the agenda on Jenn's desk paper clipped with a post it note sticker on what # it pertains to on the agenda. From his post note # he assigned that item (EX: 4a or 11b), print that # on your Dynmo labels printer and cut label down smaller and stick up in the RIGHT hand corner of that item. **Some items on the agenda will have a # by them EX 11a, but it will say "verbal" next to that items on the agenda, these "verbals" there will not me an item from John to copy.
- Once you have the Agenda in order, make a copy of it. Then you will need to scan the packet with the pages all going the right way (make sure to choose this option on the printer to scan documents with different lengths, Dan or Bob can help you with this). The packet needs to be scanned and sent your email, then you need to send it in 2 different emails, one email with the Packet goes to the Dept heads only: Renee, John, Joe, Sharon W, Greg, Lon.
- Lon posts this one on the SPU website.
- Second email in a separate email to just the Commissioner's:
- Mathew Meyer mathew@mathewmmeyer.com
- Deb Amundson damund1281@hotmail.com
- Kathi Mocol Kathi.Mocol@mwcia.org
- Jody Brennan jbrennan@ShakopeeMN.gov
- Kayden Fox kaydenfox@gmail.com

- Day of meeting
 - Set out Gavel (on shelf in Conf. Room A above countertop) in front of Commission President (Deb Amundson) spot at commission table.
 - Put Warrant lists (all must be on (Legal BOND PAPER) needing to be signed in the legal folder size with a sticker on folder saying "Documents to be signed" in front of Deb Amundson's spot at Commission table w/Gavel.
 - Set out clear clipboard, clear tray with sign in sheet (in Jenn's cube on her tall filing cabinet, she has a green folder with sign in sheets made up for each Commission meeting date through the entire year of 2020), extra pens, one extra packet and 6 extra Agendas. (These are found in Conference Room A on the shelf by Gavel box)
- Day after meeting
 - First remove meeting agendas from entrances and change to the next meeting date from the yellow boxes with letters & numbers in Conf room A cabinet
 - Keep sign in sheet for official folder (Most of the time no one sign the sign in sheet but we still keep it for the "Original Packet" (Original Packet is the Packet with Minutes on Bond paper & original Agenda items with the stickers on them (meaning not copies) John get this Packet & is filed in his office. A copy of the Packet with Sign in sheet, fax cover sheets you sent to City Hall & Deb @ newspaper all get stamped in the bottom corner of each document with Jenn's stamp on her filing cabinet – change the date to the Commission date.
 - Everything else should be picked up (leave everything at Greg's spot) and recycled – if anyone leaves documents with notes – those are shredded. Keep the sign in sheet for the official packet.
 - Put everything else back in conference room A.
- Original (with stickers) (packet – put in John's office.
- Official packet (a copy of packets stamped with date on pages) – in archives on the back shelf in green file folder in storage room back shelf.
- See other admin instructions for emails, postings, etc.
- Resolutions
 - Update index list and copy on bond paper as appropriate
 - See details listed in the admin instructions document.
- Approved Meeting Minutes
 - Email to Lon (PDF), City (PDF) and SVN (**word doc**) for publishing
 - Make three copies (PDF) – Tyra, Cindy and bulletin board in the large breakroom
 - See details listed in the admin instructions document.

NOTE: occasionally the Shakopee City Council and SPUC will hold joint meetings. Follow directions from the Utilities Manager regarding agenda items, etc. Reminder to POST the meeting information on our boards at the entrance exactly like we do for a commission meeting. Be sure to include the location if the meeting will be held at the City Hall. Also post the Agenda once it is received.