



Minnesota Association of Township Perspective

STEVE M. FENSKE

GENERAL COUNSEL

MINNESOTA ASSOC. OF TOWNSHIPS INSURANCE TRUST

BASED ON EMAILS SENT JUNE 3RD, 2019

- First, MAT has no interest in whether the township chooses an employee or contractor model.
- That decision is left to the board of supervisors. We see both models and we don't recommend or caution against either model.
- My comments will point out items stated as fact that are opinion, clarify misstatements or misunderstandings, and add information that should be presented to have a full understanding of the questions posed.
- The board could pursue either option – but most importantly – this is a board of supervisor's decision.

- Next, if the board is not interested in reviewing this issue, they may simply refuse.
- Why consider something they have no interest in changing?
- Further, why does the information need to be presented at a board meeting?
- Why isn't this powerpoint and a summary enough to inform the Board of the treasurer's opinion?
- The board may pose those questions and conclude its not in the township's interest to consider the issue.

Considering the content of the presentation:

The attached powerpoint is not a 'just the facts' presentation. Despite its statements to the contrary, the presentation is clearly designed to lead the viewer to the conclusion that a contractor would be cheaper and better, and that the township is out of step with other townships. The end even advocates for changing the model. "Just the facts" would omit any conclusion like this.

Model is not abnormal:

Windemere township is not operating in an unusual or abnormal way. Many townships choose to buy equipment and keep employees. The presentation, however suggests the township is following an unusual model in having its own equipment and employees. That is not the case. Some townships use contractors, but that is not the normal model any more than is the employee model.

Expense:

The presentation says it is expensive to own equipment and keep employees before any comparison is provided. If the presentation were a just the facts comparison, this statement wouldn't be needed, it would be provided after a comparison, and the conclusion of what is too-expensive would be left to the reader. The statement and where its placed is intended to frame the current model as *too expensive*.

Loss of Control:

The presentation omits any reference to the fact that the township would lose control over the road maintenance if they choose to use a contractor. Federal law requires an independent contractor have *independence*. The contractor is provided with a goal or duties and the contractor gets to decide how and when to complete the goals. If the township wants to maintain as much control over roads as possible, it would need to keep the employee model. If they want to give up control to save money, they could use a contractor. Control versus certainty of cost are the opposite sides of the contractor/employee scales. To gain one, you lose the other.

Priority:

The presentation doesn't mention the fact that because contractors serve several principles, they may prioritize another contract over yours, unless you bargain for priority. In that case, you will pay a premium for priority. When it comes to road work, the township has a duty to clear the roads in a reasonable amount of time. The board must keep that in mind when deciding the best method for the township. This means that sometimes, you pay more to have it done quickly.

Cost-effective does not mean least expensive:

The board is not required to provide the 'most cost-effective' model, or to the extent they do, it's not required to be the least expensive. Some purchases may not be the least expensive but provide better value. We need look no further than the Municipal Contracting Law (MSA 471.345) to see that the lowest price is not the only factor that matters. The legislature provided townships great flexibility when the contract is below \$175,000, or through the use of best-value contracting. These are recognitions that sometimes the more expensive options are the better choices.

Question of Cost Savings:

- The suggestion that a contractor is any less expensive assumes that: the contractor doesn't intend to make a profit off the township
- That the contractor's expenses must be less than the township's
- That the contractor will pass the savings on to the township
- That the contractor will perform as well or better than an employee
- That the township will receive the same service or value for less money

Each of these are assumptions that may not actually be true.

Taxes:

The presentation assumes that taxes are inappropriate, but the voters set their tax. It's difficult, if not impossible, to suggest taxes are too high when the voters receive a direct vote on their property tax. Given the voters' control of the township tax, the suggestion that taxes are too high indicates a disagreement with the majority of the taxpayers, and not of excessive taxation. Further, it assumes reducing the costs of road maintenance would mean a reduction in the tax. The board and voters may choose to keep or even raise taxes to pursue other township goals

Ability to reduce costs in current model:

The township board could also control costs by limiting the hours they are willing to have employees work, eliminating some duties, or expecting duties to be completed more quickly. Employees who want to keep their jobs may decide its worth changing their operations to avoid being replaced by a contractor.

Conflict of interest:

There is a suggestion about a supervisor wanting to be the township's contractor. The board should understand that arrangement would be a statutory conflict of interest and would require the interest supervisor to abstain from any vote related to the contract and require a majority of the remaining quorum to approve the conflict and the contract. In other words, it may not be possible to have a supervisor perform work for the township. Besides the legal issue, there is an appearance of impropriety if the township eliminates their employees to give the work to a supervisor.