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Article for *Minnesota Counties*

609 REPORTING

By Rebecca Otto, State Auditor

In Minnesota, unlawful use of public funds is rare. But when evidence is discovered, the public employee or officer making the discovery must promptly report the incident to law enforcement and to the Office of the State Auditor. Minn. Stat. § 609.456, subd. 1 reads, “Whenever a public employee or public officer of a political subdivision . . . discovers evidence of theft, embezzlement, unlawful use of public funds or property, or misuse of public funds, the employee or officer shall promptly report to law enforcement and shall promptly report in writing to the state auditor a detailed description of the alleged incident or incidents.”

Minnesota law requires that the report be made “promptly” when the evidence of misconduct is “discovered.” An internal investigation does not need to be completed before the report is made. Even if your local government entity plans to conduct an internal investigation of the incident, the Office of the State Auditor should be notified “promptly” of the concerns. This Office may be able to provide suggestions to those who will be investigating the incident. Finally, the Office of the State Auditor generally does not bill local government for services provided in response to section 609 reports.

To make the reporting obligation easier, a “Report a Concern to the Office of the State Auditor” form is contained on our website at:

http://www.auditor.state.mn.us/other/reportconcern_govtofficial_form.pdf.

Use of the form is not required. However, it provides an outline for making a report. The form asks about the facts, and requests that supporting documentation be provided. The form also asks whether law enforcement has been notified, and whether internal control changes have been put in place in response to the incident.

Unlawful use of public funds by an employee may result in disciplinary actions as well as criminal charges. Those who discover evidence should consider discussing the situation with a supervisor or with your entity’s attorney. However, the public employee or officer has a separate and independent duty to report evidence to the Office of the State Auditor.

Discussing evidence with a supervisor or attorney does not fulfill the public employee or officer's obligation to report the evidence to the Office of the State Auditor.

Information that could reasonably be used to determine the identity of the person making the mandatory report to the Office of the State Auditor is classified as "private" data (Minn. Stat. § 6.715, subd. 2). In this way, Minnesota law protects the identity of the reporter to encourage public employees and officers to come forward with evidence without fear of retribution or retaliation.

Mandatory reporters also do not need to worry about whether they may share "not public" information with the Office of the State Auditor. Data classified as "not public" may be provided to the Office of the State Auditor to comply with the mandatory reporting statute (Minn. Stat. § 6.715, subd. 4). Data provided to the Office of the State Auditor retains the same data classification in our hands as it had in the hands of the local government entity.

Reports should be sent to: Office of the State Auditor, Legal/Special Investigations Division, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.

If you have questions about whether a report should be made, feel free to contact Celeste Grant, Deputy State Auditor and General Counsel, at (651) 297-3673 or Nancy Bode, Assistant Legal Counsel, at (651) 297-5853.