

# Represented by Counsel

by Steve Fenske, MAT Attorney

## Back to Basics: The Open Meeting Law Part III

*Part I of this multi-part article described when a township is having a meeting, the notice that is required for regular and special meetings, the use of continued meetings. Part II described the exceptions to the Open Meeting Law (OML), including emergency situations and meeting closures. This installment discusses the penalties for non-compliance and practical strategies to comply with the OML.*

*Part I can be found in the 2019 Spring Edition of the MN Township Insider.  
Part II can be found in the 2019 Summer Edition of the MN Township Insider.*



### Penalties – Where the Law Meets the Pocketbook:

Violation of the OML is a civil matter, not a criminal matter. The good news is that supervisors who violate the OML have not committed a crime, but the bad news is that it is easier to be found liable of violating the OML. Whereas conviction of a crime requires proof beyond a reasonable doubt, our highest standard of evidence, civil matters like the OML require only a preponderance of the evidence for liability. Preponderance of the evidence, our lowest standard of evidence, requires a plaintiff show that its more likely than not that the public official violated OML to prevail.

The OML imposes a fine of up to \$300 per offense on the public officials found to have violated the OML. The fine cannot be paid by the township – it must be paid by the public officials themselves. This ensures public officials take their OML duties seriously and do not just rely on the township to pay for their violations. The statute also requires the courts to remove a person from public office if the person is found to have intentionally violated the OML in three or more separate cases involving the same governing body.

More concerning is the Court's power to award attorney's fee of up to \$13,000 per plaintiff, if the plaintiff prevails in the case. The attorney fee award is intended to encourage people to bring OML cases by compensating them for their costs. It is possible for a township to pay attorney's fees for one or more of their officers, but the township is not required to do so. Even if the township considered paying the fees, the interested official (the person ordered to pay attorney's fees) cannot vote on the matter because it would pose a conflict of interest.

The pursuit of good and open government should be enough for officers to comply with the OML. If those reasons are not enough, the prospect of paying fines should encourage town officers to pay attention to the OML.

### Practical Strategies –We Can Manage This:

The first installment of this article started by recognizing that the OML was not built with townships in mind because townships often do not have staff and board members routinely perform work for their

townships. Since the OML operates with the assumption the Board members cannot communicate between meetings, townships should structure their operations to respond to issues likely to arise between meetings. For example, township boards can and should delegate authority to a supervisor or some other trusted person to make decisions likely to come up between meetings. The delegation of authority should include limits on the things the appointee may do. They may be granted some limited spending authority to make purchases that are urgent and should not wait for a board meeting, but do not amount to an emergency. Townships using this method tend to take a more proactive approach to governing because they are actively anticipating the issues that may come up between meetings, and planning for their resolution. Towns that do not use this method are taking a more reactive approach because they are relying on the board to respond to each issue arising between meetings.

Many townships appoint a supervisor as the road manager and authorize him or her to direct road contractors or employees and make day-to-day decisions about the township roads. For example, the road manager decides when the plows go out, if urgent vehicle maintenance should be performed, and how the township responds to resident complaints or notices, all subject to the board's policy about the matters. Using this method, work continues to get done and the Board is not needed to do so. Some townships designate other positions for management of planning and zoning activities, fire department supervision (yes, township fire departments must be managed by the Board), and township employees. Many boards authorize the clerk and treasurer to make routine office supply purchases, within the limits set, for operation of the township. These issues are often resolved at the Reorganization Meeting after the election.

### Another important strategy – Wait for a Meeting!

The OML shows that the Legislature and the courts favor transparency over efficiency. Most problems do not need an immediate solution, and some that do are emergencies that can be resolved by an emergency meeting. Town Boards can point to the OML as the reason they must move slowly on some matters.



# Insurance Insight

by Jon Mocol, Manager of MAT Agency

## Prepare for Winter & Policy Review

It is hard to believe that summer is over, and we have completed the Summer Specialized Trainings and the District Meetings. Also, we saw the State Fair come and go, and we are anticipating the Twins hopefully entering the post season. All of this points to something that we may dread, which is winter quickly approaching. This leads us to start thinking about all the hazards to come.

As the season approaches, it is important to make sure that we have properly serviced our equipment, made sure that the machinery and all the safety features are in good working order. It is crucial to winterize our buildings to ensure that the buildings will not have frozen pipes or other leaks in the building. Last year we saw some claims because of snowplows getting too close to vehicles that were encroaching on the township's roads. Please make sure that the roads are properly marked so that the snowplow operators know where the roads need to be plowed. It is also important to make sure that the residents all know, that in the case of snow, what the township expects to maintain the roads. In the case of your facilities, please make sure that you take the necessary precautions to make sure the sidewalks and steps are free from snow and ice. Also please make sure that you have the proper signage in the townhall about wet floors, so people are careful as they walk into the buildings.

So, as I have completed six months as the Manager of the MAT Agency, I thought it would only be fitting to give a brief overview of where we have been. In June, your Association held its annual Summer Specialized Trainings and one presentation covered checklists for your township asking if you have your township properly covered. The real focus of the department is not necessarily selling more coverage, but rather to make sure that the risk that townships take regarding sharing the risk of loss is acceptable. As I stated in my presentation, we want to help be your township's risk manager and in that we will help to review how to adequately protect your town-



ship's assets. In the months since the Summer Specialized Trainings ended, we have had several townships contact us for either an over-the-phone consultation or an in-person consultation to make sure that they have properly insured their township's assets. Some of the issues we are finding are townships think they have everything covered, only to realize that they have a fair amount of property not covered. We had one township that had a very comprehensive listing of equipment and had assigned a value. When I met with the township, we determined that their coverage was less than 20 percent of the value of the equipment. One township close to where I live still amazes me as every time I speak with the township, I find out that they have more property or equipment that is not insured.

The best practice that townships can have when they add property or equipment is to make sure they contact the MAT Agency and ensure that coverage is on all items the township owns.

In closing, I want to make sure we all work together to take a good look at the hazards that present themselves to our townships on a daily basis and make sure to mitigate that risk as we are still spending taxpayers' money, while at a lesser amount, it is still taxpayers' money that pays the claims.

### *Jon Mocol's Contact Information*

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Office Phone: 800-228-0296

# Clerk Clarifications

by Lucinda Messman, MAT Trainer



*Welcome fall! I hope this finds you doing well. As clerks and treasurers, there are some new laws and a new election that need to be handled. This article will attempt to help answer some basic questions you may have.*

**Wage Theft** – we are a small township does it apply to us? This gets interesting. There are a few questions to consider:

1. Is everyone an elected official or contractor? If so, no worries – it doesn't apply to your Township at this time.
2. However, do supervisors work for the Township (using the C6000 documents as required) to do maintenance or other odd jobs? If so, those wages are subject to the requirements of the Wage Theft Laws. Review <https://www.dli.mn.gov/business/employment-practices/wage-theft-legislation-2019-and-summaries> for specific requirements.

Along with the Wage Theft laws, does your township maintain any personnel policies? If so, be sure to check the documentation required at the link listed above. If your Township uses the TM7000 document from the MAT website, remember that is a basic personnel policy.

We have received quite a few emails lately asking if a township is responsible for reimbursing supervisors, clerks, treasurers, and other employees for particular expenses. Most of those emails end up being forwarded onto MAT Legal Counsel, however, there is one common piece of advice to all Townships regarding this area. What does your reimbursement policy say? Having a written policy helps everyone to understand the rules regarding reimbursements. We all know what happens when we assume people know the rules our Township uses. If you don't have any type of reimbursement or personnel policy, document TM7000 is a good place to start. You can also check out other local government for units websites to see if they have anything you can use as a starting point for developing one of your own.

**Records Retention – What's the point?** We have heard many supervisors feel records retention is just busy work for clerks and a waste of money. This is not the case. According to the MN State Auditor, "Government records must be preserved according to state law. In Minnesota, local governments may only destroy government records pursuant to: An "Application for Authority to Dispose of Records" submitted to and ap-

proved by the State Records Disposition Panel; or A records retention schedule adopted by the governing board and approved by the State Records Disposition Panel." If your township has not adopted records retention yet, do NOT throw away anything!

If you wish to adopt records retention, the MAT website has all the documents required. MAT developed a Records Retention Schedule (RR1000) with staff of the state Administration Department and the Minnesota Historical Society. The State Records Disposition Panel (State Auditor, Attorney General, and Minnesota Historical Society Director) reviewed and approved the schedule.

The Records Retention Schedule provides a plan for managing township records by giving authority to dispose of records under Minn. Stat. §138.17. The schedule establishes minimum retention periods for township records based on their administrative, fiscal, legal, and historical value. The retention periods stated on the schedule apply to any form of the record (paper, digital, microfilm).

To adopt the Schedule, the township must pass a Resolution adopting the Records Retention Schedule (RR2000). After adoption, send two copies of the completed notification form to the State Archives, Notification of Adoption of Township General Record Retention, (mailing address is on the notification form) One copy will be signed by State Archives staff and returned to the township; the State Archives permanently preserves the other copy.

If you don't know if your township has adopted records retention, simply contact State Archives staff and ask.

**Presidential Nomination Primary.** Training for County Auditors is coming up so they will be training clerks for this new election after they receive their training. MAT will continue to send updates as they are known. As the costs for this election are to be reimbursed – heads up to the clerks and treasurers to keep track of costs involved. If you are using CTAS – this might be a time to give program codes a try. Just set one up for the PNP and use it for any specifics as they arise.

**CTAS Investments.** Once you get the hang of the software, investments are relatively simple to handle. Keep in mind the manual is on the MN State Auditors Website at: <https://www.auditor.state.mn.us/default.aspx?page=ctas> Scroll down to the manual and you can view chapters 16 and 17 on the investment module. You can download and print any part/all of the manual if desired. One note on the investment module. It may seem odd due to the way individuals and for-profit companies track investments, however the CTAS Investment module is designed to work the way it does on purpose. It tracks things in the way the State Auditor wants to see them. It works the way Townships need to have it work.

**Using the right Account Numbers/Coding.** When using CTAS (or any other accounting software/manual system), coding is always important. Our Chart of Accounts was designed for use by small Cities and Townships throughout the state of Minnesota. As such, there are many accounts Townships may not need in some sections and others sections where we need more. It is perfectly fine to add account numbers to the appropriate section of the chart of accounts. Before adding, be sure you understand where to add the account number.

Lets look at a couple examples.

**Example 1:** Township receives money from someone filing to run for office. Looking at the chart of account headings, this would fit best under charges for services (keep in mind the clerk does provide services of verifying residence and notarizing the form if needed). Does your township have a number there? Many have added one in the 34100 section and called it filing fees. It is ok to have one specifically there and named something your Township uses.

**Example 2:** Township has expenses for its town hall and its maintenance garage and Town hall off-site storage. While it is fine to lump the two together, if supervisors wish to see them separated, that is an option as well. Looking at the chart of accounts, both would fit in the Other General Government/Government Buildings and Plant – account number 41940. While this works, if you would like to maintain one number for Town Hall and another for the Maintenance Hall/Storage facility, it is fine to use 41940 for one and 41941 (or other 41900 area number) for the other.

If you don't like looking through the chart of accounts to figure out what to use, and you are using the CTAS program, you can always use the wizard to determine your account numbers. Using the wizard for example 2 above, we first answer some questions:

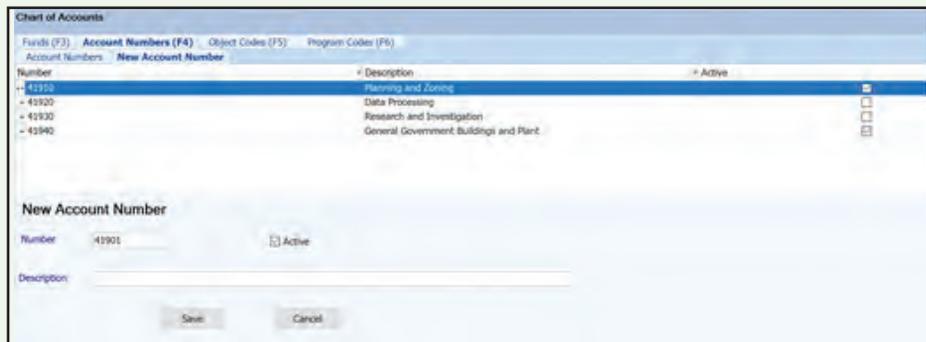
- What type of fund will be used? Answers:
  - o Governmental ...
  - o For payments
  - o General Government Expense
  - o Other General Government

The wizard then shows a snap of the chart of accounts with a suggested account number below. You can use the recommended number or edit it to be a different one in the appropriate area.

Let's look at Example 1, creating a receipt number. Again, we will just answer questions regarding the Filing fees we wish to receipt:



- A governmental fund
- For tracking receipts
- The money is a charge for a service (best choice given the list we are presented with)
- The funds are a general government charge for service
- CTAS will make a recommendation and bring up a small listing of accounts:



# Capital Improvement Plan (CIP) 2019 Legislative Changes

by Chris Mickelson and Todd Hagen from Ehlers

For Minnesota townships, the ability to undertake projects, issue bonds, and levy taxes is governed by state law. Towns have generally been able to finance capital projects through the issuance of statutorily-authorized debt in various forms. Prior to the 2019 state legislative session, Capital Improvement Plan (CIP) bonding authority was limited to townships “where 1,200 or more people reside or a town that has a platted area within 20 miles of a city hall of a city of the first class having over 200,000 population.” Additionally, towns with a population of 1,000 or more could issue CIP bonds following an affirmative vote of its electors at the annual town meeting. The Minnesota Legislature amended the Capital Improvement Bonding statute (475.521) during its 2019 session so that *any* township can now issue CIP bonds, regardless of population. The amendment also allows all town boards in Minnesota to issue CIP bonds without being required to receive an affirmative vote from residents at an annual town meeting.

## CIP Bonding

Minnesota townships may issue CIP bonds to acquire or improve public land, buildings or other improvements for the purpose of a town hall, public works facility, public safety facility, and library.

If a township chooses to finance projects under the CIP Bonding statute, it is not required to hold a referendum when issuing bonds as part of a capital improvement plan. To qualify for the referendum exemption, however, a township must:

- Publish a notice of public hearing in the town’s newspaper at least 14 days prior to that hearing.
- Hold a public hearing to approve a five-year Capital Improvement Plan and authorize related bond issue(s). The bond issuance must be approved by at least a 2/3rds vote of the town board membership.
- Allow for a thirty-day “reverse referendum” petition period – whereby voters can force a referendum by filing with the clerk a petition affixed with signatures totaling at least 5% of the votes cast in the last general election – immediately following the public hearing.
- Ensure that issuance of the CIP bonds complies with the statutory 3% net debt limit (the township’s combined principal amount of all outstanding tax-supported debt cannot be greater than 3% of its total taxable property value) if its population is 2,500 or more. Towns with populations under 2,500 are exempt from this requirement.
- Ensure its annual debt service requirements for all bonds issued under the authority of the CIP Bonding statute does not exceed 0.16% of total taxable property value. However, in the case of a shared facility in which one or more municipalities participates, the annual levy and net debt limitations are allocated to each participating municipality in proportion to its required financial contribution.

## ABOUT THE AUTHOR

### Chris Mickelson

Municipal Advisor

Chris served Ehlers’ Minnesota Municipal Team as a Financial Specialist until his 2019 promotion to Municipal Advisor. He brings nine years of

local government finance and administration experience to his role with the firm, having worked extensively with both small municipalities and large cities. Since joining Ehlers in 2016, Chris has gained valuable experience collaborating with clients to complete complex debt issuance, financial management and economic development initiatives.

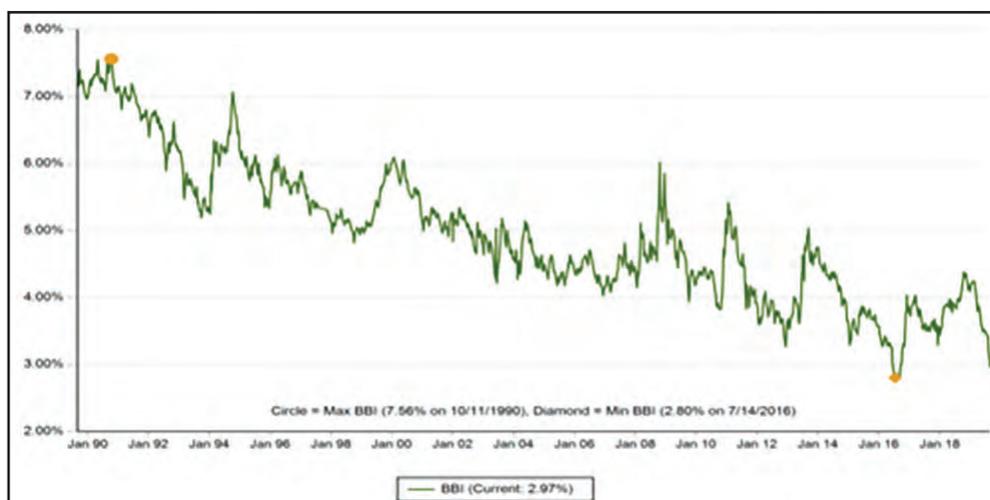


The expansion of CIP authority should give townships more flexibility in financing capital projects cost-effectively. Care should be given when crafting the Capital Improvement Plan and how the anticipated timing and tax impacts are estimated and communicated to the public. We encourage any town seeking to exercise this expanded borrowing authority to consult with qualified legal and financial professionals at the earliest possible time.

If your township has recently used or plans to use existing cash balances to acquire land or construct any of the buildings identified above, consider adopting a reimbursement resolution to preserve the opportunity to reimburse those cash expenditures from the proceeds of a future issue of CIP (or other) bonds. An attorney specializing in municipal debt can assist with drafting of the aforementioned resolution.

### Current Interest Rate Environment

Township Boards should be aware that current borrowing rates are as favorable as ever. Benchmark interest rates, including municipal bond interest rates, are at or near all-time lows as demonstrated by the below trend chart - reflecting a popular index that tracks the rate of long-term municipal interest rates. If your Township is considering issuing CIP bonds to build a new town hall, issuing Certificates of Indebtedness to finance town road improvement projects, or issuing Tax Abatement Bonds for a broadband project, now is an excellent time to access financing. Additionally, if your Township has any outstanding bond issues, these low market rates can produce significant interest cost savings through refinancing opportunities. CIP Bonding authority can also be used to refinance existing debt in some circumstances.



### ABOUT THE AUTHOR

**Todd Hagen**

Senior Municipal Advisor

Todd has been with Ehlers since 2001, working with our Minnesota City Team. He has 30+ years of experience in all

financing local government infrastructure and facilities, including municipal buildings, public works and public safety facilities, public utilities, equipment and roads. Todd's expertise goes far beyond debt issuance – extending to a wide range of finance needs such as: measuring the tax impact of projects, completing utility rate studies, financial management plans and capital improvement plans and analyzing the feasibility of projects.



### Ehlers' Role Advising Townships with Financing Needs

Ehlers has helped townships, cities, counties, and school districts across Minnesota finance capital projects and equipment since 1955. As an independent municipal advisory firm, our fiduciary duty is to always represent our client's best financial interest, whether accessing financing through the public markets or at the local bank.

Please contact **Chris Mickelson** at (651) 697-8556 and **Todd Hagen** at (651) 697-8508 or visit Ehlers' booth at the 2019 MAT Conference for more information.



# Secretary of State

by Steve Simon, MN Secretary of State

## Presidential Primary: Just around the corner!

The chill in the air and the changing colors on the trees are telling us another summer has come to a close. 2020 is just around the

corner, and with the new year comes a new election season. My office is devoting a huge amount of energy to making sure Minnesota's elections operate securely and smoothly in the coming year, and I'd like to share with you a few aspects of our work in this area.

First, we are hard at work preparing for the Presidential Nomination Primary. After incredible turnout for the 2016 caucuses, the legislature passed a law establishing the primary, which should allow more voters to participate in the presidential nomination process. Part of the understanding in the legislative process was that lawmakers would not leave local governments—the counties, cities, and towns that are on the frontlines of conducting elections in Minnesota—on the hook for the cost of a third statewide election in a single year. To fulfill that promise, my office has been working closely with Minnesota Management and Budget to make sure that the full amount necessary to reimburse local governments has been set aside from the state treasury. Our office will be reaching out to counties, cities, and towns this fall to guide them through the post-election reimbursement process.

On the administrative side, my office has begun to lead training sessions for local election officials to get everyone prepared to handle the slightly different procedures that come with the presidential primary. As always, I pledge to be a ready resource for town clerks and election judges. Please don't hesitate to contact my office with any questions or concerns as we get closer to primary day, and the start of early voting by absentee ballot as soon as January 17, 2020. We will also be rolling out a public information campaign beginning this fall to let Minnesota voters know how to participate in the primary and making sure they are aware that their choice of party ballot will be available to the political parties.

Finally, the administration of elections must be underpinned with faith in the security of the system, and I am working tirelessly to harden our elections systems against those who would attempt to intrude. We were recently given access to federal funds earmarked for election security, and my office has hit the ground running: staffing up to assist local governments in cybersecurity issues, modernizing the state's voter registration database to keep our information safe, and implementing other recommendations from federal intelligence officials and local partners. But we are in a race without a finish line; the world we live in demands constant vigilance. I know that there will be attempts to disrupt our systems and rattle our confidence. I'll always be your strongest partner in working to repel these attempts and safeguard our democratic institutions.



### FROM THE MN SOS WEBSITE

**This symbol was adopted as the state seal in 1858.**

The Minnesota Secretary of State is the keeper of the Great Seal of the State of Minnesota and affixes the seal to government documents to make them official. Just as people authenticate a document by signing their name to it, the state seal acts as the State's signature. When Minnesota became a state on May 11, 1858, it did not have an official state seal—despite a constitutional requirement to have one.

Find the story on how our seal came to be at [www.sos.state.mn.us](http://www.sos.state.mn.us)

# Office of the State Auditor

by Julie Blaha, State Auditor

## Come See Us at the MAT Annual Conference!



As summer winds down one of the things I am looking forward to, in addition to pumpkin spice everything, is at-

tending my first Minnesota Association of Townships Annual Conference. Staff from our Government Information Division (GID) have already begun planning our part in the conference and I am excited to meet as many of you as possible.

This year, lead CTAS trainer Mark Albarado will once again be facilitating our Small City & Town Accounting System (CTAS) training. Mark has been with the Minnesota Office of the State Auditor (OSA) for 12 years and has been involved with CTAS training for 11 years.

Not only will we provide group training, but as in the past, Mark will be available for one-on-one CTAS training sessions at the conference. He will also provide training on how to report annual township financial information electronically. That training will be for both CTAS and non-CTAS users. As we continue to move towards all electronic reporting, this session will show how to log into the OSA website to download, complete, review, and upload the forms.

CTAS training provided at the annual conference is built on comments and feedback from past conference surveys, as well as issues identified by GID staff during reviews of township financial information. This year, we will have a CTAS suggestion box at our booth so that we can continue to improve the CTAS user experience. Please stop by, share your ideas, and meet Mark Albarado, Kathy Docter (GID Director), and me. I also want to be sure to remind everyone that our office will be on the Friday night Bingo card, so there's another reason to stop by.

While you are visiting our booth, you will be able to review the completed 2018 Minnesota Town Finances Report. The annual Township report includes all town revenues and expenditures reported to us, as well as helpful graphs and charts displayed in a user-friendly way. Our research analysts compile the data so that local leaders and their constituents can see financial trends and comparisons to make better informed budget decisions.

The GID staff has a wealth of experience and is available to help you. For questions, please send an email to [GID.OSA@osa.state.mn.us](mailto:GID.OSA@osa.state.mn.us) or call 651-297-3682. For CTAS specific questions please send an email to [ctas@osa.state.mn.us](mailto:ctas@osa.state.mn.us) or call the CTAS helpline at 651-296-6262.

I look forward to working with the Township Association and its members and can't wait to see you at the convention in Mankato!

## Here's Where you can visit with the Auditor's Office at the Conference

**Friday November 22:** Exhibitor Booth and a Round Table (4:00pm - 8:00pm)

**Saturday November 23:** AM One-on-Ones with Mark Albarado

**Saturday November 23:** Year End Reporting with or without CTAS Workshop

For all the information on this year's MAT Annual Conference in Mankato, see pages 22-29



# Pre-Registration Form

**2019 MAT ANNUAL CONFERENCE**

**NOVEMBER 22 - 23, 2019**

**MANKATO CIVIC CENTER, MANKATO**

FOR OFFICE USE ONLY:

Please print clearly and fill in completely. If registration is for more than one delegate, please make copies of this form or print blank forms from our website. You may also register online.

Postmark, fax, or submit online forms by **November 1<sup>st</sup>** (*No phone registrations accepted*) to:  
Minnesota Association of Townships \* PO Box 267, St. Michael, MN 55376

Fax: 763-497-3361 \* [www.mntownships.org](http://www.mntownships.org)

Township \_\_\_\_\_ County \_\_\_\_\_

Delegate \_\_\_\_\_ Attending Spouse/Guest \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Daytime Phone (\_\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_\_) \_\_\_\_\_

**DELEGATE Registration**

\_\_\_\_\_ Two-Day Conference  
\$130/person (on-site will be \$160)

**SPOUSE/GUEST Registration**

\_\_\_\_\_ Saturday Breakfast - \$25/person  
*Does not include Exhibit Hall Pass. Saturday Breakfast ONLY.*

\_\_\_\_\_ Saturday Lunch - \$30/person  
*Does not include Exhibit Hall Pass. Saturday Lunch ONLY.*

\_\_\_\_\_ Guest Exhibit Hall Pass-\$10/person  
*Friday Exhibitor Show with refreshments and light snacks*

\_\_\_\_\_ Guest /Spouse Event \$30/person  
*Chankaska Barrell Room Experience*

**BOARD OF EQUALIZATION TRAINING**

If you would like to attend the Board of Equalization Certification class on Saturday, November 23, please check this box:

Board of Equalization  
Nov 23: Mankato

**NOTE:** You must be pre-registered for the Conference to attend this class.  
*Class size is limited*

\_\_\_\_\_ SUBTOTAL DELEGATE REGISTRATION

\_\_\_\_\_ SUBTOTAL SPOUSE/GUEST REGISTRATION

\_\_\_\_\_ GRAND TOTAL OF REGISTRATION

**SELECT A PAYMENT OPTION:**

\_\_\_\_\_ PAYMENT ENCLOSED (*PAYABLE TO MAT*)

\_\_\_\_\_ BILL ME DIRECTLY

\_\_\_\_\_ BILL TOWNSHIP

Registrations received after the deadline will be held and processed at the Conference Registration Area at on-site rates.  
Questions contact Jesi Petersen ([jpetersen@mntownships.org](mailto:jpetersen@mntownships.org)) or Julie Lenneman ([jlenneman@mntownships.org](mailto:jlenneman@mntownships.org)) or call 763-497-2330 or 800-228-0296.