

NORTHFIELD TOWNSHIP

MEMO

To: Northfield Township Board

From: Steve Aynes

Date: 4/19/2018

Re: Independent Contractor Agreements for Recording Secretary & AV Operator – Legal Opinion

Dear Township Board,

Our labor attorney has provided us with her legal opinion regarding the Independent Contractor Agreements for the Recording Secretary and AV Operator. Based on this opinion, the board will need to have a discussion on how they wish to proceed.

Sincerely,

Steve Aynes
Northfield Township Manager

McGraw Morris P.C.

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GLENN A. DIEGEL
OF COUNSEL

April 19, 2018

VIA EMAIL

Mr. Steven Aynes, Township Manager
NORTHFIELD TOWNSHIP
8350 Main Street
Whitmore Lake, Michigan 48189

Re: Independent Contractor v. Employee Classifications

Dear Mr. Aynes:

You have requested a legal opinion regarding whether, Lisa Lemble and Jim Nelson, two individuals who perform work for Northfield Township, are employees of the Township or are independent contractors. I have reviewed the draft contractor agreements for these individuals and have been provided a brief overview of their work for the Township. For the reasons set forth below, these individuals are Township employees.

To be considered an independent contractor, an individual must meet the following elements established by the Internal Revenue Service ("IRS") based on applicable case law:

1. A contractor is self-employed and is in business for himself or herself, providing a defined service to the Township as a result of that business.
2. Because a contractor is self-employed and in business for himself or herself, the individual can realize a profit or incur a loss based on the overall business.
3. The extent to which the worker makes his or her services available to the relevant market for which he or she provides services.
4. A contractor brings his or her own specialized expertise, tools and methods to the Township and utilizes the expertise, tools and methods to carry out a defined project.

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5. A contractor can provide his or her own services to multiple different entities for compensation from each.
6. A contractor sets his or her own hours and determines independently when to provide services as well as how the services will be carried out or performed and the Township has no authority over when or how the contractor performs services.
7. A contractor generally works free from control by the Township.
8. A contractor provides his or her own liability and workers compensation insurance.
9. A contractor can hire others to help him or her carry out services for the Township.

As set forth below, neither Lemble, as a recording secretary, nor Nelson, as a videographer, meet any of the above-referenced elements. Therefore, they are employees of the Township and not independent contractors.

1. As to Lemble, she is not in business for herself for the purpose of taking notes of municipal meetings. Rather, she does this work only for the Township. As to Nelson, it does not appear that he has a video recording business but rather, appears only at Township meetings to record those meetings.
2. Neither Lemble nor Nelson is in business for herself or himself and neither provides a defined service to the Township as a result of that business.
3. Neither Lemble nor Nelson provides their service to any other municipality and their service to the Township is not the result of their self-employment.
4. Neither Lemble nor Nelson has marketable specialized knowledge that they provide to the Township. Rather, each is hired to do a particular job. In contrast, a true contractor is someone who utilizes specialized knowledge, tools or methods to carry out their duties.
5. Neither Lemble nor Nelson provides services to multiple different municipalities for compensation.
6. Both Lemble and Nelson appear for meetings to record Township business on dates and at times established by the Township Board. Each carries out his or her specific job at the direction of the Township Board and Township Manager for the purpose of obtaining a specific result, that being the recording of the Board's meetings.
7. Neither Lemble nor Nelson carries workers compensation or liability insurance.

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8. The Township does not allow Lemble or Nelson to hire another individual to help them carry out their work for the Township.

Based on the foregoing, both a recording secretary and a videographer are employees of the Township and not independent contractors. In addition to the fact that these individuals do not meet the IRS factors for designation as independent contractors, if the IRS learns that an employee has been misclassified as a contractor, the Township could be subject to penalties and fines as well as an audit of all workers to determine whether any other individuals are improperly classified.

This opinion is based on the facts and information available as of the date of this letter. Should additional facts and/or information become available, our opinion may be altered. Should you have questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

MCGRAW MORRIS P.C.



STACY J. BELISLE