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September 19, 2022

Via email

Town of Clinton, Vernon County
c/o Sandy Schweiger, Clerk
clerk@tn.clinton.wi.gov

Re: Paul Clark Employment Matter

Dear Town Officers:

As you are aware, the Town retained us to review an employment matter related to Mr. Paul Clark. We reviewed many related Town records and spoke with Mr. Clark, Supervisor Brandt, Chairperson Leis, Clerk Schweiger, and former Town Chairperson John LaDue.

The facts are as follows. The Town Board minutes of June 12, 2019 show that the Town Board agreed to hire "Paul Clark as temporary Assistant Patrolman." There is no applicable contract, employment handbook, or detailed job description. Mr. Clark's employment status is never again discussed in the Town Board's minutes, including on February 12, 2020 when the Town Board hired a full-time employee.

The Town hired Mr. Clark because of needing help at times due to the difficulty of regular employee turnover and occasional severe weather. Mr. Clark is a former Town patrolman and experienced with operating Town equipment. Mr. Clark works on an on-call basis when help is needed. Usually the Chairperson or Patrolman contact Mr. Clark to work. Mr. Clark's hours worked are kept track of for requisite payment. Mr. Clark is not paid if not working any hours.

Mr. Clark did work hours since his hiring and received pay less withholdings and a W-2 for tax purposes at the end of the year for both 2019 and 2020. Starting in 2021 Mr. Clark received Town checks for payment, without withholdings. Mr. Clark did not receive a W-2 for 2021, and he does not recall whether he did obtain a 1099, which are given to contractors. Mr. Clark received similar Town checks in 2022. At some point, Mr. Clark asked Clerk Schweiger about his employment status and was informed that he was an independent contractor.

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Mr. Clark never attempted to resign and the Town Board never discussed let alone acted upon terminating Mr. Clark's employment or altering the status of it. Other than when he asked the Clerk, no one ever informed Mr. Clark that his employment had been terminated or altered, and he has never been rehired.

The Town Board had the authority to hire Mr. Clark. "The town board may employ on a temporary or permanent basis persons necessary to carry out the functions of town government..." Wis. Stat. § 60.37. The Town Board has never acted to delegate this authority to another Town officer or employee. As such, only the Town Board is authorized to determine matters of Town employment. The Town Board further determines "the qualifications and terms of employment." Wis. Stat. § 60.37.

The last act of the Town Board was the hiring of Mr. Clark as an employee. Nothing has been done to change this. There is no period of time after which Mr. Clark's status would automatically change, resulting in continued work as an independent contractor. Any desired changes should be addressed by the Town Board. If the Town Board does not make any changes, and continues to call up Mr. Clark for work for the Town, then Mr. Clark's payroll must be administered for him as a Town employee.

In our opinion, the Town will need an accountant, but we can provide the following basic information. Form W-2 must be retained for four years and Form I-9 must be retained for three years from date of hire or one year after employment ends. If the Town does not have Mr. Clark's employment paperwork, then have him complete new copies as soon as possible. The Town can fix the lack of withholdings for 2022 yet and should do that. This leaves only 2021 to readdress.

Mr. Clark was actually overpaid by the Town for 2021 because there were no withholdings from his checks. If the Town does not require him to pay this money back, the kept amount is actually additional pay that will then need to be taxed as well. Mr. Clark will need to amend his personal 2021 taxes one way or another.

A qualified accountant will be best able to determine the Town's outstanding tax liability and how to go about paying it. Before contacting any regulators directly, it is advised to make the necessary determinations as to the amount owed and what will actually be required of you to fix it. If it is still possible, the Town will want to avoid any penalties.

Finally, Mr. Clark stated that he does maintain a Class A over the highway commercial driver's license ("CDL"). This is necessary for some of the Town's vehicles. The Town must ensure that Mr. Clark is enrolled in an appropriate CDL drug testing program. Unless the Town Board changes Mr. Clark's status as an employee, all normal employee processes must be in place.

We know that you only contacted us because you already desire to remedy this situation, and we urge you to follow through on that. Let us know if we can be of any further assistance on this matter. At this time, please utilize a qualified accountant and align Town practices with Mr. Clark's status as a Town employee unless and until the Town Board acts to change that.



Sincerely,
DEMPSEY LAW FIRM, LLP

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Wausau Office

cc: Corey Leis, Chairperson
Fred Brandt, Supervisor