

Memorandum

To: **Minneapolis City Charter Commissioners**
From: **Karen Dzedzic and Tyrone P. Bujold**
Date: **12/9/2005**
Re: **Meeting with Park Board Attorney Brian Rice and Commissioner Annie Young**

On November 18 Tyrone Bujold and Karen Dzedzic, committee members for the Minneapolis Charter Commission, met with Minneapolis Board of Parks and Recreation (herein “Park Board”) attorney Brian Rice and Park Board Commissioner Annie Young at Mr. Rice’s law office. Also attending the meeting, ex officio, was Charter Chair Jim Bernstein. To avoid my (TPB) having to engage in lengthy typing, I will refer in this Memo to Brian Rice’s “Proposed amendments to Article VIII...November 15, 2005 (herein “Rice Memo”).

- 1. See Rice Memo. Rice suggests that “Charter powers” in Section 8.1 be expanded to “holds, improves, designs, develops...”. He will settle for adding the word “holds”. This makes sense.**
- 2. See Rice Memo. Rice says in Section 8.1 (a)(1)(B) ”body water” should include “lakes, streams, waterways, ponds and...”While we were discussing this Commissioner Young said she wanted “rivers” to be included, too, so that it was clear that the Mississippi is included. It isn’t clear how important this additional language really is.**
- 3. See Rice Memo. The reference to” statutory powers”must be changed to “Legislatively granted powers” and include the specific language cited at Section 8.2 (a) (2) on page 1 of the Rice Memo. He has a point because many of the Park Board’s powers are the result of Special Laws which technically are “Laws” and not “statutes”. He seeks the same result with his proposal at Section 8.2(b)(6) where he adds the words “or by legislative enactment.”**
- 4. See Rice Memo. He wants us to add, at Section 8.2(b)(3) “in and adjacent to the City of Minneapolis.” This is because the Park Board actually owns property outside of Minneapolis, e.g. Theodore Wirth Park.**

5. See Rice Memo. At Section 8.2(b) Rice seeks to add subparagraphs (7) through (10). He thinks that Brian Melendez has told him that these subparagraphs are all embraced in other, more compact, prior changes. In general, he wants this specific language. If it is already covered, it is obviously just the kind of redundancy that Brian Melendez sought to eliminate. But the argument is that the Park Board wants to avoid any possibility of ambiguity. He acknowledges that these subparagraphs are all taken from various Special Laws. It seems that he wants some “bright buttons” in any future litigation, which he would contrast with requiring a court to look at Special Laws to find the powers. This seems to me a splitting of hairs. Rice seems to be adamant about keeping, at least, subparagraph (10).
6. See Rice Memo. Once again Rice wishes clarity on the fact that the Park Board owns property outside of the City. Thus, he seeks, at Section 8.2(c) a reference to “...without the corporate boundaries....”
7. See Rice Memo. At Section 8.2 (d) he once again refers to property “adjacent to the City of Minneapolis” This, again refers to Wirth Park which, he says, has been described by the Minnesota Supreme Court as “adjacent” to the City—although it may not be literally adjacent, as in “contiguous”. He also adds to the granted powers, the right of the Park Board to “designate” property, and provides further the power to mortgage property”with or without bonds to secure the unpaid purchase price...”I am not at all certain what—or why—he is seeking here.
8. See Rice Memo. With Section 8.2(g) he has reworded a bit and blended the concepts of “Employment” and “Compensation”. He adds a subparagraph (E) and means to say “any other position as authorized by [State] law.”
9. See Rice Memo. Rice now addresses the “Composition” of the Board, at Section 8.3 (a). Referring to the time of election, he adds “...and at the same time as the election of the Major.” As I understand this, this additional language is meant to assure an election every four years and is intended to cover the situation where re-districting may put other elections in a year other than a year whose “number is evenly divisible by four...”
10. See Rice Memo. He addresses “Borrowing power at Section 8.5 and raises the allowable annual interest to \$50,000. This, he says, is permitted by Laws, 1975, Ch. 426.

Since summarizing the foregoing, I have received another email from Mr. Rice. He tells me he intends to summarize his comments by citing to Revision 8. But in the event he does not, I will copy his email below:

Ty:

The cite to the special law that increased the amount of interest the Park Board could pay from \$35,000 per year to \$50,000 is Laws of Minnesota 1975, Chapter 426.

After you left I continued to do some research and I reviewed several provisions of the proposed Chapter 5 dealing with Boards generally. I found several areas that I would differ with the Draft.

Specifically they are:

1. 5.3 (c) sets out a standard that provides a definition of "majority" and directs that you disregard a vacancy in determining what constitutes a majority. I have given my client the exact opposite opinion based on two Minnesota Supreme Court cases involving the election of the City Council President. The file on this is in storage but I'm recalling it tomorrow. Basically, the cases involved the election of the Minneapolis City Council President under the old 26 Alderman system where one of the seats was vacant. The election results were 13-12. The controlling case law provides that under the terms of the City Charter a majority of all members was necessary to effectuate an election. The Park Board was faced with an election of President where the vote was 4-3-1 (abstain)-1 (absent). At a minimum I think this provision needs to be reviewed as to the types of voting that may occur, e.g.. an election of officers might be different than the passage of an ordinance.

2. 5.3 (e) provides rules about how records of proceedings are kept and requires that each vote is recorded. I don't believe this language is what is required of the Park Board by Charter.

3. In 5.4(a) the phrase special law should be added after "statute".

4. In 5.4 (b) (1) I think the reference should be to "classified" rather than "unclassified" as the Civil Service rules are designed to protect the employees in the Civil Service "classified" system.

5. In provisions in 5.6 (d) on accounting practices appears to give the City Council exceptionally broad powers over the finances of the individual boards. Within the last two years I had to research the relationship between the City Finance Department and the City Council and the Park Board. From that research, I did not conclude that the City Council would have such broad authority.

6. Lastly, Section 5.7 on Ethics is very broad and I am unaware of any such provision in the current Charter. I do know the City Council enacted an Ethics Ordinance which essentially restated existing state laws on the topic. That ordinance specifically excluded the Independent Boards. The reason for this is quite simple, the Independent Boards under the current Charter are clearly given the ability to regulate their own affairs. This has been what the Charter provides and what has been the practice for years.

I will endeavor to make suggested edits in regard to the above and get hem to you tomorrow.

Thank you again for the meeting today.

December 9, 2005

Brian Rice