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MEMORANDUM

TO: Susan L. Segal
City Attorney

Peter W. Ginder
Deputy City Attorney

FROM: Charles N. Nauen 
William A. Gengler

DATE: May 22, 2012

RE: Review of City Attorney Opinion on Stadium Legislation

As requested, we have reviewed and analyzed the City Attorney's May 21, 2012, Memorandum to Mayor R.T. Rybak, Council President Barbara Johnson, and Members of the City Council regarding "Vikings Stadium Legislation and City Charter Chapter 15, Section 13, Financing Professional Sports Facilities." More specifically, we have reviewed and analyzed the opinion expressed regarding whether the financing plan under Laws 2012, Chapter 299 (the "stadium legislation") triggers Section 13 of Chapter 15 of the City of Minneapolis Charter, which provides that no city resources over \$10 million may be expended for the financing of a professional sports facility without a referendum. As instructed, we have assumed for purposes of this review and analysis that Article 3, Section 4 and Article 5, Section 6 of the stadium legislation, which provide that the City may implement the legislation without regard to any City Charter limitation (including any referendum requirement), are inapplicable.

I. Summary

Under the Minnesota Constitution, the Legislature has plenary control of municipalities, may grant and withdraw municipal power to tax, and may take control of municipal property and vest it in other agencies. The 2012 Legislature exercised its constitutional authority by modifying a prior legislative grant of authority to the City to impose sales taxes to build, operate, and market a convention center. The 2012 Legislature vested in the State the paramount right to possess, control and use this tax revenue to the extent needed to satisfy the State's stadium financing obligations and limited the City's right of possession and control to the tax revenue that exceeds the State's need. The 2012 Legislature also gave the City greater latitude to use the

City's portion of the tax revenue for capital projects and economic development in downtown Minneapolis and in Minneapolis neighborhoods.

As the City Attorney concluded, under these circumstances, the stadium legislation does not require the City to finance the stadium using city resources in excess of \$10 million and, therefore, does not trigger the referendum requirement under the City Charter.

II. Minnesota Constitutional and Statutory Context

The nature of the relationship between the City and the State, as defined by the Minnesota Constitution, is the key to the question presented. Under the Minnesota Constitution, all local government units are creatures of the State and are subservient to the will of the Legislature, subject to certain constitutional limitations. *See* Minn. Const. art XII, § 3 (“The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions[.]”); *Town of Bridgie v. Koochiching County*, 35 N.W.2d 537, 540 (Minn. 1948) (“the power thus to create implies the power to curtail”); *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006) (municipalities are “purely creatures of the legislature”).

Municipalities “possess no inherent powers[.]” *Id.* They “possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers.” *Id.*; *see also City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 6 (Minn. 2008).

The Legislature has granted cities authority to adopt home rule charters. Minn. Stat. § 410.04; *see also* Minn. Const. art XII, § 4. Home rule charters give cities “unique powers over local matters.” *Gadey v. City of Minneapolis*, 517 N.W.2d 344, 348 (Minn. Ct. App. 1994). However, these powers are limited by the rule that city charters “must be in harmony with state laws[.]” *Id.* (*citing Park v. City of Duluth*, 159 N.W. 627, 628 (Minn. 1916)). To the extent a charter provision conflicts with state law, the charter provision is preempted and invalid. *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. Ct. App. 2002).

The Legislature also has delegated to cities limited authority to impose taxes.¹ The Legislature has, for example, authorized cities to impose general sales taxes, subject to certain requirements and restrictions. *See* Minn. Stat. § 297A.99. And through the vehicle of “special laws” applicable to a particular city or group of local government units, the Legislature may grant cities additional authority to tax subject to legislatively-mandated requirements, restrictions, and limitations. *See, generally*, Minn. Const. art XII, § 2 (Legislature may enact special laws); Minn. Stat. § 645.021 (establishing guidelines for local approval and filing of

¹ The Minnesota Constitution vests all taxing authority in the Legislature. Minn. Const. art X, § 1.

special laws); *see, e.g.*, Laws 1986, Chapter 396, Secs. 4 and 5 (authorizing City of Minneapolis to impose additional sales tax and liquor, lodging, and restaurant tax).

Cities exercise these powers at the will of the Legislature. “Absent constitutional restriction, the legislature may at its pleasure modify or withdraw any powers so entrusted to a city, hold such powers itself, or vest them in other agencies.” *Monaghan v. Armatage*, 15 N.W.2d 241, 243 (Minn. 1944); *see also Town of Bridgie*, 35 N.W.2d at 540 (municipal powers “are derived solely from the legislature, and they may be enlarged and extended, or abridged and entirely withdrawn by legislative action. There is no constitutional restriction binding the legislature in this respect.”).

III. Laws 1986, Chapter 396, Secs. 4 and 5, and the Stadium Legislation

The special law at issue here – Laws 1986, Chapter 396, Secs. 4 and 5, as previously amended – authorizes the City to impose up to a half percent sales tax and up to a three percent tax on liquor, lodging, and restaurants (collectively, the “local tax”) to build, operate, and market the Convention Center. The authority granted to the City under this special law has never been absolute. As enacted and as amended prior to the 2012 legislative session, the City’s taxing authority always has been subject to legislatively-dictated requirements, limitations, and restrictions. The Legislature dictated, among other things: (1) the maximum percentage of the local tax; (2) the taxing area; (3) the goods and services subject to the local tax; (4) the goods and services that are tax-exempt; and (5) the use of the local tax revenue. The Legislature granted the City the right to all net local tax revenue, subject to the requirement that it be used to finance the acquisition and betterment of a convention center and related facilities. *See* Laws 1986, Chapter 396, Secs. 4 and 5.²

As is its prerogative, and as previous legislatures have done on multiple occasions, the 2012 Legislature amended Laws 1986, Chapter 396, Secs. 4 and 5. As part of the stadium legislation, the 2012 amendments make significant changes to the possession, control, and use of the local tax revenue. Previous iterations gave the City the right to possess, control, and use the local tax revenue, subject to the limitations discussed above, net only of collection costs. Under the 2012 amendments, the City will receive the local tax revenue that is net of collection costs and amounts necessary for the State to meet its obligations for stadium bond debt service, capital improvement reserves, and operating expense appropriations. *See* Laws 2012, Chapter 299, Art. 3, Sec. 1 (State Revenue Commissioner shall deduct amounts sufficient to meet the State’s

² Notably, the original 1986 enactment granted the City authority to impose the local tax “[n]otwithstanding . . . any . . . contrary provision of law, ordinance, or city charter” *See* Laws 1986, Chapter 396, Sec. 4, subd. 1. This provision continues unchanged in the law.

stadium obligations before distributing remaining tax revenues to the City).³ The State – not the City – will have the exclusive right to possess and control local tax revenues necessary to meet the State’s stadium obligations. And the City will have greater latitude and control as to how its portion of the local tax revenue may be used. *See* Laws 2012, Chapter 299, Art. 3, Sec. 2, Laws 1986, Chapter 396, Sec. 4, subd. 3 (City’s local tax revenue may be used for Convention Center costs and any capital projects or economic developments in downtown Minneapolis and Minneapolis neighborhoods).

These amendments – taking from the City control of certain local tax revenue and giving control to the State – accord with the well-established principle that municipalities have “no vested right in or to its public funds, like that which the Constitution protects in the individual, as precludes legislative interference.” *State v. Wright County*, 148 N.W. 53, 54 (Minn. 1914). Municipalities hold property “subject to the paramount interest of the legislature, whose creature it is.” *Monaghan*, 15 N.W.2d at 244. Because the Legislature has plenary control of municipalities, it has the right to direct the distribution and use of funds as it sees fit, even though the funds originally were intended for a different public purpose. *See Wright County*, 148 N.W. at 54; *see also Town of Bridgie*, 35 N.W.2d at 540 (“The power of the legislature over the property which a municipal corporation has acquired . . . is complete. It may take control thereof from the officers of the corporation and turn it over to other officers under the direct supervision and control of the state.”).

IV. The Stadium Legislation and Minneapolis City Charter, Chapter 15, Section 13

The Minneapolis City Charter prohibits the “City of Minneapolis, Minneapolis Community Development Agency, or any city department, agency, commission or board” from using “city resources over \$10 million for the financing of professional sports facilities” unless approved in a voter referendum. Charter Chapter 15, Section 13. As the City Attorney concludes, the stadium legislation does not require the City to finance the stadium using city resources in excess of \$10 million.

³ As the City Attorney notes, these stadium financing obligations unquestionably are obligations of the State, not obligations of the City, to be satisfied in part using local tax revenue retained by the State. *See* Laws 2012, Chapter 299, Art. 2, Sec. 1, § 16A.965, subd. 2(b) (State shall issue state bonds to fund construction); Laws 2012, Chapter 299, Art. 1, Sec. 18, § 473J.13, subd. 2(b) (State shall pay operating expenses); *id.* at subd. 4(c) (State shall fund capital improvements); Laws 2012, Chapter 299, Art. 3, Sec. 1, § 297A.994, subd. 3 (designating local tax revenue for State stadium bond debt service, operating expenses, and capital improvement reserve).

Under the stadium legislation, it is the State, not the City, which will provide the public financing for the stadium. As discussed above, the multi-million dollar obligations to provide public funds for stadium construction, operating expenses, and capital improvements fall solely on the State. See Laws 2012, Chapter 299, Art. 2, Sec. 1 and Art. 1, Sec. 18. Further, it is the State, not the City, which will collect and use the local tax revenue for this purpose.

The fact that the tax is on sales in Minneapolis does not mean the revenue is City revenue and, therefore, “city resources.” In order for tax revenue to constitute “city resources,” the City must have the right to possess, control, and use the revenue. As discussed above, under the 2012 amendments, the State – not the City – possesses, controls, and uses the local tax revenue to the extent needed to meet the State’s stadium financing obligations. Local tax revenue collected for stadium financing purposes will never pass through the City’s hands. The City’s right of possession, control and use of local tax revenue is subordinate to the State’s right and is limited to local tax revenue that exceeds the State’s need.⁴

For these reasons, we agree with the City Attorney’s conclusion that, even ignoring the provisions of the stadium legislation which allow the City to override the Charter referendum requirement, the legislation does not trigger the Charter referendum requirement.

⁴ Approval of a special law by resolution adopted by a majority vote of all members of the governing body of local government unit is a legislative act, not a “city resource” as this term is used in Charter Chapter 15, Section 13. The pertinent resource at issue here is tax revenue that the State controls; it is, therefore, a State resource, not a City resource. And the State, not the City, will use this resource to finance the stadium.