



**Request for City Council Committee Action
From the City Attorney's Office**

Date: August 12, 2003
To: Intergovernmental Relations Committee
Referral to:

Subject: Report regarding Requirements to be Complied With by Public Officers and Agencies Regarding the Use and Sale of State Bond Financed Property

Recommendation: Receive and file staff report

Prepared by: _____ Phone: 673-2478 _____ Phone: 673-3375
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Acting Deputy City Attorney, Civil Finance Officer

Presenter in Committee: Peter W. Ginder, Acting Deputy City Attorney, Civil

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Neighborhood Notification
City Goals:
Comprehensive Plan
Zoning Code
Other

Background/Supporting Information

The purpose of this report is to discuss the obligations placed on the City of Minneapolis when it agrees to act as a "fiscal agent" for non-public parties applying for state bond financing. As discussed below, when acting as a fiscal agent, the City assumes numerous obligations that may continue throughout the life of the proposed project.

"State Bond Financed Property" is defined as property acquired or bettered in whole or part with the proceeds of state general obligation bonds authorized to be issued under Article XI, Section 5, clause (a) of the Minnesota Constitution. Minn. Stat. §16A.695. The Constitution provides that public debt may be contracted and works of internal improvements carried on for the purposes of acquiring public land and

buildings, and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes.

Minn. Stat. §16A.695 governs the lease, management, and sale of property financed with the proceeds of state bonds. In an Order entitled "Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 14, 1994, and as amended July 30, 1995, (hereinafter "Order") the Commissioner has issued guidelines establishing requirements under Section 16A.695. The purpose of the requirements is to ensure that the proceeds of state general obligation bonds authorized by the legislature to be issued to finance the acquisition or betterment of public land and buildings and other improvements of a capital nature by the state and its political subdivisions are used for such purposes and that the interest to be paid thereon is and will continue to be "whenever possible" exempt from federal income taxation. Order Section 1.02. Essentially, state general obligation bonds can be issued only to finance publicly owned land, buildings or improvements to be used to conduct governmental programs of the state and its instrumentalities and political subdivisions. Id. Where state bonds are to be issued to finance property which is to be leased, managed, operated or otherwise used by a non-public party, or where state bond financed property is to be sold to a non-public party, the requirements of the Commissioner's Order are to be complied with by a public officer or agency entering into such a lease or similar contract to ensure the legality and tax exempt status of the bonds Id. Recipients of grants from money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the recipient has the ability and a plan to fund the program intended for the facility. Minn. Stat. §16A.695 subd. 5.

In addition to the requirement that the political subdivision own the financed property, both Section 16A.695 and the Commissioner's Order detail a number of requirements for non-public party use contracts ("use contract" means a lease, management contract or other similar contract relating to state bond financed property, between a public officer or agency which owns or has jurisdiction over the property and another public officer or agency or non-public party). Such a use contract, in addition to requirements that it apply with all substantive and procedural provisions of the state law authorizing it, must:

1. Be entered into for the express purpose of carrying out a governmental program authorized by law and established by official action of the contracting public officer or agency.
2. Provide for program oversight by a public officer or agency. Program oversight would include the requirement that the non-public party provide the contracting public agency an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenue and expenses.
3. Allow for termination by the public agency in the event of default by the non-public party or in the event the governmental program is terminated or changed.
4. Require the non-public party to pay all costs of operation and maintenance of the state bond financed property allocable to it, unless the public agency is authorized and agrees to pay such costs pursuant to state law.

No public agency may enter into a use contract with respect to state bond financed property, or renew an amendment of an existing use contract, without the prior written approval of the Commissioner of Finance. A public agency may not sell any state bond financed property unless the public agency determines by

official action that the property is no longer usable or needed by the public officer or agency to carry out the governmental program for which it was acquired or constructed. Any such sale can be made only if

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authorized by law, must be made at fair market value, and approved by the Commissioner. Guidelines and procedures for sale of bond financed property are detailed in the Commissioner's Order.

In light of the obligations placed upon a political subdivision when it acts as a "fiscal agent" for state financed bonds, the City needs to consider these requirements before undertaking such a role. It also should be noted that the exact nature of the requirements placed on the political subdivision are subject to negotiation between the state, the political subdivision, and the non-public party after the approval of the bond financing.

Before agreeing to involvement in state bond financing for a non-public party, staff recommends:

1. That the City provide notice to non-public party bond applicants of the requirements placed upon the political subdivision and the ongoing involvement of the political subdivision with the applicant for the duration of the project.
2. That the City consider imposing (1) a fee for initial review of the program to determine public purpose and the non-public party's financial ability to effectuate the program, (2) a fee to cover staff expense for the ongoing annual program oversight, and (3) a construction management fee for those projects in which the state money is used for construction financing.
3. That the City develop policy guidelines to assist it in determining which projects are appropriate for the City to act as a fiscal agent for in regard to state bond financing.