

BOARD OF ESTIMATE AND TAXATION

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December 15, 2003

The Honorable Barbara Johnson, Chair
Ways & Means Committee
City of Minneapolis
307 City Hall
Minneapolis, MN 55415

Dear Council Member Johnson:

The enclosed report, "Review of Filings of the Statement of Economic Interest", was presented to the Board of Estimate and Taxation (BET) on December 10, 2003, and is transmitted to you for your review.

Because of the inherent limitations in any system of internal accounting controls, errors or irregularities may occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Mr. Bjorklund, the Internal Auditor, will be available upon notice, telephone 673-2863, to respond to your questions concerning the audit.

Sincerely,

A handwritten signature in black ink that reads "Gordon Nelson". The signature is written in a cursive style with a large initial "G".

Gordon Nelson
President - Board of Estimate & Taxation

CITY OF MINNEAPOLIS
REVIEW OF FILINGS OF THE STATEMENT OF ECONOMIC INTEREST
CALENDAR 2003

DECEMBER 2003

INTERNAL AUDIT
CITY OF MINNEAPOLIS
ROBERT BJORKLUND, DIRECTOR OF INTERNAL AUDIT

Internal Audit
Review of Filings of the Statement of Economic Interest
And Related Documents
Calendar 2003

In compliance with Minnesota Statute 10A.09, Internal Audit has reviewed the filings of the Statement of Economic Interest (SEI), and related documents, for calendar year 2003. The statute stipulates the SEI document is to be filed within 60 days after taking office and/or by April 15th.

Statements are to be filed by appointed local officials as well as candidates and elected officials in a Metropolitan government unit. In addition to the City proper, governmental units under review include The Park & Recreation Board, the Municipal Library Board and the MCDA/CPED. Also, the City rewrote its ethics ordinance which resulted in several additional positions being defined as local officials to include Mayoral and Council appointees to certain Boards and Commissions. These include, Mayoral appointees/ reps and City Council appointees from the City Planning Commission, Metropolitan Sports Facilities Commission, Minneapolis Public Housing Authority, Bassett Creek Watershed Management Commission, McKnight Family Housing Fund, and Shingle Creek Watershed Management Commission.

The reviews were of an overview nature and verified that the appropriate form was on file, signed by the individual, dated and had requested information documented. This summary report will then be forwarded to the State Auditor's Office.

- ◆ The City of Minneapolis has thirty-five positions, including 16 elected, who are required to file the SEI form on an annual basis. The Elections Department is responsible for maintaining these. Internal Audit reviewed available documentation and noted the following: a) 33 of the required 35 forms were on file. Absent were SEI forms for the (new) Commissioner of Health and the (acting) Director of Human Resources; b) two of the forms were signed/received after the requested cutoff date of April 15; c) one individual listed "various mutual funds" under the securities section of the form but provided no detail – SEI requirements include listing the individual fund provider as well as the fund name; d) one individual failed to designate either of the options available for subsequent certification; e) it was determined, via the City Attorneys Office that the Director of Event Services was not required to fill out an SEI form.

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Also, for the 22 Commission and Board Members (those listed in the third paragraph), 19 were verified as on hand – although one of the 19 was omitted on the master listing. For the remaining three, also omitted on the master listing, one was undeliverable and returned by the postal service to Elections; and two did not respond to the mailed request from Elections.

- ◆ The MCDA/CPED had SEI filings for the three individuals required to file. For 2003, Internal Audit was told that all other MCDA employees filled out a “Certification of No Financial or Other Interest by Agency Employees” form. Internal Audit did not conduct a review of these, however, retained a blank copy of this form in the files.
- ◆ The Minneapolis Park & Recreation Board Office and no 2003 filings on hand due to an apparent misunderstanding. The individual responsible for this area told Internal Audit he had called all applicable Park Board members and asked if they had any changes to make from the previous years SEI, and was told no by all and did nothing further. What should have occurred was a mailing to each Park Board member of a form which allows them to designate one of two options – a) there are changes to be made from the previous year, in which case they would be sent a supplemental SEI form to complete; or b) no, there are no changes and that form would be signed, dated and returned for filing.

Additionally, one of the Park Board members from 2002 passed away and was replaced by a new member. That new member has not yet been contacted to complete a SEI form.

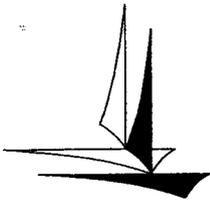
- ◆ The Minneapolis Public Library (MPL) has an eight member board, all of whom are required to file the SEI form documentation; this information is maintained at the MPL offices. Internal Audit noted that seven of the eight had filed for 2003. The one missing was that of a former board member (resigned 8/03) who had not filed any SEI documentation for 2003. Additionally, the individual who replaced the resigned member on the board (started 10/8/03) had not yet filed any SEI documentation as of 10/30/03.

Also, as recommended last year, the MPL did begin using a format similar to the City’s whereby the individual required to file a SEI statement was sent a form asking them to certify (by means of checking the appropriate line) whether the information on the most recently filed SEI had changed or not, and then return the letter. However, the letter did not require the MPL board member to sign or date the letter.

(3)

RECOMMENDATION: As had been previously discussed with Susanne Griffin, Director of Elections, beginning with 2004 the Park Board, Library Board and MCDA/CPED will all be transferring the functions regarding the processing of their respective SEI statements, and retention thereof, to the City's Elections Office. This will give all SEI's a centralized location and better coordinate the effort.

DISCUSSION: The discussion item from last year, which sought to review whether certain additional positions should be included with those required to complete the SEI form was initially addressed by means of holding meetings with representative from Elections, City Attorneys Office, Human Resources, and the City Coordinator's Office. Included at the end of this report is a memorandum from Carol Lansing of the City Attorney's Office with analysis and a recommendation regarding this issue.



Minneapolis
City of Lakes

Office of the City Attorney

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DATE: March 3, 2003

TO: Bob Bjorklund, Director of Internal Audit
Susanne Griffin, Elections Director

CC: Jay Heffern, City Attorney

FROM: Carol Lansing, Assistant City Attorney 

RE: Which Local Officials Must File Statements
of Economic Interest

MEMORANDUM

I am responding to a question raised during our meeting of February 13, 2003, during which we discussed the requirements in the City's Ethics Code relating to filing of statements of economic interests (SEI). The Ethics Code is found in Chapter 15 of the Minneapolis Code of Ordinances (MCO). As you know, the City Council is currently considering a proposed revision of the Ethics Code. Specifically, the question is whether the City should require certain persons not currently required by ordinance to file SEI's to file such statements prior to enactment of the revised Ethics Code.

State law requires that certain "local officials" in metropolitan governmental units, including the City of Minneapolis, file statements of economic interest. Minn. Stat. §10A.09. For purposes of that statute, "local official" means:

[A] person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

Minn. Stat. §10A.01, subd. 22 (definitions).

The City's Ethics Code incorporates the filing requirement in §15.40 of the current code. The people required to file SEI's, as set forth in §15.40(a), are "candidates" and "local officials," as defined in MCO §15.10(c). The definition of "local officials" provided in §15.10(c), states:

Local official, as defined in Minnesota Statutes, Section 10A.01, means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to

recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money and shall only include:

- (1) The following elected officials: city council members; the mayor; and elected board of estimate and taxation members; and
- (2) The following appointed officials: city assessor; city attorney; city coordinator; city clerk; finance officer; city engineer; health commissioner; planning director; fire chief; police chief; budget director; assistant city coordinators; treasury division director; convention center general manager; and board of estimate and taxation employees.

MCO §15.10(c) (emphasis added). Pursuant to these provisions, the City Council has made a legislative determination regarding who must file SEI's and has explicitly limited the filing requirement to the specified officials.

Based on his interpretation of their responsibility for recommending or taking actions related to major budget items, Bob Bjorklund has suggested that the following officials also meet the definition of "local official" in Minn. Stat. §10A.01 and, therefore, should also be required to file SEI's:

- Director of Purchasing/Procurement
- Asst. Director of Purchasing/Procurement
- Director of Inspections
- Director of Licenses
- Manager of Investments & Special Projects
- Others with signature authority > \$50,000 (appears to include an additional 30 positions not specifically named above).

Although all these positions are included in the proposed Ethics Code as ones for which SEI's must be filed, Bob's concern is that, even if eventually enacted as written in this regard, the new code will not be enacted in time for these people to file the statements by April 15, 2003.

The Ethical Practices Board (now the Campaign Finance & Public Disclosure Board) has opined that "a city council in a metropolitan governmental unit must examine the organizational structure of decision making assigned to its nonelected officials and employees when determining which officials or employees meet the definition of "local official " for purposes of the application of economic interest and potential conflicts of interest disclosure. In the opinion of the Board the city council's determination of what constitute "major decisions" for purposes of both economic interest disclosure and lobbyist disclosure is valid until such time as the

Memorandum Regarding Statements of Economic Interest

March 3, 2003

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Legislature may clarify the applicable provisions of Minn. Stat. ch. 10A.” (Eth. Prac. Bd. Advisory Op. 111, 1991). Since this opinion was issued, the Legislature has not made any such clarification.

It is the recommendation of the City Attorney’s Office that the City not request or require City officials to file statements of economic interest unless and until they are required to do so by ordinance or other policy adopted by the City Council. This recommendation is consistent with prior opinions of the state board that is responsible for administering Minn. Stat. ch. 10A.¹

02A-01012 bjorklund griffin.sei.030303

¹ Subsequent to our meeting, Bob also learned that, at some time in the past, members of the Civil Rights Commission were filing SEI’s. Civil Rights Commissioners are not included in the ordinance as “local officials” who must file SEI’s and I am not aware of any City policy requiring them to do so. If you do have documentation of such a policy, I could look into that question further.