

MINNESOTA SPORTS FACILITIES AUTHORITY

Regular Meeting
Friday, June 22, 2012
11:00 a.m.

Hubert H. Humphrey Metrodome
Halsey Hall Room
900 South 5th Street
Minneapolis, MN 55415

1. CALL TO ORDER

Michele Kelm-Helgen called the meeting of the Minnesota Sports Facilities Authority to order at 11:00 a.m.

2. ORGANIZATIONAL MATTERS

A. Oaths of Office

Governor Dayton swore in the new Authority Board. Chair Michele Kelm-Helgen and Commissioners Barbara Butts Williams, Duane Benson, Bill McCarthy and John Griffith.

B. Election of Officers

Chair Kelm-Helgen stated that with a five member board the most efficient way to conduct business would be with a Committee of the Whole.

Chair Kelm-Helgen requested if there was a nomination for Vice Chair. Commissioner Butts Williams nominated Commissioner McCarthy. The nomination was seconded by Commissioner Benson. Motion carried.

Chair Kelm-Helgen requested a nomination for Secretary/Treasurer. Commissioner McCarthy nominated Commissioner Benson for the position. The nomination was seconded by Commissioner Griffith. Motion carried.

The new Authority will operate as a Committee of the Whole as there are only five members.

C. Standing Meeting Schedule

Chair Kelm-Helgen reported that the new Authority will meet every three weeks, starting on July 13, 2012. Meetings will take place on Fridays at 9:00 a.m.

A motion was made by Commissioner Benson to adopt the new meeting schedule. It was seconded by Commissioner Butts Williams. Motion carried.

3. OVERVIEW OF THE PROJECT

Ted Mondale, Chair of the MSFC, presented what is in the legislation and highlighted the key tasks. A copy of this presentation can be found on the MSFC website.

Chair Kelm-Helgen introduced Mayor Rybak. The Mayor reflected on the memories of the Metrodome and the making of new memories with the new stadium. He said this is the first time that a building is being built solely on the behalf of the Vikings. Mayor Rybak wants to make the Game Day Experience a priority for the people. The Mayor's core point is that the new stadium will be a place that will bring memories and experiences to the people. The Mayor indicated the Vikings are also very excited to bring Major League Soccer to the new stadium. As a final point, the Mayor stressed that the new stadium needs to be different than the Metrodome and connect to the city better.

4. INITIAL PLAN OF OPERATIONS

- A. Office Space. The MSFA administrative office will be located in the Metrodome in the current space of the MSFC.
 - a. Communication. The Authority web site will be www.msfa.com. The current web site www.msfc.com has a link to the new web site.
- B. Chair Position. Given the scope of work before the new board, Commissioner McCarthy made a motion to make the Chair position full-time with an annual salary of \$100,000. Commissioner Griffith seconded the motion. Motion carried.
- C. Executive Director Position. Chair Kelm-Helgen stated Ted Mondale is the logical choice for Executive Director and CEO of the new Authority. Commissioner Griffith noted that Ted Mondale has a great heart for Minnesota and the work ahead is much more than just building a stadium. Chair Kelm-Helgen then nominated Mr. Mondale for the position with a salary of \$157,181, effective today. Commissioner Benson seconded the motion. Motion carried.

5. ACTION ITEMS

- a. Authorize issuance of RFP for Authority Owner's Representative

The Metropolitan Sports Facilities Commission authorized on the behalf of the MSFA a Request for Qualifications for Owner's Representative Services on May 24, 2012. The submittals for the RFQ are due at 4 p.m. on June 22, 2012. Attached is documentation related to the RFQ and to the RFP.

The Owner's Representative services are in general to advise, guide, and assist the MSFA during the pre-construction and construction time frames. The Owner's Representative will be a key MSFA consultant in relationships with the Minnesota Vikings ("Team"), designers and contractors for the project. The RFQ and RFP documents more specifically outline the scope of services of the Owner's Representative. It is desirable to have an Owner's Representative services available at the start of the new stadium design.

By Statute, the Authority and Team will create a stadium design and construction group to manage the design and construction of the stadium and to oversee construction (“Project Group”). The Project Group will be comprised of representatives of the Authority and the Team. The Project Group will hire an Owner’s Representative for the project. Similarly, the Team may have its own Owner’s Representative. Potentially, either the MSFA Owner’s Representative or the Team Owner’s Representative could be the Project Group’s Owner’s Representative.

The timeline for procurement of services is recommended as follows:

- Authority Approval of Request for Proposals June 22, 2012
- Request for Qualifications Due June 22, 2012 4 p.m.
- Request for Proposals Due July 2, 2012 4pm
- Interviews of Proposers (if necessary) July 10, 2012
- Authority Award of Contract July 13, 2012

Recommendation: *The Authority authorizes the Chair and Executive Director to issue the Request for Proposals for Owner’s Representative Services. A motion was made by Commissioner McCarthy and seconded by Commissioner Benson. Motion carried.*

b. Authorize issuance of RFP for Environmental Consulting Services

The development of a new stadium for the Minnesota Vikings will require by State of Minnesota Administrative Rules both an Environmental Assessment Worksheet (EAW) and an Environmental Impact Statement (EIS). The MSFA is the Responsible Government Unit (RGU) by Statute.

Minnesota Administrative Rules 4410.4300 mandates an EAW:

Subp. 34 -For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

Similarly Minnesota Administrative Rules 4410.4400 mandates an EIS:

Subp. 22. Sports or entertainment facilities. For construction of a new outdoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, the local governmental unit is the RGU.

Because the timelines for development of these documents is lengthy, it is important for the Authority to take prompt action to procure an environmental consultant for new stadium project. The expected cost for such services is in the \$750,000 to \$1,000,000 range. Initial expenditures for these services are anticipated to begin in August of 2012.

The timeline for procurement of services is as follows:

- Authority Approve Advertising of Proposals June 22, 2012
- Pre-proposal meeting July 6, 2012 10am
- Proposals Due July 9, 2012 4pm
- Interviews (if necessary) July 11, 2012
- Authority Award of Contract July 13, 2012

Recommendation: *The Authority resolves that an Environmental Assessment Worksheet and Environmental Impact Statement are necessary for the new stadium project. Furthermore, the Authority authorizes the Chair and Executive Director to solicit Request for Proposals -Environmental Consulting Services. A motion was made by Commissioner Butts Williams and seconded by Commissioner McCarthy. Motion carried.*

c. Designate Finance Institutions

The cash and investment management program for the Minnesota Sports Facilities Authority must be managed in accordance with Minnesota Statutes Chapter 118A. Chapter 118A requires the Authority to designate, as a depository of its funds, one or more financial institutions. Financial institution is defined as a savings association, commercial bank, trust company, credit union, or industrial loan and thrift company. This chapter requires that if funds are on deposit at the close of the financial institution’s banking day that exceed available federal deposit insurance, then the Authority shall require the financial institution to furnish collateral security or a corporate surety bond. The total amount of the collateral computed at its market value shall be at least ten percent more than the amount on deposit at the close of the financial institution’s banking day. The type of investments, contracts and agreements that are allowable for public funds are specified in this chapter.

The Executive Director and/or the Director of Finance are responsible for the management and safekeeping of cash and investments of the Authority and for the deposit of such funds in banks and other financial institutions approved and designated by the Authority. The Executive Director and/or the Director of Finance are also responsible to make agreements with such depositories as to interest rate and to agree or consent to changes in such interest rates from time to time as conditions might require. The Executive Director and/or the Director of Finance will make every effort to secure interest on such funds consistent with their safekeeping and the Authority’s liquidity needs.

U.S. Bank, N.A. has been the authorized financial institution of the Metropolitan Sports Facilities Commission for several years. Two checking accounts, an operating account and a payroll account, and one money market account are maintained at U.S. Bank, N.A. The money market account is a deposit account that is considered a savings account. The accounts are insured by Federal Deposit Insurance Corporation and are collateralized in accordance with Chapter 118A.

RECOMMENDATION: That the Authority designates U.S. Bank, N.A. as the financial institution for the depository of funds for its operations checking account, payroll checking account, and money market account. A motion was made by Commissioner Butts Williams and seconded by Commissioner Griffith. The Commissioners requested to change the treasurer position to the secretary/treasurer position. Motion carried.

VI. OTHER MATTERS

- a. Requirements that come with statutory designation as a public official.
- b. Open Meeting Law/Data Practices Act Requirements.

Both matters were brought forth by Kathleen Lamb of McGrann Shea Law Firm

Introduction

This document provides information regarding the Minnesota Open Meeting Law, the Minnesota Data Practices Act, the Minnesota Gift Ban, and the Minnesota Conflicts of Interest statutes and the application of these laws to public officials. This is a general overview. Because matters that arise under these areas of law are fact-specific, further analysis is required to apply these statutes to a specific issue.

Minnesota Open Meeting Law

Presumption: All meetings of public bodies are open to the public, with a few limited exceptions. Specifically, the statute provides:

All meetings, including executive sessions, must be open to the public (a) of a state, (1) agency, (2) board, (3) commission, or (4) department, when required or permitted by law to transact public business in a meeting; (b) of the governing body of a (1) school district however organized, (2) unorganized territory, (3) county, (4) statutory or home rule charter city, (5) town, or (6) other public body; (c) of any (1) committee, (2) subcommittee, (3) board, (4) department, or (5) commission, of a public body...[T]his chapter does not apply (1) to meetings of the commissioner of corrections; (2) to a state agency, board, or commission when it is exercising quasi-judicial functions involving disciplinary proceedings; or (3) as otherwise expressly provided by statute.

Minn. Stat. § 13D.01, subds. 1, 2.

The Open Meeting Law further requires that:

- A schedule of meetings be kept at the public body's primary offices. Minn. Stat. § 13D.04, subd. 1.

- If a special meeting is required, it must be posted with the date, time, place, and purpose on the principal bulletin board of the public body, or if there is none, on the door of its usual meeting room. *Id.* at subd. 2.
- If a party requests notice of special meetings, particular notice requirements relating to these requests apply. *Id.*
- If an emergency meeting is required, the public body must make good faith efforts to provide notice of the meeting in accordance with the statute. *Id.* at subd. 3.
- All votes of members on actions taken in a meeting required to be open must be recorded in a journal kept for that purpose. Minn. Stat. § 13D.01, subd. 4.
- All votes of members must be recorded on each appropriation of money excluding payments of judgments, claims, and amounts fixed by statute. *Id.*
- The journal must be open to the public during normal business hours where the records of the public body are kept. *Id.* at subd. 5.
- At least one copy of any printed materials relating to the meeting's agenda must be available in the meeting room for inspection by the public while the governing body considers the subject matter. *Id.* at subd. 6.
- If a meeting is to be closed pursuant to one of the below exceptions to the Open Meeting Law, the public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject matter to be discussed. *Id.* at subd. 3.

Exceptions: The Open Meeting Law provides certain exceptions as well as the exclusions set forth above to the requirements that meetings remain open. These exceptions relate to the type of data to be discussed and are divided into two categories: those meetings which are permitted to be closed and those which are required to be closed.

Meetings that are permitted to be closed due to nature of data discussed:

- Labor negotiation strategy. Minn. Stat. § 13D.03 (closed meeting must be recorded).
- When the public body is evaluating performance of an individual subject to the body's authority following disclosure of the name of the individual. Minn. Stat. 13D.05, subd. 3.
- When authorized by statute or permitted by the attorney-client privilege. *Id.*
- To determine the asking price for real or personal property to be sold. *Id.*
- To review confidential appraisal data. *Id.*
- To develop or consider offers or counteroffers relating to real estate purchase or sale. *Id.* (closed meeting must be recorded and preserved for 8 years)
- To receive security briefings or reports. *Id.*

Meetings are required to be closed when the data discussed includes:

- Preliminary considerations of allegations/charges against an individual subject to the body's authority. Minn. Stat. § 13D.03, subd. 2.
- Educational; health; medical; welfare; or mental health data that are not public data. *Id.*
- An individual's medical records. *Id.*

- Information that would disclose the identity of alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults. *Id.*
- Active investigation data or internal affairs data relating to allegations of law enforcement misconduct. *Id.*

Applicability: Public bodies are required to hold all meetings open to the public unless a specific exception applies.

Minnesota Data Practices Act

Presumption: All government data are public and citizens have a right to free and easy access to this data as well as copies and explanations when requested. (Minn. Stat. Ch. 13)

- All data collected, created, received, maintained or disseminated by a government entity is presumed public. Minn. Stat. § 13.03 subd. 1.
- All government entities must keep this data in such an arrangement as to make them easily accessible for convenient use. *Id.* at subd. 2.
- Any person may request to inspect and copy public government data at reasonable times and places, and upon request may be informed of the data's meaning. *Id.* at subd. 3.

Exceptions: The requirements for access to governmental documents do not apply to the following:

- Documents classified by statute. Minn. Stat. § 13.03, subd. 1.
- Documents classified pursuant to state or federal law. *Id.*
- Documents classified as nonpublic or protected, or with respect to individuals, documents classified as private or confidential. *Id.*;
- Trade Secret data. Minn. Stat. § 13.37, subd. 1.
- Responses to requests for bids. Minn. Stat. § 13.591, subd. 3.
- Civil investigative data. Minn. Stat. § 13.39.
- Labor relations information. Minn. Stat. § 13.37, subd. 1.
- Private or nonpublic survey data. Minn. Stat. § 13.59, subd. 1.
- Financial assistance data. *Id.* at subd. 3.

Applicability: Except in limited circumstances, all information of a public body is public and must be kept in a place and manner which is easily accessible for public viewing. The public may copy data (for a reasonable fee) and, upon request, be informed of the data's meaning.

Minnesota Gift Ban

Presumption: Public officials are prohibited from accepting gifts from lobbyists and lobbyists are prohibited from giving gifts to public officials. Specifically:

A lobbyist or principal may not give a gift or request another to give a gift to an official.
An official may not accept a gift from a lobbyist or principal.

Minn. Stat. § 10A.071, subd. 2. The members and chief executive of the Authority are deemed public officials. Minn. Stat. § 10A.01, subd. 35(25).

The statutes define a “gift” as “money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.” Minn. Stat. § 10A.071, subd. 1(b). An “official” is defined as “a public official, an employee of the legislature, a judge, or a local official of a metropolitan governmental unit.” *Id.*, subd. 1(c). Please note that a counterpart gift ban applicable to local units of government can be found in Minnesota Statutes section 471.895.

Exceptions: The gift ban does not apply to the following circumstances:

1. a contribution as defined in section 10A.01, subdivision 11;
2. services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
3. services of insignificant monetary value;
4. a plaque with a resale value of \$5 or less;
5. a trinket or memento costing \$5 or less;
6. informational material with a resale value of \$5 or less; or
7. food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

Minn. Stat. § 10A.071, subd. 3(a).

In addition, the statutory prohibitions do not apply if the gift is given “because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group” or if the gift is from “a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.” Minn. Stat. § 10A.071, subd. 3(b).

Applicability: Except in limited circumstances, no member of a public body may accept a gift from a lobbyist as defined by the statute.

Minnesota Conflict of Interest Law

Presumption: Minnesota Statutes section 10A.07 requires public officials to disclose potential conflicts of interest. Public officials are further required to abstain, if possible, from any decision in which he or she may have any personal financial interest:

The disclosure of potential conflicts requires an assessment of whether such conflict would affect the discharge of public duties:

A public official . . . who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
 - (2) deliver copies of the statement to the official's immediate superior, if any;
- and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

Minn. Stat. § 10A.07, subd. 1.

In addition to the statutorily prescribed disclosure, the conflicted public official must abstain from the affected action:

If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official must abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

Minn. Stat. § 10A.07, subd. 2.

Applicability: The statutes relating to conflicts of interest are very fact-specific, and it is currently unclear from the text of the statutes what constitutes a personal financial interest which is sufficient to give rise to a prohibited conflict of interest.

c. Develop Proposed Bylaws

Kathleen Lamb will draft bylaws for the Authority and propose them at the next meeting. Commissioner Griffith will assist.

VII. DISCUSSION

Lester Bagley of the Minnesota Vikings addressed the new Authority. Mr. Bagley indicated he looked forward to collaborating with the new Board to create a facility that works for the team and the community. Mr. Bagley then thanked the Sports Commission staff.

VIII. PUBLIC COMMENT

Ray Lewis, Minnesota Public Health Association, addressed the Board and asked them to consider health impacts when they build a new stadium.

IX. ANNOUNCEMENT OF FUTURE MEETINGS

The Minnesota Sports Facilities Authority
Friday, July 11, 2012 9:00 a.m.
Halsey Hall Room 900 South Fifth Street, Minneapolis, MN 55415

ADJOURNMENT

There being no further business to come before the Commission, Chair Kelm-Helgen adjourned the meeting at 12:07pm

ADOPTED this 13th day of July, 2012 by the Minnesota Sports Facilities Authority.

Duane Benson, Secretary

Ted Mondale
CEO/Executive Director/Deputy Secretary