

MINNESOTA SPORTS FACILITIES AUTHORITY

Regular Meeting
Friday, October 26, 2012
9:00 a.m.

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

1. CALL TO ORDER

Chair Michele Kelm-Helgen called the meeting of the Minnesota Sports Facilities Authority to order at 9:01 am

2. ROLL CALL

Commissioners Present: Michele Kelm-Helgen, Barbara Butts Williams, Duane Benson, Bill McCarthy, John Griffith

Commissioners Absent: None

3. ADOPTION OF AGENDA

Chair Kelm-Helgen presented the agenda. *A motion was made by Commissioner Butts Williams and seconded by Commissioner Benson to adopt the agenda. Motion carried.*

4. APPROVAL OF AUTHORITY MEETING MINUTES

Approval of Authority Minutes for Regular Meeting of September 14, 2012 and Special Meeting of September 28, 2012. *A motion made by Commissioner McCarthy and seconded by Commissioner Benson to approve the minutes. Motion carried.*

5. CHAIR'S REPORT

Chair Kelm-Helgen commented on the 'Environmental Assessment Worksheet' open house. It was well attended and had a good media presence..On October 5th, the interviews for HKS's subconsultant – structural engineers were conducted. Palanisami and Chase Engineering were selected through the assistance of Met Council. HKS is working on schematic designs. The MSFA, along with HKS will be conducting Public Listening Sessions. Two are scheduled: November 13 in Rochester, MN and November 27 in Duluth, MN.

6. BUSINESS

a. Action Items – New Stadium

i. Authorize Assumption of Contract with Laborer’s Union Local No. 563

In August, the Authority authorized the assumption of a number of contracts that had previously been held by the Metropolitan Sports Facilities Commission. The contract between the Commission and Local No. 563 was inadvertently left off that listing. Local No. 563 represents approximately 10 maintenance personnel whose primary job responsibilities involve small building repairs, playing field preparation and monitoring of roof operating systems (24/7 basis). The contract was negotiated earlier this year and is for the term beginning March 1, 2012 and extends to February 28, 2014.

Recommendation: The MSFA authorize the assumption of the contract as detailed above with Laborers’ Union Local No. 563. Motion made by Commissioner McCarthy and seconded by Commissioner Butts Williams. Motion carried.

ii. Approve Administrative Manual

The MSFA administrative manual sets forth the basic principles to be followed in the administration and operation of the activities of the Minnesota Sports Facilities Authority. It provides a uniform approach and tool to be used by management and staff to guide and inform decision-making and to assist them in their responsibilities. Authority By-laws, policies, and the Affirmative Action Plan for 2012 – 2014 are included in this manual.

A thorough review of the Metropolitan Sports Facilities Commission’s policies was completed and it was determined that several updates and revisions were needed. Staff worked with Springsted, Inc. and Dorsey & Whitney, LLP to create policies for the Authority. The Commission’s policies served as the building block for creating the Authority’s policies. Dorsey & Whitney, LLP prepared the by-laws for the Authority and the Affirmative Action Plan 2012 – 2014.

Authority By-laws – include the Authority’s Name, Composition of the Authority, Officers of the Authority, Meetings of the Authority, Compensation and Expense Reimbursement, Official Documents, Amendments, and Electronic Mail.

Following are the policies that are included in this manual along with a brief description of each.

Capital Asset Management Policy - establishes the systems for the acquisition, management, periodic evaluation, maintenance, and financial reporting of the Authority’s assets. Capital assets are defined as having an initial cost in excess of \$5,000 and a useful life in excess of three years. Annually an inventory of capital assets will be conducted.

Investment Policy – directs the investment of Authority funds in a manner that ensures compliance with federal and state regulations. Investment objectives are listed in order of priority including compliance, safety, liquidity, diversification, and yield. Purchase of investment instruments must comply with Minnesota statutes 118A and the list of authorized and suitable investments are listed and described as well as a list of prohibited investments is included. Other areas described include safekeeping and custody, investment advisor, broker relationships, diversification, concentration of credit risk, asset allocation, and reporting. Benchmarks will need to be developed that are based on current indexes and yields.

Liquidity/Reserve Policy – provides a guide for maintaining adequate liquidity to meet the Authority’s operations expenditure requirements. Maintenance of a cash position in the operating fund to meet six months of operating expenditures requires a minimum balance of \$6 million.

Personnel Policy – serves as an employee handbook and is to be used to govern Authority employees. Employees covered by a collective bargaining agreement are exempt from provisions of this policy which conflict with the labor contract provisions and such employees are limited to the benefits provided in the agreement. The administrative manual includes equal employment opportunity policy, separation policy, policy against discrimination, harassment and offensive behavior, problem resolution policy, open door policy, social media policy, conduct policy, and several other standards of conduct. The manual also includes wage and salary administration, hours of work and payroll practices, and employee benefits.

Procurement Policy – establishes the guidelines for the procurement of goods and services and specifies the manner for competitive purchases. Micro purchases are defined as procurements valued at less than \$25,000 and can be made either upon quotation or in the open market. Small purchases are valued between \$25,000 and \$100,000 and can be made after obtaining two or more quotations, bids, or proposals. Major purchases are valued at greater than \$100,000 and will be made by publicly soliciting bids or proposals. The policy also requires a competitive process when contracting for professional services for more than \$100,000. A detailed explanation of best value contracting is also included.

Travel and Meeting Policy – sets the guidelines for reimbursement of expenses for authorized and approved travel for Commissioners and employees. Expenses include use of a private vehicle, miles, parking, lodging, meals, vehicle rental and a variety of other expenses. Documentation is required for all expenses other than meals while on “out-of-state” travel and mileage. Mileage will be paid based on the standard mileage allowance as determined by the Internal Revenue Service and expenses for meals will be reimbursed on a per-diem basis based on the federal per-diem rates as defined per individual city.

Affirmative Action Plan 2012 – 2014 – this two year plan includes the Authority’s Equal Employment Opportunity Policy, Assignment of Responsibility for the Affirmative Action Program, Dissemination of the Affirmative Action Policy and Plan, Workforce, Internal Audit and Reporting Systems, Measures to Facilitate Implementation of the Plan, Affirmative Action Plan for Individuals with Disabilities, and Support Data. This plan will replace the temporary Affirmative Action Plan and will be submitted to Minnesota Management & Budget.

RECOMMENDATION: *The Authority approves and adopts the Administrative Manual effective August 1, 2012. A motion to approve and adopt was made by Commissioner McCarthy and seconded by Commissioner Benson. Motion carried.*

- iii. Approve Personal Services Items

ADDITION OF A FULL-TIME PROJECT COORDINATOR FOR MSFA

The planning phase for the People’s stadium requires additional staffing resources and the need for a full-time Project Coordinator for the Minnesota Sports Facilities Authority. This position will be responsible for planning, scheduling and staffing public meetings and events with an emphasis on

logistics and planning. The position will also be involved in a variety of special projects. In addition this position will organize and staff community meetings conducted by the MSFA and the Team, provide support for all City of Minneapolis Implementation committee and subcommittee meetings, and prepare and develop presentations for public meetings and events.

The recruiting process included advertisement of the position, review of applications, and interviews.

REQUEST FOR 2012 SALARY AND WAGE RATES FOR NEW MSFA POSITIONS

Staff reviewed salary and wage rate information from other public sector employers to assist in recommending 2012 salary and wage rates for the Director of Communications, Project Coordinator for the MSFA, and the Senior Executive Assistant. Staff recommends the following salaries and wage rate for the new MSFA positions:

Full-time Positions:	2012
Exempt:	<u>Salaries/Wage Rate</u>
Director of Communications	\$91,000
Project Coordinator for MSFA	\$57,600
Part-time Position:	
Nonexempt:	
Senior Executive Assistant	\$30/hour

Recommendation: The Authority approves the addition of a full-time position Project Coordinator for the MSFA and the 2012 salaries and wage rate for the positions listed above. Motion made by Commissioner Butts Williams and seconded by Commissioner McCarthy.

iv. Approve Loaned Executive Agreement with the Metropolitan Council

On September 28, Authority Chair Kelm-Helgen announced that the Authority had asked the Metropolitan Council to help design a plan to reach the Women Business Enterprise (WBE)/Minority Business Enterprise (MBE) goals on the People’s Stadium project.

Given their expertise in contracting issues and their successes on the Hiawatha and Central Corridor Light Rail projects, we have reached an agreement with the Metropolitan Council’s Office of Diversity and Equal Opportunity to have two executives on loan to develop this plan.

Staff recommends contracting with the Metropolitan Council to borrow Wanda Kirkpatrick and Aaron Koski of the Council’s Office of Diversity and Equal Opportunity through December 31, 2013. The Minnesota Vikings support this recommendation.

Their services will be billed on a monthly basis based on established hourly rates and will be a stadium project cost.

Recommendation: The Authority authorizes the Chair and CEO/Executive Director to enter into a contract regarding loaned executives with the Metropolitan Council. Motion made by Commissioner Butts Williams and seconded by Commissioner McCarthy. Motion carried.

b. Reports Items

i. Budget Report

Mary Fox-Stroman presented the budget report for the Minnesota Sports Facilities Authority for the period from January 1, 2012 through August 31, 2012. Copies of reports are on file in the Authority office. Motion to accept the budget was made by Commissioner Benson and seconded by Commissioner Griffith. Motion carried.

ii. Vikings Ticket Raffle

This memorandum analyzes the feasibility of conducting a raffle to award season tickets for the term of the stadium use agreement (30 years). Although the idea has intuitive appeal, it would be very difficult to execute under existing Minnesota law, and would most likely require new legislation to allow the raffle to go forward. Based on historical data, the raffle would probably yield less than \$75,000.

Background

The Minnesota legislature has required the Minnesota Sports Facilities Authority (the "Authority") to study the feasibility of conducting a raffle to assist with payment of bonds on the new stadium. Section 13, subdivision 14 of the stadium bill states:

The authority shall study the feasibility of conducting a raffle for chances to win a pair or other limited numbers of prime seats (such as lower deck, 50 yard line seats) in the stadium for professional football games for the duration of the lease or use agreement.

Minn. Stat. § 473J.09, subd. 14. This memorandum addresses the feasibility of such a raffle by analyzing the legal gambling restrictions and the 2011 statistics for revenue generated by raffles in Minnesota.

Relevant Legal Restrictions.

This section addresses the existing statutory restrictions on raffles and how these restrictions would apply to a raffle of Vikings football tickets as described in Minn. Stat. § 473J.09, subd. 14. There are three main legal challenges: (1) the value of the raffle prize, (2) the entity that would conduct the raffle, and (3) the time and place restrictions on the raffle.

Amount of Prize.

The prize envisioned by Minn. Stat. § 473J.09, subd. 14 exceeds the statutory maximum for the value of a raffle prize. Under Minnesota law, the value of an individual raffle prize cannot exceed \$50,000. Minn. Stat. § 349.211, subd. 2d. The estimated prize value is based on the fair market value of the item, even if the item is donated. Minn. Stat. § 349.211, subd. 4(a); Minn. Admin. R. 7861.0210, subp. 18.

The estimated fair market value of a pair of prime tickets for the duration of the 30-year term is at least \$76,800. This estimate is based on two tickets at the current season ticket price of \$1,280 for 30 years. This estimate is almost certainly lower than the actual fair market value, because it assumes that ticket prices will remain the same over time and assumes that ticket prices in the new stadium will be the same as in the existing stadium. Although the Vikings have not raised season ticket prices in the past three years it is unlikely that this trend will continue for the next three decades.

Under existing Minnesota law, it is not legal (hence infeasible) to conduct a raffle for a pair of prime seats at the new stadium for the duration of the lease. The Authority could comply with Minn. Stat. § 349.211, subd. 2d by lowering the value of the raffle prize, for example, by limiting the tickets to 10 years instead of 30 years. The Authority could split the prize into three pairs of 10-year tickets, as there is no limit on the cumulative value of multiple raffle prizes. Minn. Stat. § 349.211, subd. 2d. If the Authority wishes to keep the raffle prize the same as the description in Minn. Stat. § 473J.09, subd. 14, it will be necessary to pass new legislation to specifically allow a raffle with this high-value prize.

Entity Conducting Raffle

The second, and probably most challenging, legal issue is identifying an entity that could conduct the raffle. A raffle can only be conducted by an “organization,” which is defined as “any fraternal, religious, veterans, or other nonprofit organization.” Minn. Stat. §§ 349.12, subd. 28; 349.16, subd. 1. The Authority does not qualify as a “nonprofit organization” and therefore cannot conduct the raffle itself. If the Authority wishes to conduct the raffle itself, it will be necessary to pass new legislation.

If a nonprofit organization conducted the raffle, the nonprofit organization could donate the net proceeds to the Authority. The gross profits of a raffle can only be spent on “lawful purposes” and “allowable expenses.” Minn. Stat. § 349.15, subd. 1(a). “Allowable expenses” are typically the cost of operating the raffle. Minn. Stat. § 349.12, subd. 3a. The remaining funds must be spent on “lawful purposes” such as donations to charity. See, e.g., Minn. Stat. § 349.12, subs. 25(a)(1), (12) & (14). An organization may also make “a contribution to . . . any of [Minnesota’s] political subdivisions . . . other than a direct contribution to a law enforcement or prosecutorial agency” as a lawful disposition of raffle proceeds. Minn. Stat. § 349.12, subd. 25(a)(10). Under this section, a nonprofit could operate the raffle and donate the proceeds to the Authority, which is a political subdivision.

The Authority cannot establish a nonprofit for the purpose of conducting the raffle, for two reasons. First, an organization must be in existence for three years prior to submitting an application for a gambling license. Minn. Stat. § 349.16, subd 2(b). Second, an organization “must not be in existence solely for the purpose of conducting gambling.” Minn. Stat. § 349.16, subd. 2(d).

In summary, the Authority cannot conduct a raffle itself and cannot establish a nonprofit for the purpose of conducting a raffle. An existing nonprofit could conduct the raffle and donate the proceeds to the Authority, if that organization complied with the other requirements in Chapter 349.

Other Legal Restrictions

Finally, the Authority must decide whether the raffle would be a standard licensed raffle or a tax-exempt raffle. An organization that conducts a tax-exempt raffle can only engage in gambling activity for a maximum of five days per year, with a total annual prize limit of \$50,000. Minn. Stat. § 349.166, subd. 2(a)(1) & (2). An organization does not need a license to conduct an exempt raffle, but must submit an application for exemption. Id., subd. 2(a)(3). The organization is also required to give notice to municipal authorities prior to the raffle, and to submit a modest amount of paperwork after the raffle was completed. Id., subd. 2(a)(4). An exempt raffle is not subject to Minnesota taxes. Minn. Stat. § 297E.02, subd. 2.

An organization that conducts a licensed raffle has no cumulative annual prize limit (although each individual prize is limited to \$50,000) and no limit on the number of days on which the raffle is conducted. The organization has other obligations, such as paying taxes on the proceeds, complying with requirements for employees who operate the raffle, and holding the raffle in an authorized

location. In addition, the organization must obtain a license prior to the raffle, separate the raffle funds, and provide detailed financial reporting to the Minnesota Gambling Control Board. See Exhibit A (letter from Minnesota Gambling Control Board) for more details on statutory and regulatory restrictions.

Other Considerations

There are other considerations affecting the feasibility and advisability of conducting a raffle, including the potential revenue and the costs associated with conducting a raffle. Although each raffle is different, the average raffle collects gross proceeds of approximately twice the value of the prizes awarded. See Minnesota Gambling Control Board 2011 Annual Report p. 5 (available at http://www.gcb.state.mn.us/PDF_Files/FY11.pdf and attached as Exhibit B to this memorandum). After deducting the cost of the prize, the net receipts are often roughly equivalent to the cost of the prize. These net receipts are distributed between allowable expenses, state taxes and charitable contributions (the profit from the raffle). Over the past ten years, over 50% of the net proceeds have been used for allowable expenses, with charitable contributions being slightly higher than taxes paid. *Id.* at p. 9. Shown below are a few rough calculations based on the averages in the 2011 Annual Report:

Prize: \$50,000
Gross receipts: \$100,000 (approx. twice the value of the \$50,000 maximum prize)
Net receipts (gross – prize): \$50,000
Allowable expenses: \$27,500 (55% of net proceeds, based on 2011 average)
State taxes: \$10,000 (20% of net proceeds, based on 2011 average)
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Yield: \$12,500 (25% of net proceeds, based on 2011 average)

Even assuming the best scenario – the prize is donated by the Team at no cost to the Authority, the raffle is operated in such a way that no tax is due, and the allowable expenses are average – the yield would be approximately \$73,500. This yield is relatively modest considering the number and complexity of legal restrictions applicable to the raffle.

As described above, these numbers are based on aggregate annual statistics, not projections specific to this particular raffle. If the Authority believes that the legal challenges can be resolved, it could be beneficial to engage an appropriate financial or economic expert to develop projections for this particular raffle.

Conclusion and Recommendation

There are significant legal barriers that prevent the Authority from lawfully conducting a raffle of season tickets for the duration of the lease. There are two issues that are insurmountable, unless additional legislation is passed: (1) the value of the raffle prize is higher than the statutory maximum; and (2) the Authority cannot conduct the raffle and cannot create a nonprofit to conduct the raffle. The Authority can work within the confines of existing law by lowering the value of the raffle prize or by allowing an existing nonprofit to conduct the raffle, but both of these alternatives present challenges. If the 30-year season tickets prize is split into multiple prizes, the total value of prizes would still exceed the tax-exempt limit. If the Authority allows a nonprofit to conduct the raffle, the Authority will necessarily lose significant control over the operation of the raffle. Finally, based on statistics from 2011 raffles in Minnesota, the projected economic gain from the raffle would be less than \$75,000, even assuming that

the prize was donated and the raffle was tax-exempt. It would be reasonable for the Authority to conclude that the significant effort it will take to appropriately address the statutory and regulatory hurdles is not justified by the relatively modest potential gain of conducting a raffle.

Recommendation: The Authority receive and accept the recommendation as delineated by legal counsel. No further action is required at this time. Motion made by Commissioner Benson and seconded by Commissioner Griffith. Motion carried.

7. PUBLIC COMMENT

One individual came forward to address the MSFA Board.

R.A. Edwards; Topic: Minorities in the workplace

8. DISCUSSION

None

9. ANNOUNCE FUTURE MEETINGS

Friday, November 16, 2012 at 9:00am – MSFA Board Meeting, Halsey Hall

10. ADJOURNMENT

There being no further business to come before the Authority, a motion was made by Commissioner Griffith and seconded by Commissioner Butts Williams to adjourn the meeting. Motion carried. Chair Kelm-Helgen adjourned the meeting at 9:45 am