

# DORSEY & WHITNEY

PROFESSIONAL LIMITED LIABILITY PARTNERSHIP

NEW YORK  
WASHINGTON, D. C.  
DENVER  
ORANGE COUNTY, CA  
LONDON  
BRUSSELS  
HONG KONG

PILLSBURY CENTER SOUTH  
220 SOUTH SIXTH STREET  
MINNEAPOLIS, MINNESOTA 55402-1498  
(612) 340-2600  
FAX (612) 340-2668

THOMAS S. HAY  
(612) 343-7965

SEATTLE  
ROCHESTER, MN  
BILLINGS  
GREAT FALLS  
MISSOULA  
DES MOINES  
FARGO

September 21, 1995

Mr. Peter Sausen  
Assistant Commissioner  
of Finance  
MN Department of Finance  
400 Centennial Office Building  
658 Cedar Street, 4th Floor  
St. Paul, MN 55155

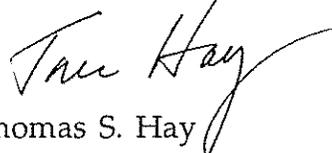
Re: Use of State Bond Proceeds Appropriated to Metropolitan  
Council for Regional Recreation Open Space

Dear Peter:

We have reviewed the letters you received from Beth Widstrom-Anderson, Controller of the Metropolitan Council, dated April 13, 1995, relating to the subject described above. We agree that the proceeds of State bonds appropriated and granted to the Metropolitan Council for regional recreation open space purposes are deemed expended when paid to the Council, and that the use of the State bond proceeds to make grants to local government units pursuant to Minnesota Statutes, Section 473.315, to reimburse them for expenditures previously made, does not render the State bonds as "reimbursement bonds" and make them taxable.

We express no opinion as to the tax-exempt status of bonds issued by the Metropolitan Council whose proceeds are used for the same purposes.

Very truly yours,

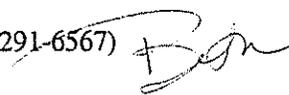


Thomas S. Hay

TSH/pmh

**METROPOLITAN COUNCIL**

Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101-1634  
Phone (612) 291-6359 TDD (612) 291-0904 FAX (612) 291-6550 Metro Info (612) 229-3780

**DATE:** August 31, 1995  
**TO:** Peter Sausen, Assistant Commissioner Department of Finance  
**FROM:** Beth Widstrom-Anderson (291-6567)   
**SUBJECT:** Confirmation of treatment of bond issues

Earlier this year we wrote you a letter regarding the appropriate treatment for state bonds used for Regional Park issues (copy attached). We proposed that the bonds not be treated as reimbursement bonds because the state was not reimbursing itself. You agreed verbally with our proposed treatment.

We are now having some conversations with the LCMR and other state staff on a similar issue. It would be helpful if we had something from you in writing that states you agree with our assessment. A memo from your bond counsel on the issue or a memo from you acknowledging agreement would be sufficient.

Thanks!



# Metropolitan Council

Advocating regional economic, societal and environmental issues and solutions

---

April 13, 1995

Peter Sausen  
Assistant Commissioner  
Minnesota Department of Finance  
658 Cedar Street  
Saint Paul, MN 55155

Re: Use of State Bond Proceeds for Reimbursement of Regional Park Implementing Agency  
Capital Improvements

Dear Mr. Sausen:

The Metropolitan Council makes grants to regional park implementing agencies for acquisition and betterment of regional parks to serve the citizens of and visitors to the metropolitan area. The park implementing agencies are the counties of Anoka, Carver, Dakota, Ramsey, Scott, and Washington; the cities of Saint Paul and Bloomington; the city of Minneapolis' Park and Recreation Board; and the Suburban Hennepin Regional Park District.

Historically, some regional parks grants have been funded from state bond funds for expenditures made by the park agencies prior to the state issuing the bonds which fund the grants. Park projects are not eligible for regional grants until the project is included in the Council's regional parks Capital Improvement Program (CIP) as a priority for regional funding. However, the local units may spend available local funds on acquisition and betterment of the parks in the hope that the projects may, in the future, become a priority for the regional system. Once the project is identified as having value for the regional system, it is appropriate that regional funds pay for its accomplishment and inclusion in the regional system.

In some cases, the original payments by the local units were made several years prior to the issuing of bonds. There are a number of reasons why this occurs, but the primary reason is the statutory requirements for the process of regional parks planning, funding, and implementation combined with the Council's park debt limitation and the significant time lags built into the state bonding process. In some instances, the project is on-going, but was started before the bonds were sold and the grants made. In other instances a grant amount turned out to be insufficient to complete a priority project and the local unit supplemented a grant with its own funds.

Local units of government have the authority to spend their own funds on capital projects. In relation to regional park capital projects, they may spend their own funds in the hope that they will eventually receive reimbursement from the state or Council or other contributors. However, neither the state nor the Council makes any commitment to reimburse the local unit's expenditures until the project achieves regional priority, the project is included in the CIP, and a grant is awarded by the Council. This does not disallow the local unit's authority to make the expenditures. There is now a question about whether IRS regulations prohibit reimbursing these costs due to the provisions of the regulations governing reimbursement bonds.

Peter Sausen  
April 13, 1995  
Page 2

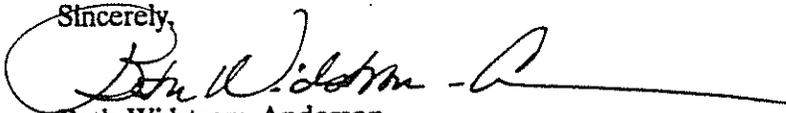
The Council believes that the IRS provisions governing reimbursement bonds apply to an issuer which reimburses itself from the bond proceeds. Thus, the regulations govern the state using state bonds to reimburse a past state fund expenditure and the Council using Council bonds to reimburse a past Council fund expenditure. It is the position of the Metropolitan Council that neither the Council nor the park implementing agencies are "issuers" of the state bonds and, therefore, the arbitrage regulations applying to issuers do not apply to the park grants from the state to the Council or from the Council to the implementing agencies.

"Issuer" is defined in IRS regulation 1.148-1 to mean the entity that actually issues the issue and, unless the context or a provision clearly requires otherwise, each conduit borrower of the issue. A definition and example of a conduit borrower is given in IRS regulation 1.150-1. The example describes a situation where the issuer invests proceeds in a loan, lease, installment sale obligation or similar obligation to another entity and the obligor uses the proceeds to carry out the governmental purpose of the issue. In these cases, the obligor is a conduit borrower. Because the state does not in any way loan the proceeds to the Council or to the implementing agencies, the Council and the implementing agencies should not be considered conduit borrowers. The Council is a grantee of the state and the local park agencies are grantees of the Council. There is no expectation that the funds will one day be repaid to the state or the Council as in a loan arrangement.

The definition for "Expenditures for grants" in IRS regulation 1.148-6 states that gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made. This implies that the key date for the issuer is the date the expenditure is made from the issuer's books and that the issuer need not look to the date the grantee expended the funds to determine the expenditure date.

I hope this sufficiently explains the circumstances in which the reimbursements occur so that you will be able to determine that the IRS reimbursement bond provisions do not cover the regional park grants to the Council and to the park agencies for park agency prior expenditures. Before 1986, the Council awarded park grants and transferred bond proceeds to the implementing agencies for future projects. Since the arbitrage restrictions were enacted, the Council has implemented the grant program based on reimbursements in large part to avoid the risk of the park implementing agencies' earning arbitrage. It would be unfortunate if the Council's efforts to comply with arbitrage restrictions resulted in a determination that the state's bonds are reimbursement bonds. The Regional Parks approval process is moving forward and meetings are scheduled in the next several weeks. Please call me at 291-6567 with your thoughts as soon as possible.

Sincerely,



Beth Widstrom-Anderson  
Controller

cc: Arne Stefferud, Park Planner/Grants Administrator

ORDER OF COMMISSIONER OF FINANCE  
RELATING TO USE AND SALE OF STATE  
BOND FINANCED PROPERTY

IT IS HEREBY ORDERED by the Commissioner of Finance of the State of Minnesota:

Section 1. Authorization; Purpose; Necessity.

1.01. Authorization. This Order is adopted pursuant to Minnesota Laws 1994, Chapter 643, Section 36, for the purpose of establishing requirements to be complied with by public officers and agencies in entering into contracts relating to the use or sale of state bond financed property.

1.02. Purpose. 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. 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. 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, questions may arise as to the legality and tax-exempt status of the bonds. Accordingly, the requirements set forth herein are to be complied with by a public officer or agency in entering into lease, management or other similar contracts relating to the use of state bond financed property pursuant to state law, and in selling state bond financed property, to ensure the legality and tax-exempt status of the bonds.

1.03. Necessity. The provisions of this Order are determined to be necessary to ensure the legality and tax-exempt status of state general obligation bonds and compliance with the act.

Section 2. Definitions. For purposes of this Order the terms defined in this Section shall have the meanings given to them in this Section.

2.01. Act. "Act" means Minnesota Laws 1994, Chapter 643, Section 36, which became effective on May 17, 1994.

2.02. Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

2.03. Commissioner. "Commissioner" means the Commissioner of Finance or his or her designated representative.

2.04. Fair Market Value. "Fair market value" means, with respect to the sale of state bond financed property, the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property, or the price bid by a purchaser under a public bid procedure after reasonable public notice.

2.05. Non-Public Party. "Non-public party" means a person or entity other than a public officer or agency.

2.06. Public Officer or Agency. "Public officer or agency" means a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or other public entity, or any officer or employee thereof. It does not include the United States or any agency or instrumentality of the United States.

2.07. State Bond Financed Property. "State bond financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds. "Acquired" and "bettered" shall have the meanings given the terms "acquisition" and "betterment", respectively, in Minnesota Statutes, Section 475.51, and shall include planning and design activities related to a specific project.

2.08. State General Obligation Bonds. "State general obligation bonds" and "state bonds" mean state general obligation bonds authorized to be issued under Article XI, Section 5, clause (a) of the Minnesota Constitution, or any bonds issued to refund those bonds.

2.09. Use Contract. "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 a non-public party.

Section 3. Application. This Order shall apply only as provided in this Section, and the provisions of Sections 4 through 6 are subject to the provisions of this Section.

3.01. In General. This Order applies to transactions involving state bond financed property, regardless of when acquired or improved, unless otherwise provided by law, or unless such application would impair the obligations of a public officer or agency to a non-public party under a contract entered into pursuant to law, which contract was in effect on May 17, 1994. The commissioner will, from time to

time, issue, revise and publish a list of transactions exempted from the provisions of the act and this Order pursuant to law.

3.02. Certain Use Contracts. If the public officer or agency having jurisdiction over or which owns state bond financed property determines that it is permanently or currently not needed for governmental purposes, and the determination is approved by the commissioner, the requirements set forth herein relating to governmental programs shall not be applicable to use contracts relating thereto.

3.03. Transactions Between Public Officers and Agencies. This Order applies to transactions between and involving only public officers or agencies which are entered into pursuant to state law, except as specifically provided in Sections 4 and 5.

#### Section 4. Requirements for Use Contracts.

4.01. Statutory Authorization. (a) Use contracts relating to state bond financed property can be entered into only where authorized by state law other than the act; the act itself does not authorize, but only regulates, such contracts. f

(b) A use contract must comply with the substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

4.02. Requirements for Non-Public Party Use Contracts. Use contracts between a public officer or agency and a non-public party are governed by the provisions of Section 4.01 and this Section.

(a) The use contract must be entered into for the express purpose of carrying out a governmental program established by law or authorized by law and established by official action of the contracting public officer or agency. The governmental program and its purpose must be set forth in the use contract.

(b) The term of a use contract relating solely to land shall be governed by the state law authorizing it. The term of a use contract relating to buildings and improvements, including all renewal terms that are solely at the option of the non-public party, shall be substantially less than the useful life of the buildings or improvements. Ordinarily a use contract term not exceeding 50% of the useful life of the property to which it relates will be considered to be for a period substantially less than the useful life of such property. A use contract may allow renewal beyond the end of the original (or any previous renewal) term, upon determination by the public officer or agency by official action that such renewal is necessary or desirable to continue to carry out a governmental program.

(c) The use contract must provide for program oversight by a public officer or agency. A use contract which requires the non-public party to provide to the contracting public officer or agency an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenues and expenses, will be considered to provide for program oversight by a public officer or agency.

(d) The use contract must allow for termination by a public officer or agency in the event of default by the non-public party, or in the event the governmental program is terminated or changed, and may provide for notice of default for a specified period which is reasonable under the circumstances prior to termination.

(e) The use contract must 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 officer or agency is authorized and agrees to pay such costs pursuant to state law. A use contract need not require the non-public party to pay to the public officer or agency any compensation for use of the state bond financed property unless required by a state law other than the act or required by the commissioner.

(f) If during any year of the term of a use contract relating to state bond financed property, state general obligation bonds issued to acquire or better such property are outstanding, a percentage of all moneys received by a public officer or agency pursuant to the use contract in excess of the amount needed and authorized to be used to pay operating costs of the state bond financed property must be paid to the commissioner by the public officer or agency and used by the commissioner to pay and redeem or defease state bonds issued to finance the property. Such percentage shall be determined by the commissioner and, absent circumstances which would indicate a different method, will be determined by dividing the total principal amount of all state bonds issued with respect to the state bond financed property by the total principal amount of all capital costs incurred with respect to such property by any public officer or agency or non-public party (including those payable from state bonds), without regard to the amount of bonds outstanding at any time.

4.03. Requirements for Public Officer or Agency Use Contracts. Use contracts between two public officers or agencies are governed by the provisions of Section 4.01 and this Section. The provisions of Section 4.02, paragraphs (a), (c), (d) and (f) shall apply to such use contracts.

4.04. Approval by Commissioner. (a) No public officer or agency shall enter into a use contract with respect to state bond financed property, or the renewal

or amendment of an existing use contract, without the prior written approval of the commissioner.

(b) Proposed use contracts, renewals and amendments and, with respect to use contracts involving a non-public party the related information described below, should be submitted to the commissioner not less than 60 days before their proposed date of execution, except that in the case of a use contract described in Section 4.05, paragraph (a), the use contract should be submitted not less than 90 days before such date, and the submission should indicate that Section 4.05 is applicable. Such related information should include, if not evident from the use contract, state law authorization; the name, address, nature, financial condition, and reason for selection of the non-public party; the initial or current program implementation plan and budget (except in cases of leases of excess property); and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change in use contract terms within a reasonable period after receipt of the proposed use contract and the related information, but failure to approve or provide comments on a proposed use contract shall not constitute approval.

4.05. Tax Considerations. (a) Except as provided in paragraph (b), if under the terms of a proposed use contract the commissioner reasonably expects to receive money pursuant to Section 4.02, paragraph (f), the public officer or agency shall, upon direction by the commissioner, take, and/or require the contracting non-public party to take, such actions and furnish such documents to the commissioner as the commissioner determines to be necessary to ensure that the interest to be paid on the state bonds issued to finance the property to which the use contract relates is exempt from federal income taxation. Such actions may include either (i) compliance with procedures intended to classify the state bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, or (ii) changing the nature and/or terms of the use contract so that it complies with Revenue Procedure 93-19; or (iii) compliance with Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

(b) The commissioner may determine that under the Code the state bonds will not be subject to federal income taxation without regard to compliance with paragraph (a), or that compliance with the requirements of paragraph (a) is not practical or economically feasible, in which event compliance with paragraph (a) may not be required. In most cases, and barring special circumstances, compliance will not be required where the total amount of state bonds authorized by law to be issued with respect to a governmental project or program is less than \$1,000,000.

Section 5. Guidelines and Procedures for Sale of Bond Financed Property.

5.01. Authorization of Sales. (a) State bond financed property can be sold or transferred to a non-public party or a public officer or agency only where authorized by state law; the act itself does not authorize, but only regulates, such transactions.

(b) A sale or transfer must comply with substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

5.02. Requirements for Sales. (a) Except as provided in paragraph (c), no public officer or agency shall sell state bond financed property unless the public officer or agency determines by official action that the property is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, the sale is made for fair market value, and the sale is approved by the commissioner.

(b)(i) If any state bond financed property which is sold was acquired or improved solely with state bond proceeds, so much of the net proceeds of sale as is necessary to pay and redeem or defease the outstanding state bonds must be paid to the commissioner, deposited in the state bond fund, and used for this purpose, and any balance of the net proceeds shall be deposited in the general fund or other state fund designated by law; and (ii) if the state bond financed property which is sold was acquired or improved partly with state bond proceeds and partly with other money, the net proceeds of sale shall be paid to the commissioner and so much thereof as is necessary to pay and redeem or defease the outstanding state bonds shall be deposited in the state bond fund and used for this purpose, and any net sale proceeds not needed for this purpose shall be divided between or among and paid to the interested public and private parties which provided money for such acquisition or betterment, in proportion to the amounts of money provided by them for such purpose, which division shall be agreed to in writing between or among all of them.

(c) State bond financed property may be transferred between public officers or agencies for a nominal consideration where authorized by state law, if the transferor public officer or agency determines by official action that the state bond financed property to be transferred is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, and the transferee public officer or agency determines by official action that the property is needed or useful for a governmental program of the transferee, the official action is filed with the commissioner, and the transferee public officer or agency acknowledges that any sale of the property by the transferee is subject to the provisions of this Order.

(d) Paragraphs (a) through (c) do not apply to transfers of control of state-owned property between state departments or agencies which are regulated by Minnesota Statutes, Section 15.16. So much of the moneys transferred to a state department or agency as a result of the transfer of control of state bond financed property as is necessary to pay and redeem or defease outstanding state bonds issued to finance the acquisition or improvement of the property, shall be transferred to the state bond fund and used for this purpose.

5.03. Approval by Commissioner. (a) No public officer or agency shall enter into a contract for the sale of state bond financed property or any amendment thereto affecting the sale price without the approval of the commissioner.

(b) Proposed sale contracts and amendments, and the related information described below, should be submitted to the commissioner not less than 60 days before their planned date of execution. Such related information should include, if not evident from the sale contract, state law authorization; the name, address and nature of the purchaser, if known; the proposed method of sale; the sales price and how it was determined; any appraisal upon which the sale price is based; and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change within a reasonable period after receipt of the proposed sale contract and the related information, but failure to approve or provide comments on a proposed sale contract shall not constitute approval.

#### Section 6. Grant and Loan Agreements; Title Records.

6.01. Grant and Loan Agreements. Every state officer or agency to which proceeds of state general obligation bonds are appropriated to fund a grant or loan to another public officer or agency shall enter into a grant or loan agreement with respect to such proceeds whereby the public officer or agency receiving the grant or loan acknowledges that use agreements relating to and sales of property acquired in whole or in part with the state bond proceeds: (a) are subject to the provisions of the act and this Order, and (b) will be used in a manner which will not cause the interest on the state bonds to be or become subject to federal income taxation, due to their classification as "private activity bonds" within the meaning of Section 141 of the Code, or as "arbitrage bonds" within the meaning of Section 148 of the Code, or for any other reason.

6.02. Title Records. Every public officer or agency which expends state general obligation bond proceeds to acquire or improve real property shall, not later than thirty (30) days after the first such expenditure or as soon thereafter as practical, cause to be recorded in the official real estate title records maintained by the county recorder for the county or counties in which the property is located, a declaration or other appropriate instrument in the form or substantially the same form attached

hereto as Exhibit 1. Upon full compliance with the provisions of this order and when appropriate, upon request, the Commissioner of Finance shall execute and deliver to the party requesting it, a written release evidencing the release of the subject property from the provisions of the act and this Order.

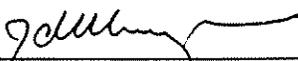
Section 7. Amendments; Publication; Effective Date.

7.01. Amendments. The Commissioner retains the right to amend this Order at any time as necessary to accomplish the purposes of the act.

7.02. Publication. The Commissioner intends to publish this Order and any amendments thereto in such manner and at such times as are likely to provide access to its contents by all affected persons, but the Order or any amendment shall be effective upon its issuance without regard to its publication.

7.03. Effective Date. This Order is effective as of its date of execution set forth below.

Executed: July 14, 1994.

  
\_\_\_\_\_  
John Gunyou,  
Commissioner of Finance

