

## Attachment: Summary of Legal Principles

### SUMMARY OF LEGAL PRINCIPLES REGARDING GIFT ACCEPTANCE, RECOGNITION AND FUNDRAISING

Prepared by the Dakota County Attorney's Office

The following is a summary of applicable law regarding authority of counties to accept and recognize gifts, receive support from non-profits of county parks and potential fundraising efforts to support certain park endeavors. Minnesota counties are entities of state creation and therefore only have those powers expressly or impliedly granted by statute. *Motokazie! Inc., v. Rice County*, 824 N.W.2d 341 (Minn. Ct. App. 2012) This limits what counties may do in relation to creating foundations, accepting gifts and potentially accepting sponsorships and/or naming rights. There are also constitutional considerations such as the first amendment and the public purpose doctrine. This memo provides an overview relating to those legal principles and constraints.

#### Acceptance of Gifts

There are a multitude of statutes that authorize gift acceptance by counties. For example. Minnesota statutes, sections 375.26 and 465.03 provide that a county may receive gifts of personal and real property for the benefit of its citizens. Other statutes permit gifts for specific purposes e.g., Minn. Stat. § 134.15 allows library board to accept gifts for public library; Minn. Stat. §398.33, subd. 4 allows the county to receive gifts for parks.<sup>1</sup>

Gifts may be accepted with or without conditions. Minn. Stat. § 375.27. If there are conditions, those should be stated in the resolution, if applicable, accepting the gifts so any restrictions are well documented. Even though not directly derived from taxpayer dollars, the public purpose doctrine applies as to how the county may spend gifts. Any expenditure of those funds must be authorized by law and for a public purpose.<sup>2</sup>

Many Minnesota parks offer individuals the opportunity to purchase a bench, trees, or other accessories to accent parks and gift them to the park. As part of those programs for an additional cost, individuals may purchase recognition plaques. If the County Board chooses to adopt such a program, policies and procedures establishing parameters for plaques such as size, font and number of characters should be adopted.

#### Fundraising, Foundations and other Nonprofits

While a county may accept gifts, it does not have authority to fundraise. A county also does not have the authority to create a non-profit such as a foundation. In fact, Minnesota law specifically prohibits a county from creating a corporation, including nonprofits, unless otherwise authorized

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<sup>1</sup> While a county may accept gifts, those included in the definition of local official should be cautious if accepting or soliciting gifts so they do not run afoul of state laws prohibiting acceptance of gifts. Minn. Stat. §10A.071.

<sup>2</sup> The Minnesota Constitution requires public funds to be expended on public purposes (See Arts. X, § 1, XI, § 2 and XII, § 1). The purposes for which a county may expend fund are determined by state law granting powers to counties.

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by law. Minn. Stat. § 465.717. Because a county lacks authority to do those things, it is unlikely it has authority to expend funds or dedicate staff time to support such fundraising endeavors.

As with any non-profit, if a foundation to support parks is created by citizens, it will run autonomously from the County. The leadership of the nonprofit will determine its own priorities. Its authority and activities will be governed by laws applying to nonprofits and its own operating rules. While the County may share its priorities with the foundation, the county does not have authority to direct and control a foundation or its priorities, except for the County's decision of whether to accept gifts and any potential conditions associated with a specific gift.

Existing nonprofits can support parks programs through their own fundraising and gift the proceeds to the County, subject to the County Board's acceptance of the gift.

### Naming Rights, Advertising and Sponsorship

Questions have arisen about naming rights and sponsorship/advertising opportunities. The authority for counties is more limited than other government entities.

When comparing counties to other government entities, it is important to analyze the various statutory framework for the different government entities. For example, the statutory cities' park statute is arguably broader than the county park statute. That statute specifically authorizes statutory cities to construct pavilions and provide musical and free entertainment to patrons. Minn. Stat. § 412.521. School districts have specific statutory authority to enter into contracts for naming rights, advertising and sponsorship. Minn. Stat. § 123.025. Cities do have some authority to sell advertising in sporting facilities. MN AG Op. 59b-11 (Dec.9, 1958), Minn. Stat. § 471.191. However there is no express broad statutory authority for counties similar to schools or even cities regarding naming rights and sponsorship, other than for the operation of an indoor ice arena. Minn. Stat. § 373.44.

### First Amendment

When contemplating any sort of gift recognition, advertising or naming program, the first amendment should be taken into consideration. The ability to regulate speech depends on what type of forum, if any, exists.

- *Traditional Public Forum.* These are places that historically have been open to public speech, debate and assembly. Most common examples are streets and parks. Any regulation of speech must be necessary to serve a compelling state interest and is narrowly drawn. Government may regulate time, place and manner of speech as long as the regulation is content neutral, narrowly tailored to serve a compelling government interest and leaves open other channels of communication.

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- *Designated Public Forum.* These are places that have not traditionally been open to public speech, debate and assembly, but have intentionally been made open by government action.
  - *Limited Public Forum.* This forum is similar to designated public forum, but in the limited public forum the topic of speech may be regulated. An example of this would be a public hearing on a specific issue.

A government entity is not obligated to retain forever after a designated forum's open nature.

- *Nonpublic Forum.* This forum allows the greatest amount of regulation. Government may regulate time, place, and manner; reserve the forum for its' intended purposes as long as the regulation on speech is reasonable and not an effort to suppress expression merely because the government entity/public official oppose the speaker's view. An example of this would be government email or lobby of government buildings.

First amendment analysis is very fact specific. For example, the US Supreme Courts found advertising on mass transit is a nonpublic forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974). In that analysis, the court noted that this venue was not one open to traditional speech such as a park, but rather the city was involved in commerce.

Also, if a county is engaging in its own speech then the first amendment does not apply. The first amendment restricts the government's ability to regulate private speech, but not its own speech.

When developing any recognition and/or advertising program, the County will want to ensure that its policies takes these principles into consideration.