

GRUNDHOEFER & LUDESCHER, P.A.

*ATTORNEYS AT LAW
515 WATER STREET SOUTH
P.O. BOX 7
NORTHFIELD, MINNESOTA 55057-0007*

*MARVIN L. GRUNDHOEFER
DAVID L. LUDESCHER
MATTHEW D. RICH
CAITLIN M. ELLIOTT*

*TELEPHONE (507) 645-4451
TOLL FREE (800) 944-2095
TELEFAX (507) 645-7233
www.northfieldlaw.com*

MELAINEY J. SCHROT, Legal Assistant

June 21, 2012

c/o Joanne Sommers
Northfield Citizen's Safety Task Force
By email at: joanne.sommers@yahoo.com

Re: *Safety Center Opinion*

Dear Ms. Sommers:

I have been asked to provide a legal opinion on the proposed financing arrangements contemplated by the Northfield City Council. Specifically, I have been advised that the Northfield City Council has indicated that it intends to use either the Northfield Housing and Redevelopment Authority (HRA) or the Northfield Economic Development Authority (EDA) to issue bonds to finance the Safety Center. The City of Northfield would then lease the building back from the HRA or EDA.

I am of the following legal opinions:

City Council Action

1. Background. Minnesota Statute § 465.71 provides that a city may lease real or personal property with an option to purchase under a lease purchase agreement. Under this arrangement, the title is retained by the seller or vendor or assigned to a third party as security for the purchase price. Such purchases are subject to statutory and charter provisions applicable to the purchase of real or personal property.

If the obligation created by the lease purchase agreement is less than \$1,000,000.00, the amount is not included in the calculation of the net debt for the purposes of calculation of debt.

A city must have the right to terminate the lease purchase agreement at the end of the any fiscal year.

2. Case Law. I could not find any cases that interpreted the statute.

3. Attorney General Opinion. I found an Attorney General's opinion that regarding the implementation of this financing period. The Attorney General's opinion provides that any agreement by the city beyond the one-year period must be submitted to the voters for a bond referendum. As such, I am of the opinion that any obligation that would be incurred for the development of the police station cannot be guaranteed by City without a bond referendum. If the City enters into a lease arrangement, the City cannot obligate itself to continue to make lease payments into the future.

Issuing entity (HRA or EDA)

My preliminary opinion is that the Housing and Redevelopment Authority cannot be the issuing agency for the building of a public facility. I have not had the opportunity to review whether or not the Economic Development Authority could do so. The rationales are similar. The reader should be aware that HRAs and EDAs are apparently engaging in this type of financing. Information from the League of Cities as well as other sources suggest that practice may be different than the letter (and spirit) of the law.

1. Background.

Housing and redevelopment authorities are established under Minnesota statute §§ 609.01 through 609.047.

2. Purpose.

Minnesota Statute § 469.001 provides that the purposes of housing and redevelopment authorities are to provide a sufficient supply of housing, develop blighted areas, perform duties according to comprehensive plans, remedy shortage of housing, and in cities of the first class, to provide housing for persons of all incomes. You will note that nothing in the purposes of the statute provides that a housing and redevelopment authority may fund this type of project.

3. Authority.

City housing and development authorities are authorized by Minnesota Statute § 469.003. It

is my understanding that Northfield has done so by the appropriate resolutions.

4. Powers.

The powers of each authority are vested in the commissioners. Minnesota Statute § 469.011.

Powers of the body are defined in Minnesota Statute § 469.012. I did not locate any provision in this statute which permitted this type of operation. The HRA is bound by the terms and conditions set forth in the statute regarding the municipal governing body. § 469.028.

When the HRA determines that a redevelopment project should be undertaken, it shall apply to the governing body of the city in which the project is located for approval. The application must be accompanied by a redevelopment plan, a statement of the method proposed for financing the project, and a written opinion of the planning agency if there is one. Before approving any redevelopment plan, the governing body shall hold a public hearing thereon after published notice in the newspaper at least once, not less than 10 days and not more than 30 days prior to the date of the hearing.

The authorities shall not proceed with the project unless the governing body finds by resolution a number of factors, including that the land is not available for redevelopment without financial aid, that the redevelopment plan will afford the maximum opportunity for redevelopment by private enterprise, and that the redevelopment plan conforms to a general plan for development of the locality as a whole.

The governing body shall, within 30 days after submission of the application, give written notice to the authority of its decision. The HRA may option to gain control of the property without prior approval of the governing body, but may not obligate itself to do so. Other provisions are contained in this statute.

Thus, even if the HRA were to undertake the project, it must meet certain specifications, including having a redevelopment plan in place governing the area. A public hearing must be held, and the City Council must approve the plan.

If the HRA were to proceed forward after this plan, it must establish a reasonable rental value for the City. § 469.032. It must place an estimated fair market value or rental value on each piece or tract of land within the area ~~which, in accordance with the plan~~. The value shall be based on the plan use.

The financing arrangements are set forth by statute. § 469.033. The Project may be financed

with federal grants, issuance of bonds, a revenue pool, a special benefit tax fund, a special taxes and operation area, or special taxes and operation area. In issuing bonds, the authority may issue the bonds as it deems fit. § 469.034. An authority may pledge the general obligation of the general jurisdiction governmental unit as additional security for the bonds payable from revenue or income of the project or authority. The authority must find that the pledged revenues will equal or exceed 110% of the principal and interest due on the bonds for each year. The obligations issued and sold must be in the manner provided in Minnesota Statute § 475. The obligations are not subject to approval by the electors. However, public hearings must be held on the issuance of the obligations by both the authority and the general jurisdiction governmental unit. The hearings must be held at least 15 days but not more than 120 days before the sale of the obligations. More technical provisions are included in the statute.

In sum, I am of the opinion that the HRA does not have the statutory authority to act as the fiscal agent in this matter. The safety center project clearly falls outside of the jurisdiction of the Housing and Redevelopment Authority as set forth in the statute. There is no direct mechanism to challenge an HRA decision to proceed forward.

~~Lastly~~, Minnesota Statute § 469.047 states that nothing in the § 469.044 through § 469.047 affects the rights of any person to bring a suit for civil damages. No bond shall be required to bring such a suit except as otherwise provided by the law.

Lastly, I am of the opinion that a private person may sue the HRA if the HRA attempts to engage in the financing of this project. Further, I am of the opinion that the City Council would be subject to the same lawsuit if it approved the financing of the project as a redevelopment project of the HRA.

Should you have any further questions, please contact me directly.

Thank you for your attention.

Sincerely,

GRUNDHOEFER & LUDESCHER, P.A.



David L. Ludescher

DLL/cme