From:	Lance R. Heisler
To:	Ben Martig; Rhonda Pownell
Cc:	Scott Oney; Greg Colby; Jon Denison; Judith Schotzko; Peter Swift; David Ludescher
Subject:	Charter Commission Opinion regarding City Council Resolution 2016-053
Date:	Monday, July 30, 2018 4:01:53 PM
Attachments:	DOC073018.pdf

To Ben Martig, Northfield City Administrator and Mayor Rhonda Pownell

At the July 26, 2018 meeting of the Northfield Charter Commission, a motion was passed directing that as Chairman of the Charger Commission I request a response from the City Council regarding the opinion letter from the Charter Commission on city council resolution 2016-053. This relates to what is known as the Big Ten project.

The Charter Commission opinion letter was transmitted to the mayor and city council by memorandum from Scott Oney, the Secretary of the Charter Commission, on July 28, 2017. A copy of Mr. Oney's transmission and the Charter Commission opinion letter is attached. To the best of my knowledge, no formal response to this opinion was received from the mayor or the council.

The Charter Commission takes the position that open communication with the mayor and city council regarding potential violations of the Charter is important and necessary to the continued health and relevance of the Charter. Accordingly, I request that the attached opinion be placed on the agenda of the city council as soon as possible for a response on the record.

Thank you.

Lance R. Heisler
Chairman, Northfield Charter Commission

MEMORANDUM

Date: July 28, 2017

To: Northfield Mayor and City Council

From: Scott Oney, Secretary, Northfield Charter Commission

Re: Opinion of the Northfield Charter Commission Regarding Resolution No. 2016-053

The Northfield Charter Commission has approved and adopted the attached opinion on Resolution No. 2016-053. It was approved at our meeting on July 27, 2017. We respectfully submit it to Mayor Pownell and members of the council.

Opinion of the Northfield Charter Commission Regarding Resolution No. 2016-053

At a meeting of the Northfield Charter Commission, members of the commission questioned whether Resolution 2016-053 and the Private Development Agreement ("Agreement") with Big Ten LLC complied with the Northfield City Charter. The commission appointed David Ludescher and Scott Oney to draft a proposed opinion of the Charter Commission for the purpose of informing the City Council.

Background

The City of Northfield has adopted a charter as permitted by Minnesota Statute 410. Section 9.1 of the charter provides in part: "The council may contribute city funds to any entity to promote the health, safety, and welfare of the city, if the gift does not have as its primary objective the benefit of a private interest."

Section 9.10 provides in part: ". . . the council may issue and sell obligations for any other municipal purpose. . . . Except in the case of obligations for which an election is not required by this Charter or by law, no such obligations shall be issued and sold without the approval of a majority of the voters voting on the question at a general or special election."

Section 8.1 provides, "All contracts entered into on behalf of the city shall comply with the provisions of the Minnesota Uniform Contracting Law, where applicable."

The Agreement (p.23) contains three specific contributions of city funds and indebtedness:

1. $250,000 for a private parking garage

2. Land valued at $267,000

3. A loan from Big Ten LLC for $987,000 at 4.5% interest

Discussion

I. The contribution of city funds for the parking garage violates the charter for two reasons:

A. The only objective of the city funds/gift of $250,000 is to benefit Big Ten LLC, a private entity, in building a parking garage.

B. The gift does not promote the health or the safety or the welfare of the city. Health, safety, and welfare are not defined. However, Section 2.2 speaks to the health, safety, morals, comfort, convenience, and welfare of the inhabitants of the city. This gift does not promote the welfare of the inhabitants. Rather, as stated, the gift is intended to fulfill an unspecified prior plan of the city. The city does not cite any direct benefit to the inhabitants.

II. The "sale" of land suffers from similar problems:

A. The gift's only objective is to benefit Big Ten LLC.

B. The gift does not promote the welfare of the inhabitants.

C. The gift has an additional barrier. It appears from the plans that the gift of land is not part of the hotel project. Thus, not only is it a gift to Big Ten LLC, but the gift is not needed for the hotel project itself.

III. The loan from Big Ten LLC violates Section 9.10 of the charter:

No obligation may be issued and sold without approval of the voters. An exception is made for obligations for which an election is not required by charter or by law. The charter makes two exceptions: Section 9.11, Tax Anticipation Certificates, and Section 9.12, Emergency Debt Certificates. Neither the resolution nor the Development Agreement specifies the authority for the city to incur almost $1 million in debt. If these are intended as tax anticipation certificates, the defects are obvious. The city does not cite to any statutory provisions that would permit this indebtedness without a vote of the majority of citizens. It is also troubling that the Council has failed to state why it needs to borrow money from Big Ten LLC or how the borrowing serves a City/municipal purpose.

Two additional concerns and comments about the loan are appropriate. First, the city has entered into a loan that requires a 4.5% interest rate. Big Ten LLC stands to gain more than $300,000 in interest income, an amount that appears to be at odds with the current going market rate. Second, if the city is in need of money to borrow, it should have put this request for indebtedness out to other potential lenders who could have provided a much lower interest rate. See below.

IV. The charter imposes a duty to comply with contracting law:

The Charter Commission is unaware of any bidding process for this hotel to be developed. If the goal as stated is redevelopent of this area, a request for proposals seems appropriate and necessary. The charter requires statutory compliance; no compliance has been shown, nor even discussed.

Enforcement of the Charter

Over the course of the last year or so, the commission has discussed to what extent its opinions should bind the Council and to what extent the Council's opinions should bind the Charter Commission.

Lance Heisler is currently preparing a proposal to the Council to address what methods the city should use to interpret and enforce the charter.

It is the opinion of the Charter Commission that the issue of interpretation, in this case, is too obvious to merit a debate. These gifts and loans violate both the letter and the spirit of the charter.

It is also the opinion of the Charter Commission that to the extent the City Council claims that it has the authority to engage in this Agreement, even though the Agreement violates the charter, it is the City Council's burden to demonstrate that it has power from a source outside of the charter.

Thus, how to enforce the charter against a noncompliant City Council is a question that may need to be answered by the voters or a court. It may be fair to say that the framers of the charter never contemplated that interpretation and enforcement would be an issue. Now that interpretation and enforcement is an issue, it is clear that if a City Council is not in compliance with the Charter, a body other than the City Council should decide the appropriate course of action.

Charter Provisions Regarding the Council's Power in Relation to the Charter

Under the charter, the City Council is not given any authority to modify or enforce the charter. A Charter Commission–initiated amendment or revision requires either all seven votes of the City Council members or approval by a majority of the voters in an election. A Council-initiated change requires a majority of the voters.

It is safe to conclude that the framers of the charter did contemplate that a reigning City Council might entertain the idea of changing the rules of governance. For that reason, it is the voters who get to decide whether Council-initiated changes to the charter should be approved. An alternate method was provided in the event that proposed changes were not initiated by the Council. In that case, charter changes could be approved only by unanimous consent of the Council.

In this particular case, the Council did not have a unanimous opinion about whether or not the charter was being interpreted correctly. The agreement failed by a six to one vote. However, even if the vote were unanimous, the charter commission and the voters should have a remedy to enforce violations.

For that reason, it is the opinion of the Charter Commission that any citizen has the ability to sue the City Council for a violation of the charter. Included in citizens eligible to sue are the members of the Charter Commission.

Statutory Provisions Regarding Charter Preemption of State Law

The authors' admittedly brief research of state law located only two statutes bearing some relevance on this matter.

First, Minnesota statute 410.19 provides that the charter commission may incorporate into a charter specific powers of the mayor and the council members. Among the powers defined in our charter, none include the ability of the mayor or Council members to interpret the charter. In addition, the statute specifically would permit the Charter Commission to incorporate language limiting the powers of the Council members to both interpret and enforce the charter and could further grant itself as the Charter Commission the authority to do so. By statute, the City Council has no such powers.

Second, Minnesota statute 410.33 provides that, if the charter is silent as to a matter that is addressed by laws for statutory cities or general law, then the city may rely on general law. The implication of this statute is clear. If the charter addresses a matter, the city is not permitted to go outside of the charter and rely on general law.

As already stated above, the charter speaks to the issues of gifts and indebtedness. Because the charter is not silent, state law does not apply and the charter must be followed.