

Metropolitan Sports Facilities Commission*

Financial Audit

For the Year Ended December 31, 1995

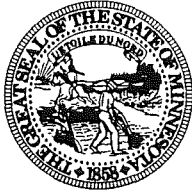
* The Metropolitan Sports Facilities Commission is a component unit of the Metropolitan Council.

April 1996

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Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

96-19



STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

CENTENNIAL BUILDING, 658 CEDAR STREET • ST. PAUL, MN 55155 • 612/296-4708 • TDD RELAY 612/297-5353

JAMES R. NOBLES, LEGISLATIVE AUDITOR

Representative Ann H. Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Henry Savelkoul, Chair
Metropolitan Sports Facilities Commission

Members of the Metropolitan Sports Facilities Commission

Mr. William Lester, Executive Director
Metropolitan Sports Facilities Commission

We have audited the Metropolitan Sports Facilities Commission for the year ended December 31, 1995. The primary objective of our audit was to issue an opinion on the financial statements of the commission for the year then ended. Our opinion thereon dated April 5, 1996, is included in the financial section of this report. The following Summary highlights the audit objectives and conclusions. We discuss our conclusions and concerns more fully in the body of this report.

We conducted our audit in accordance with generally accepted government auditing standards. As part of obtaining reasonable assurance about whether the commission's financial statements are free from material misstatement, we performed tests of the commission's compliance with certain provisions of laws, regulations, contracts, and grants. We also obtained an understanding of the commission's internal control structure. Our conclusions on internal control and compliance are included within this report as an *Auditor's Report on the Internal Control Structure* and a *Report on Compliance Based on an Audit of Financial Statements*.

This report is intended for the information of the Legislative Audit Commission and the management of the Metropolitan Sports Facilities Commission. This restriction is not intended to limit the distribution of this report, which was released as a public document on April 30, 1996.

A handwritten signature in dark ink, appearing to read "James R. Nobles".

James R. Nobles
Legislative Auditor

A handwritten signature in dark ink, appearing to read "John Asmussen".

John Asmussen, CPA
Deputy Legislative Auditor

End of Fieldwork: April 5, 1996

Report Signed On: April 24, 1996

SUMMARY

State of Minnesota

Office of the Legislative Auditor

Centennial Office Building • St. Paul, MN 55155
612/296-4708

Metropolitan Sports Facilities Commission

Financial Audit For the Year Ended December 31, 1995

Public Release Date: April 30, 1996

No. 96-19

Agency Background

The Metropolitan Sports Facilities Commission is a component unit of the Metropolitan Council. Its primary responsibility is the operation of the Hubert H. Humphrey Metrodome sports facility (the Metrodome).

Financial Statement Highlights

The financial statements show total commission assets of nearly \$95 million as of December 31, 1995. Nearly \$69 million of property and equipment comprises the largest portion of commission assets; cash and investments accounted for most of its other assets. The commission owed total liabilities of about \$40 million at December 31, 1995, with about \$38.5 million representing principal and accrued interest on its long-term debt. The financial statements show that the commission has equity of \$54.4 million: \$17 million in contributed capital, \$13 million reserved according to its bond covenants, and \$24.3 million of unreserved retained earnings.

Audit Objectives

As required by Minn. Stat. Section 473.595, Subd. 5, we have conducted an audit of the commission's financial statements for the year ended December 31, 1995. We also reviewed the internal control structure of the commission and tested the commission's compliance with significant finance-related legal provisions.

Conclusions

Based on our examination, we concluded that the commission's financial statements are fairly presented in conformity with generally accepted accounting principles. We issued an unqualified opinion on the statements for the year ended December 31, 1995.

We found three areas where the internal control structure needed improvement:

- The commission created and financed a foundation without seeking explicit legislative intent.
- The commission does not have a clear policy regarding imposing admission tax versus charging rent.
- The commission did not follow certain portions of its internal procurement policy.

We found no instances of noncompliance with finance-related legal provisions.

Contact the Financial Audit Division for additional information.

296-1235

Metropolitan Sports Facilities Commission

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Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

John Asmussen, CPA	Deputy Legislative Auditor
Jeanine Leifeld, CPA	Audit Manager
Joan Haskin, CPA	Auditor-in-Charge
Beaujon Guerin	Auditor

Exit Conference

This report was discussed with the following staff of the Metropolitan Sports Facilities Commission at the exit conference held on April 17, 1996:

William Lester	Executive Director
Roger Simonson	Finance Director
Dennis Alfton	Operations Director
Paul Thatcher	Finance, Committee Chair
Andrew Shea	Commission Counsel
Peter Cooper	Commission Counsel

Metropolitan Sports Facilities Commission

Financial Section



STATE OF MINNESOTA

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JAMES R. NOBLES, LEGISLATIVE AUDITOR

Independent Auditor's Report

Mr. Henry Savelkoul, Chair
Metropolitan Sports Facilities Commission

Members of the Metropolitan Sports Facilities Commission

Mr. William Lester, Executive Director
Metropolitan Sports Facilities Commission

We have audited the accompanying balance sheets of the Metropolitan Sports Facilities Commission, a component unit of the Metropolitan Council, as of and for the year ended December 31, 1995 and 1994, and the related statements of income, retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the commission's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Metropolitan Sports Facilities Commission as of December 31, 1995 and 1994, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

In accordance with Government Auditing Standards, we have also issued a report dated April 5, 1996, on our consideration of the Metropolitan Sports Facilities Commission's internal control structure and a report dated April 5, 1996, on its compliance with laws and regulations.

James R. Nobles
Legislative Auditor

John Asmussen, CPA
Deputy Legislative Auditor

April 5, 1996

Metropolitan Sports Facilities Commission

Balance Sheet December 31, 1995 and 1994

ASSETS	<u>1995</u>	<u>1994</u>
Unrestricted current assets: (note 5)		
Cash and cash equivalents	\$ 696,107	\$ 8,713,195
Investments	6,289,651	0
Accounts receivable	2,734,020	1,808,956
Accrued interest receivable	168,301	103,955
Prepaid insurance expense	<u>52,933</u>	<u>67,939</u>
Total unrestricted assets	<u>\$ 9,941,012</u>	<u>\$10,694,045</u>
Restricted current assets: (note 5)		
Cash and cash equivalents	\$ 0	\$ 7,092,334
Cash and cash equivalents with trustee	1,082,822	1,344,446
Investments	6,518,878	3,025,319
Investments with trustee	8,000,000	7,606,280
Prepaid roof fabric expense	22,725	22,725
Accounts receivable, with trustee	170,155	52,013
Accrued interest, with trustee	<u>182,270</u>	<u>190,688</u>
Total restricted assets	<u>\$15,976,850</u>	<u>\$19,333,805</u>
Fixed assets: (note 2)		
Metrodome stadium site	\$ 8,700,000	\$ 8,700,000
Metrodome stadium building and equipment	101,285,200	94,877,992
Less accumulated depreciation	<u>(44,427,106)</u>	<u>(41,138,587)</u>
Metrodome fixed assets, net	<u>\$65,558,094</u>	<u>\$62,439,405</u>
Met Center site	\$ 2,357,830	\$ 2,357,830
Site preparation costs (note 4)	<u>875,756</u>	<u>372,521</u>
Met Center fixed assets, net	<u>\$ 3,233,586</u>	<u>\$ 2,730,351</u>
Total fixed assets, net	<u>\$68,791,680</u>	<u>\$65,169,756</u>
TOTAL ASSETS	<u>\$94,709,542</u>	<u>\$95,197,606</u>

The accompanying notes are an integral part of the financial statements.

Metropolitan Sports Facilities Commission

Balance Sheet December 31, 1995 and 1994

LIABILITIES and EQUITY	<u>1995</u>	<u>1994</u>
Unrestricted current liabilities:		
Accounts payable	\$ 1,110,768	\$ 927,249
Accrued expenses	<u>167,420</u>	<u>154,487</u>
Total unrestricted current liabilities	<u>\$ 1,278,188</u>	<u>\$ 1,081,736</u>
Restricted current liabilities:		
Current portion long term debt	\$ 1,905,000	\$ 1,825,000
Accounts payable	519,885	82,706
Accrued interest expense	<u>531,597</u>	<u>550,987</u>
Total restricted current liabilities	<u>\$ 2,956,482</u>	<u>\$ 2,458,693</u>
Long term debt, less current portion (note 7)	<u>\$36,080,000</u>	<u>\$37,985,000</u>
Total liabilities	<u>\$40,314,670</u>	<u>\$41,525,429</u>
Equity:		
Contributed capital (note 2)	<u>\$17,069,238</u>	<u>\$17,069,238</u>
Retained earnings: (note 2)		
Reserved	\$13,020,368	\$16,875,112
Unreserved	<u>24,305,266</u>	<u>19,727,827</u>
Total retained earnings	<u>\$37,325,634</u>	<u>\$36,602,939</u>
Total equity	<u>\$54,394,872</u>	<u>\$53,672,177</u>
TOTAL LIABILITIES and EQUITY	<u>\$94,709,542</u>	<u>\$95,197,606</u>

The accompanying notes are an integral part of the financial statements.

Metropolitan Sports Facilities Commission

Statement of Revenue, Expenses, and Changes in Retained Earnings Years Ended December 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
Revenue:		
Concession revenue (note 3)	\$10,879,594	\$11,743,271
Admission tax	3,562,493	3,703,678
Stadium rents	3,120,226	2,676,481
Advertising fees	1,501,911	1,570,330
Parking fees	136,974	171,020
Other	<u>856,424</u>	<u>839,069</u>
Total revenue	<u>\$20,057,622</u>	<u>\$20,703,849</u>
Expenses:		
Concession operating costs (note 3)	\$ 5,854,566	\$ 5,833,096
Tenants share of concession receipts (note 3)	2,126,957	2,920,877
Personal services	2,337,640	2,378,667
Contractual services	2,014,890	1,969,321
Utilities	1,726,150	1,701,895
Technical consultants	568,718	507,770
Supplies, repairs and maintenance	348,390	318,263
Insurance	260,559	307,949
Professional services	232,683	177,350
Communication	70,804	71,007
Travel and meeting	60,587	60,696
Metropolitan Council services (note 1)	12,683	7,406
Miscellaneous	1,140,915	661,319
Less - expenses reimbursed by tenants	<u>(1,484,345)</u>	<u>(1,466,840)</u>
Total expenses before depreciation and amortization	<u>\$15,271,197</u>	<u>\$15,448,776</u>
Operating income before depreciation and amortization and disposal of fixed assets	\$ 4,786,425	\$ 5,255,073
Depreciation and amortization	(4,944,453)	(4,317,561)
Gain on disposal of fixed assets	<u>11,291</u>	<u>3,755</u>
Operating (loss) income	(\$146,737)	\$941,267

Metropolitan Sports Facilities Commission

Statement of Revenue, Expenses, and Changes in Retained Earnings Years Ended December 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
Non-operating income:		
Net Met Center revenues (note 4)	\$ 389,939	\$ 0
Interest earned	1,084,866	1,071,511
Interest earned, with trustee	569,220	537,814
Investments revalued or sold	74,844	0
Investments revalued or sold, with trustee	550,640	0
Investment lawsuit settlement	<u>540,000</u>	<u>0</u>
Total non-operating income	<u>\$ 3,209,509</u>	<u>\$ 1,609,325</u>
Non-operating expense:		
Met Center building and equipment disposal (note 4)	\$ 0	\$ 5,093,050
Net Met Center expenses (note 4)	0	5,549
Interest expense domed stadium revenue bonds	2,184,555	2,253,445
Target Center costs (note 9)	129,552	1,189,887
Investments revalued or sold (note 5)	25,970	2,160,622
Investments revalued or sold, with trustee	<u>0</u>	<u>550,640</u>
Total non-operating expense	<u>\$ 2,340,077</u>	<u>\$11,253,193</u>
Net income (loss)	\$ 722,695	(\$ 8,702,601)
Retained earnings, January 1	<u>36,602,939</u>	<u>45,305,540</u>
Retained earnings, December 31	<u>\$37,325,634</u>	<u>\$36,602,939</u>

The accompanying notes are an integral part of the financial statements.

Metropolitan Sports Facilities Commission

Statement of Cash Flows Years Ended December 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
Cash flows from operating activities:		
Operating (loss) income	(\$146,737)	\$941,267
Adjustments to reconcile operating income to net cash flows provided by operating activities:		
Depreciation and amortization	4,944,453	4,317,561
Gain on disposal of fixed assets	(11,291)	(3,755)
Changes in unrestricted assets and liabilities:		
Decrease (increase) in accounts receivable	(385,064)	(248,312)
Decrease (increase) in prepaid expenses	15,006	(377,610)
(Decrease) increase in accounts payable	620,697	343,950
(Decrease) increase in wages payable	<u>12,933</u>	<u>(5,934)</u>
Net cash provided by operating activities	\$ 5,049,997	\$ 4,967,167
Cash flows from investing activities:		
Gross purchases	(\$69,018,919)	(\$188,533,427)
Gross sales	59,284,586	204,370,105
Interest received	1,002,766	1,367,885
Interest received-trustee	577,638	536,111
Gross purchases with trustee	(3,965,743)	(4,828,133)
Gross sales with trustee	<u>4,122,662</u>	<u>4,708,201</u>
Net cash used for investing activities	(\$7,997,010)	\$17,620,742
Cash flows from capital and related financing activities:		
Principal paid on bonds	(\$1,825,000)	(\$1,760,000)
Interest paid on bonds	(2,203,945)	(2,269,945)
Acquisition of capital assets	(8,284,615)	(1,580,329)
Proceeds from sale of capital assets	13,200	50,303
Receipts from Met Center operations	5,879	109,592
Target Center costs	<u>(129,552)</u>	<u>(1,013,887)</u>
Net cash used for capital and related financing activities	(\$12,424,033)	(\$6,464,266)
Net (decrease) increase in cash and cash equivalents	(\$15,371,046)	\$16,123,643
Cash and cash equivalents at beginning of year	<u>17,149,975</u>	<u>1,026,332</u>
Cash and cash equivalents at end of year	<u>\$ 1,778,929</u>	<u>\$17,149,975</u>

The accompanying notes are an integral part of the financial statements.

Metropolitan Sports Facilities Commission

Notes to Financial Statements December 31, 1995 and 1994

(1) Organization and Relationship with the Metropolitan Council

Authorizing Legislation

The Metropolitan Sports Facilities Commission (the Commission) was established under Chapter 89 (the Stadium Act) of Minnesota Laws of 1977 and operates under Minnesota Statutes Chapter 473, as amended. The primary responsibility of the Commission is the operation of the Hubert H. Humphrey Metrodome sports facility (Metrodome). The Commission also owns the site of the former Metropolitan Sports Center (Met Center) (note 4).

The Stadium Act gives the Metropolitan Council (Council) the following powers and duties relating to the Commission:

Debt Issuance

- To provide funds for the acquisition or betterment of sports facilities by the Commission.
- To refund bonds authorized or assumed under the Stadium Act.
- To fund judgments entered by any court against the Commission, or against the Council in matters relating to the Commission's functions.

Budget Approval

Budgets prepared by the Commission are subject to Council review and approval. Additionally, the Council provides the Commission with other services such as review of the liquor tax/hotel-motel tax and legal counsel regarding the bond indenture.

Component Unit

The Commission is a component unit of the Council.

Foundation

The Metropolitan Sports Facilities Commission Foundation (Foundation) was incorporated as a Minnesota nonprofit corporation in May, 1995. The Foundation's purpose and activities are intended to qualify for exemption from federal income tax

Metropolitan Sports Facilities Commission

under Section 501(c)(3) of the Internal Revenue Code. Application for recognition of exemption will be timely filed. The purpose of the Foundation is to promote educational and charitable activities by providing financial and other support for athletic and other activities for underserved youth, and in so doing, promoting and enhancing student education.

The Foundation has no members. The Board of Directors of the Foundation is comprised of the sitting members and chair of the Commission. The Foundation is thus deemed a component unit of the Commission. The Foundation's net assets, changes in net assets and cash flows are not material to the Commission.

(2) Significant Accounting Policies

Basis of Accounting

The financial activities of the Commission are accounted for as an enterprise fund, and accordingly, the accompanying financial statements are presented on the accrual basis. Enterprise funds account for operations that are financed and operated in a manner similar to private business enterprises - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the governing body had decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. The Commission's accounting policies conform to generally accepted accounting principles as prescribed by the Government Accounting Standards Board. In accordance with Governmental Accounting Standard No. 20, the Commission does not apply any pronouncements of the Financial Accounting Standards Board issued after November 30, 1989.

Cash and Cash Equivalents

The Commission considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. The Commission's cash and cash equivalents consist of bank deposits and commercial paper.

Investments

Commission investments consist principally of debt securities. Investments with the trustee are valued at lower of market or par. Other investments are valued at the lower of cost or market.

In accordance with generally accepted accounting principles, investments are categorized as to credit risk. Credit risk category 1 includes investments that are insured or registered, or for which the securities are held by the Commission or its agent in the Commission's

Metropolitan Sports Facilities Commission

name (i.e., the Commission's investment custodian, Norwest Bank Minnesota). Credit risk category 2 includes uninsured and unregistered investments for which the securities are held by the broker's or dealer's trust department or agent in the Commission's name. Credit risk category 3 includes uninsured and unregistered investments for which the securities are held by the broker or dealer or by its trust department or agent but not in the Commission's name. All Commission investments are included in credit risk category 1.

Property and Equipment

Property, building improvements, and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives are as follows:

Buildings	15 to 30 years, or bond life, or the year 2009
Building Improvements	10 to 30 years, or bond life, or the year 2009
Equipment	3 to 10 years

Depreciation expense, including amounts relating to the Met Center through March 1994, is reflected in the statement of revenue and expenses.

Admission Tax

The Commission is required to impose a 10 percent admission tax on all admissions to events conducted at the Metrodome. The admission tax is intended for use by the Commission as a source of revenue to pay current operating expenses and, to the extent available, debt service.

Liquor Tax and Hotel-Motel Tax

As provided for in the Stadium Act, the Commission has entered into a Hotel-Motel and Liquor Tax agreement with the City of Minneapolis. On or before October 15 of each year, the Council is required to establish the "City Tax Requirement" for the next succeeding calendar year. The City Tax Requirement is the revenues determined by the Metropolitan Council from year to year to be required, together with revenues available to the Commission, to pay when due all debt service on bonds and all expenses of operation, administration and maintenance of the Metrodome, including reserves for debt service and expenses. Once the determination of the dollar amount of the City Tax Requirement is made, the City is required to set the rate or rates of the Liquor Tax or the Hotel-Motel Tax, or both, so that the estimated net tax proceeds from such sales taxes will equal the City Tax Requirement. There has been no City Tax Requirement since December 31, 1984.

Metropolitan Sports Facilities Commission

Contributed Capital

Upon establishment of the Commission through authorizing legislation in 1977, certain contributions were provided to the Commission to commence its operations. This contributed capital amount of \$17,069,238 classified as a component of the Commission's equity in the balance sheet, arose from the contributions of (i) various assets by the Commission's predecessor organization (the Metropolitan Sports Area Commission), (ii) the Metrodome stadium site, and (iii) proceeds from the Council related to a metropolitan on-sale liquor tax that was repealed in 1979.

Retained Earnings

The Commission maintains certain accounts in accordance with the Indenture of Trust (Indenture) between the Council and the Trustee, dated as of August 1, 1992 (note 6). Retained earnings are classified as "reserved" or "unreserved". Reserved retained earnings represent net assets held in certain funds and accounts under the Indenture where the Indenture prescribes the amount or imposes a formula for determining the amount, to be held in such fund or account. Unreserved retained earnings represent net assets held in certain funds and accounts under the Indenture where the Commission has some discretion as to the amount to be held, and net fixed assets not specifically held in funds or accounts under the Indenture. Although the Commission presents certain retained earnings as "unreserved", Minn. Stat. Sections 473.551 - 473.595 and the Indenture provide that all revenues and investments of the Commission are pledged for the payment of the Sports Facilities Revenue Refunding Bonds. The components of retained earnings, which include the accounts maintained in accordance with the Indenture, are as follows:

Retained Earnings	<u>1995</u>	<u>1994</u>
Reserved:		
Debt service account and reserve	\$ 6,828,496	\$ 6,765,427
Repair and replacement account	1,087,516	4,006,526
Concession reserve account	1,175,106	2,173,909
Operating reserve account	<u>3,929,250</u>	<u>3,929,250</u>
Total reserved retained earnings	<u>\$13,020,368</u>	<u>\$16,875,112</u>
Unreserved:		
Operating account	\$ 2,825,528	\$ 3,278,327
Capital improvement account	5,837,296	6,706,503
Fixed assets, net of long-term debt	<u>15,642,442</u>	<u>9,742,997</u>
Total unreserved retained earnings	<u>\$24,305,266</u>	<u>\$19,727,827</u>
Total retained earnings	<u>\$37,325,634</u>	<u>\$36,602,939</u>

Metropolitan Sports Facilities Commission

(3) Operation of the Metrodome

The Commission has entered into use agreements with the Minnesota Twins, Inc., the Minnesota Vikings Football Club, and the University of Minnesota. These agreements contain provisions for, among other things, rental rates, exclusive use space, payment of event-related costs and expenses, private boxes, and sharing of concession revenue. Special events are also held in the Metrodome.

The Commission owns the concessions in the Metrodome. It has a ten year agreement with a management company to operate the concessions which is effective until January 31, 1997. The management company is responsible for handling receipts and paying operating costs, including the payment of five percent of gross receipts to the Concession Reserve account as required by the concession services agreement. The current agreement allows the management company to retain five percent of net operating profits, the remainder is remitted to the Commission which distributes amounts to the major tenants based upon their respective use agreements. The following table reflects the actual operations of the concessions for the years ended 1995 and 1994.

Summary of Concession Operations Years Ended December 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
Gross Concession Revenue	\$10,879,594	\$11,743,271
Concession Operating Costs:		
Cost of goods and concessionaire's operating expenses	\$ 5,235,019	\$ 5,242,668
Concessionaire management fee	255,030	295,672
Repair and maintenance of concession equipment	<u>364,517</u>	<u>294,756</u>
Total concession operating costs	<u>\$ 5,854,566</u>	<u>\$ 5,833,096</u>
Net Operating Income	<u>\$ 5,025,028</u>	<u>\$ 5,910,175</u>
Distribution of Net Operating Income:		
Payments to tenants:		
Minnesota Twins	\$ 1,476,349	\$ 2,312,482
Minnesota Vikings	328,321	301,675
University of Minnesota	308,106	246,364
Others	<u>14,181</u>	<u>60,356</u>
Tenants share of concession net operating profits	\$ 2,126,957	\$ 2,920,877
Commission share	<u>2,898,071</u>	<u>2,989,298</u>
Total Distribution - Net Operating Profit	<u>\$ 5,025,028</u>	<u>\$ 5,910,175</u>

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(4) Met Center Property

The Met Center was used principally as a hockey venue for the Minnesota Northstars NHL hockey team through April 1993. Upon the departure of the Minnesota Northstars the Met Center hosted a reduced number of events until March 1994 when the Met Center was closed to events.

In December 1994, the Met Center building was demolished. Accordingly, the net book value of the Met Center building on the date of demolition of \$5,093,050 was written-off as other expense in the statement of revenue and expenses. Costs of demolition and other site preparation costs incurred during 1994 and 1995 have been capitalized as part of the cost of the Met Center site.

The Commission received non-operating income in 1995 consisting principally of \$375,000 through a short-term parking agreement with the Mall of America Company, as reflected in the statement of revenue and expenses.

The Met Center site historically has been carried in the balance sheet at a value of \$2,357,830, representing the Commission's cost of acquisition of and improvements to the Met Center property.

The Commission is currently proceeding with efforts to sell or lease the Met Center property. As part of these efforts, the Commission and certain of the constituent entities of the Mall of America Company jointly undertook a valuation which determined an estimated fair market value of \$28 million for the Met Center property. The Mall of America Company entities have subsequently questioned the assumptions of the valuation experts and the results of the valuation. No agreement for sale or lease of the Met Center property to the Mall of America Company or any of its constituent entities, or any other purchaser, has been concluded. Minnesota Laws 1996, Chapter 464, recently enacted by the Legislature (and signed by the Governor), reflects, among other things, the decision of the Legislature to end planning for a new airport in favor of expansion of the existing Minneapolis-St. Paul International Airport. Chapter 464 permits the Metropolitan Council to acquire the Met Center property. It also permits the Port Authority of the City of Bloomington to amend the redevelopment tax increment financing district No. 1-G to include the Met Center property, upon satisfaction of certain conditions precedent, including acquisition of the Met Center property by the Mall of America Company or an entity comprising at least one partner of the Mall of America Company or an affiliate of such a partner.

Failing successful negotiations with the Mall of America Company entities, the Commission intends to solicit offers from other qualified purchasers. Upon the eventual disposition of the Met Center property, the proceeds, net of costs of disposal, are pledged to the prepayment and purchase of the Sports Facilities Revenue Refunding Bonds (Bonds) under the Indenture (note 6).

Metropolitan Sports Facilities Commission

(5) Investments and Deposits

Investments

Investments of the Commission consisted of the following at December 31, 1995 and 1994:

<u>Investment Type</u>	<u>1995</u>		<u>1994</u>	
	<u>Carrying Amount</u>	<u>Market Value</u>	<u>Carrying Amount</u>	<u>Market Value</u>
Unrestricted investments:				
Commercial Paper	\$ 6,289,651	\$ 6,289,651	\$ 0	\$ 0
Restricted investments:				
US Government Obligation	\$ 4,456,513	\$ 4,521,733	\$ 3,025,319	\$ 3,025,319
Commercial Paper	<u>2,062,365</u>	<u>2,062,365</u>	<u>0</u>	<u>0</u>
Total Restricted Investments	\$ 6,518,878	\$ 6,584,098	\$ 3,025,319	\$ 3,025,319
Restricted investments with Trustee:				
US Government Obligation	\$ 8,000,000	\$ 8,214,360	\$ 7,606,280	\$ 7,606,280
Total All Investments	<u>\$20,808,529</u>	<u>\$21,088,109</u>	<u>\$10,631,599</u>	<u>\$10,631,599</u>

The Indenture for the Bonds relating to the Metrodome specifies that all revenues of the Commission from the Metrodome and Met Center are pledged for the payment of the Bonds. The Indenture establishes various funds and accounts, which may only be used for certain purposes as specified in the Indenture (note 6).

During the first half of 1994, the Commission experienced a decline in the value of certain of its investments resulting in the liquidation of two of those investments for an aggregate loss of \$1,750,241. The Commission determined that the major portion of the losses were attributable to investments in mutual funds which had substantial positions in securities commonly referred to as derivatives, most notably, the Piper Institutional Government Income Portfolio. These losses were substantially greater than those which occurred in the Commission's customary investments in government fixed income securities. The Commission promptly undertook a comprehensive study of its financial and investment policies and practices aided by a nationally recognized certified public accounting firm. In the course of the ensuing months, the Commission adopted a new written investment policy, selected SIT Fixed Income Advisors as its independent investment advisor to manage Commission investments on a discretionary basis, subject to the adopted Commission investment policy, and engaged an investment custodian, Norwest Bank Minnesota. The Commission also solicited confirmations from broker-dealers that Commission investments were in compliance with governing Minnesota Statutes and the provisions of the Indenture. Two broker-dealers acknowledged their failure to comply with the legal requirements imposed upon them by law and the requirements of the Commission. The two investments were liquidated and did not result in any material net loss. With respect to one additional broker-dealer, a settlement was reached which

Metropolitan Sports Facilities Commission

resulted in a cash payment of \$20,000 in settlement of the Commission's claims and the waiver of liquidation fees.

As publicly reported, a cash settlement was proposed by the Piper Institutional Government Income Portfolio for parties, such as the Commission, which suffered losses in that investment. The Commission elected to accept the class action settlement offer which was approved by the United States District Court in December, 1995. Under the terms of the settlement, the Commission anticipates that it will receive over the next several years payments totaling approximately \$540,000 (plus 8% interest), or reimbursement of the Commission's investment losses of about 39 cents on the dollar. In connection with the settlement of this matter, the Commission recorded a receivable in the balance sheet of \$540,000 at December 31, 1995.

Investments classified as "restricted assets" are those investments held in certain funds and accounts under the Indenture where the Indenture prescribes the amount, or imposes a formula for determining the amount, required to be held in such fund or account. Investments classified as "unrestricted assets" designate those investments held in certain funds and accounts under the Indenture where the Commission has some discretion as to the amount to be held. Pursuant to Minn. Stat. Section 473.551 - 473.595 and the Indenture, all revenues and investments of the Commission are pledged for the payment of the Bonds.

Deposits

At December 31, 1995, the Commission's bank balance for cash was \$333,770 and the book balance was \$64,579. Minn. Stat. Section 118.01 requires that deposits by municipalities, including public commissions, be secured by depository insurance or a combination of depository insurance and collateral security. The statute further requires the total collateral computed at its fair market value shall be at least 10 percent more than the amount on deposit in excess of any insured portion at the close of the business day. During 1995, the combined insured amount and collateral fell short of the legal requirement on 1 day. The uncollateralized balance on that day was \$182,763.

(6) Special Funds Under the Sports Facilities Revenue Bond Trust Indenture

Special funds and accounts, which may only be used for certain specified purposes, are established under the Indenture of Trust between the Council, the Commission, and the Trustee covering the issuance of the Sports Facilities Revenue Refunding Bonds.

The following special funds and accounts therein are established by the Indenture:

- (a) Tax Receipts Fund, to be held and administered as a trust fund by the Trustee.

Metropolitan Sports Facilities Commission

- (b) Bond Fund, to be held and administered as a trust fund by the Trustee, with the following accounts therein:
 - (i) Debt Service Account;
 - (ii) Prepayment and Purchase Account; and
 - (iii) Debt Service Reserve Account.
- (c) Revenue Fund, to be held and administered as a trust fund by the Commission, with the following accounts therein:
 - (i) Revenue Receipts Account;
 - (ii) Operating Account;
 - (iii) Operating Reserve Account;
 - (iv) Repair and Replacement Account;
 - (v) Capital Improvement Account;
 - (vi) Concession Account; and
 - (vii) Subordinated Debt Account.
- (d) Rebate Fund, to be held and administered by the Trustee.
- (e) Property Insurance and Award Fund, to be held and administered as a trust fund by the Trustee.

These funds and accounts, where applicable, have been reflected on the Commission's financial statements as a component of retained earnings. Inactive accounts and clearing accounts are not reflected in the financial statements.

(7) Long -Term Debt

On August 27, 1992, the Commission issued \$42,865,000 in Sports Facilities Revenue Refunding Bonds with an average interest rate of 5.7009 percent to refund \$42,865,000 of outstanding Series 1979 bonds with an average interest rate of 7.4861 percent. The net proceeds were used to call and redeem the Series 1979 outstanding bonds.

The annual requirements to amortize all outstanding Sports Facilities Revenue Refunding Bonds as of December 31, 1995, including interest payments, are as follows:

Metropolitan Sports Facilities Commission

<u>Year Ending December 31</u>	<u>Principal Sports Facilities Revenue Refunding Bonds</u>	<u>Interest Sports Facilities Revenue Refunding Bonds</u>	<u>Total Debt Service Requirement</u>
1996	\$1,905,000	\$2,126,386	\$4,031,386
1997	1,990,000	2,040,660	4,030,660
1998	2,085,000	1,944,144	4,029,144
1999	2,190,000	1,838,852	4,028,852
2000	2,305,000	1,726,066	4,031,066
2001	2,425,000	1,603,900	4,028,900
2002	2,560,000	1,472,950	4,032,950
2003	2,700,000	1,332,150	4,032,150
2004	2,850,000	1,180,950	4,030,950
2005	3,010,000	1,018,500	4,028,500
2006	3,195,000	837,900	4,032,900
2007	3,385,000	646,200	4,031,200
2008	3,585,000	443,100	4,028,100
2009	<u>3,800,000</u>	<u>228,000</u>	<u>4,028,000</u>
	<u>\$37,985,000</u>	<u>\$18,439,758</u>	<u>\$56,424,758</u>

Under the Indenture of Trust, the Sports Facilities Revenue Refunding Bonds bear interest ranging from 3.1 percent to 6.0 percent annually with interest payable semiannually on April 1 and October 1 of each year.

(8) Pension Plan

Plan description

All employees are covered by the Minnesota State Retirement System (MSRS) multiple employer cost sharing pension plan except for those employees previously covered by the Public Employees Retirement Association (PERA) who have elected to remain covered under that plan. The payroll for employees covered by MSRS plans for the year ended December 31 was \$1,391,530 for 1995 and \$1,434,376 for 1994. The payroll for employees covered by PERA plans for the year ended December 31 was \$97,700 for 1995 and \$98,637 for 1994. Total Commission payroll was \$1,911,071 for 1995 and \$1,916,858 for 1994.

MSRS provides retirement benefits as well as disability benefits to members, and benefits to survivors upon death of eligible members. Benefits are established by state statute and vest after three years of credited service. The defined retirement benefits are based on a member's average salary from the five highest successive years of covered salary, age, and length of service at termination of service.

Metropolitan Sports Facilities Commission

Two methods are used to compute benefits, the Step formula and the Level formula. Under the Step formula the annual accrual is 1 percent of average salary for the first 10 years of service and 1.5 percent for each remaining year. Under the Level formula, the annual accrual amount is 1.5 percent for each year of service. For MSRS members whose annuity is calculated with the Step formula, a full annuity is available when age plus years of service equals 90.

There are two types of annuities available to members upon retirement. The Single-life annuity is a lifetime annuity that ceases on the death of a member. The Optional annuity provides joint and survivor annuity options that reduce monthly annuity payments because the annuity is payable over joint lives. Members may also leave their contributions in the fund upon termination of public service in order to qualify for a deferred annuity at retirement age. Refunds of contributions are available to members who leave public service, but before retirement benefits begin.

Contributions Required and Contributions Made

Minnesota Statutes, Chapter 352 sets the rate for employee and employer contributions. Contributions are made to the fund by employees and the Commission based on a percentage of gross salary. The actuarially determined required contribution rates were 9.15 percent for 1995 and 8.93 percent for 1994. The current rates are 4.07 percent for employees and 4.20 percent for the Commission for a total of 8.27 percent. The total employer contributions for the Commission were \$70,274 for 1995 and \$71,728 for 1994. The total employee contributions were \$64,803 for 1995 and \$66,482 for 1994.

Funding Status and Progress

The "pension benefit obligation" is a standardized disclosure measure of the present value of pension benefits, adjusted for the effects of projected salary increases and step-rate benefits, estimated to be payable in the future as a result of employee service to date. The measure, which is the actuarial present value of credited projected benefits, is intended to help users assess MSRS's funding status on an ongoing basis, assess progress made in accumulating sufficient assets to pay benefits when due, and make comparisons among Minnesota Retirement Systems and among employers.

The pension benefit obligations of the MSRS for the State Employees Plan as of July 1, 1995 and 1994 are as shown below:

	(in thousands)	
	1995	1994
Total pension benefit obligations	\$3,339,193	\$3,376,267
Net assets available for benefits (cost basis)	\$3,401,803	\$3,147,066
Unfunded (assets in excess of pension benefit obligations)	(\$62,610)	\$229,201

Metropolitan Sports Facilities Commission

Ten-Year Historical Trend Information

Ten year historical trend information is presented in MSRS's Component Unit Financial Report for the year ended June 30, 1995. This information is useful in assessing the pension plans accumulation of sufficient assets to pay pension benefits as they become due.

Related Party Investments

As of December 31, 1995, and for the fiscal year then ended, MSRS held no securities issued by the Commission or other related parties.

Deferred Compensation

All Commission full-time employees are eligible to participate in a Deferred Compensation Plan offered through Aetna Insurance Company. Deferred compensation is a plan that allows employees to place a portion of their earnings into a tax deferred investment program for long term savings to supplement retirement and other benefits.

(9) Target Center

In 1994, the Minnesota Legislature authorized the acquisition by the Commission of the Target Center basketball and hockey arena located in Minneapolis. The authorizing law contemplated that, if the Commission's negotiations to acquire the Target Center were successful, the Council would issue tax-exempt revenue bonds to finance the acquisition. The bonds would be repaid, in large part, by a ticket tax and surcharge.

In late December, 1994, the Internal Revenue Service issued proposed rules that were interpreted by the Council's bond counsel as rendering taxable any revenue bonds that depended on a ticket tax for repayment. As a result, acquisition of the Target Center by the Commission was not considered to be economically feasible. Until the time of this decision, the Commission had incurred expenses for legal, accounting, physical inspection and other consultant services related to the Commission's determination of whether to acquire the Target Center.

The City of Minneapolis and Minneapolis Community Development Agency (MCDA) then commenced public acquisition of the arena by the MCDA, financed, in part, by the issuance of City of Minneapolis general obligation bonds. There was no provision for reimbursement of Commission expenses in the acquisition by the MCDA, nor is there any requirement or authority in the authorizing law for reimbursement of such costs and expenses of the Commission in the case where, as ultimately resulted, the Commission did first determine to pursue negotiations to acquire the Target Center but for reasons contemplated in the legislation declined to make a final decision in favor of such acquisition.

Metropolitan Sports Facilities Commission

Commission costs incurred to pursue acquisition of the Target Center were made as necessary to carry out the legislative direction to the Commission. However, because it is unlikely that such costs incurred by the Commission to pursue acquisition of the Target Center will ultimately be reimbursed by the City of Minneapolis, the MCDA or the State of Minnesota, the costs incurred of \$1,189,887 in 1994 and \$129,552 in 1995 have been included as nonoperating expenses in the statement of revenue and expenses.

The Commission was authorized under the Target Center legislation to enter into an agreement for use of the Target Center by the Minnesota Amateur Sports Commission (MASC). In accordance with the law, the Commission and MASC concluded a use agreement, substantially all of the Commission's rights and interests in which, including any payments received by the Commission from MASC with respect to its use of the Target Center, have been assigned to the MCDA in connection with the MCDA's acquisition of the Target Center.

(10) Metrodome Capital Improvement Planning

The Metrodome was constructed from 1979 to 1982 using '70s technology. After 14 years and over 43,700,000 attendees, the Metrodome is in need of significant improvements. The Commission has approved the first phases of a \$42 million phased program of renovation and improvements. These initial phases will cost about \$13 million. To date, the improvements completed or currently being carried out include the Metrodome Plaza (\$4.6 million), a new sound system (\$2.1 million), artificial turf replacement (\$2.5 million) and various other projects (approximately \$500,000).

The Commission's capital planning is intended to a significant extent to attempt to accommodate, consistent with the Commission's public responsibilities and prudent financial management, the needs of the Metrodome's major users, the Minnesota Twins baseball club, Minnesota Vikings football team, and the University of Minnesota football team. In particular, the Minnesota Twins and the Minnesota Vikings have expressed to the Commission a need to enhance revenue produced by their playing of home games at the Metrodome. In July, 1995, the Advisory Task Force on Professional Sports (Task Force) was established by the Commission to study the overall impact of professional sports in Minnesota and make recommendations on how to retain and attract professional sports teams. The Task Force received extensive testimony and information which resulted in findings of fact and recommendations. The Task Force found, among other things, that: (1) the financial information presented by the Minnesota Twins portrayed extended losses, which, if continued, would be sufficient to trigger the termination clause of the Twins Use Agreement effective following the 1998 season; and (2) that the needs expressed by the Minnesota Twins and the Minnesota Vikings to increase revenues within the Metrodome and to reconfigure the capacity of the Metrodome are conflicting, and likely cannot be performed to the satisfaction of each team. Among the recommendations of the Task Force were that the public sector should take such actions as are reasonably necessary and prudent to retain the professional sports currently played in Minnesota, and

Metropolitan Sports Facilities Commission

that the retention of the Minnesota Twins will require either additional revenue streams in the Metrodome, or, if that is not feasible, the construction of a new baseball stadium. The Task Force recommendations also suggest that the Metrodome will need major capital improvements to provide for the needs of the Minnesota Vikings, and the Minnesota Vikings will need additional revenue streams from the Metrodome.

The Commission's capital planning has not taken into account any net sale proceeds from the Met Center property. The Task Force also recommended that further research should be pursued to develop all options for private resources, whether applied to the Metrodome or to a new stadium.

Metropolitan Sports Facilities Commission

Other Auditor Reports

Metropolitan Sports Facilities Commission

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STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

CENTENNIAL BUILDING, 658 CEDAR STREET • ST. PAUL, MN 55155 • 612/296-4708 • TDD RELAY 612/297-5353

JAMES R. NOBLES, LEGISLATIVE AUDITOR

Auditor's Report on the Internal Control Structure

Mr. Henry Savelkoul, Chair
Metropolitan Sports Facilities Commission

Members of the Metropolitan Sports Facilities Commission

Mr. William Lester, Executive Director
Metropolitan Sports Facilities Commission

We have audited the financial statements of the Metropolitan Sports Facilities Commission as of and for the year ended December 31, 1995, and have issued our report thereon dated April 5, 1996.

We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

The management of the Metropolitan Sports Facilities Commission is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the financial statements of the Metropolitan Sports Facilities Commission for the year ended December 31, 1995, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

Mr. Henry Savelkoul, Chair
Members of the Metropolitan Sports Facilities Commission
Mr. William Lester, Executive Director
Page 2

We noted matters discussed in findings 1 through 3 involving the internal control structure and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the commission's ability to record, process, summarize, and report financial data consistent with assertions of management in the financial statements.

A material weakness is a condition in which the design or operation of one or more of the internal control structure elements does not reduce, to a relatively low level, the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

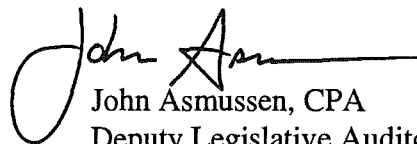
Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above. However, we do not believe that the reportable conditions described above are material weaknesses.

We also noted other matters involving the internal control structure and its operation that we have reported orally to the management of the Metropolitan Sports Facilities Commission at an exit conference held on April 17, 1996.

This report is intended for the information of the Metropolitan Sports Facilities Commission management and the Legislative Audit Commission. However, this report is a matter of public record, and its distribution is not limited.



James R. Nobles
Legislative Auditor



John Asmussen, CPA
Deputy Legislative Auditor

April 5, 1996



STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

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JAMES R. NOBLES, LEGISLATIVE AUDITOR

Report on Compliance Based on an Audit of Financial Statements

Mr. Henry Savelkoul, Chair
Metropolitan Sports Facilities Commission

Members of the Metropolitan Sports Facilities Commission

Mr. William Lester, Executive Director
Metropolitan Sports Facilities Commission

We have audited the financial statements of Metropolitan Sports Facilities Commission as of and for the year ended December 31, 1995, and have issued our report thereon dated April 5, 1996.

We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to the Metropolitan Sports Facilities Commission is the responsibility of the commission's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the commission's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards*.

This report is intended for the information of the Metropolitan Sports Facilities Commission management and the Legislative Audit Commission. However, this report is a matter of public record, and its distribution is not limited.

A handwritten signature in dark ink, appearing to read "James R. Nobles".

James R. Nobles
Legislative Auditor

A handwritten signature in dark ink, appearing to read "John Asmussen".

John Asmussen, CPA
Deputy Legislative Auditor

April 5, 1996

Metropolitan Sports Facilities Commission

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Current Findings and Recommendations

1. The commission created and financed a foundation to support youth athletic activities without seeking explicit legislative authority.

We question whether the Legislature intended the commission to have the authority to establish a legally separate, non-profit foundation to support athletic and other activities for underserved youth. We are also concerned that the commission has the potential to broaden its powers through the use of the foundation.

In recent years, the commission has come under increasing pressure to help support inner city youth programs. At its October 1994 meeting, the commission discussed supporting these programs "for nurturing young fans" and "for the preservation of the commission's fan base." On April 19, 1995, the commission authorized its legal counsel "to prepare and file the necessary documents establishing a foundation for the purpose of raising funds for the St. Paul and Minneapolis School Districts." On May 10, 1995, two lawyers from the law firm which represents the commission filed the Articles of Incorporation for the Metropolitan Sports Facilities Commission Foundation. According to its Articles of Incorporation, the purpose of the foundation is to:

engage in, advance and promote educational and charitable activities in the public interest by providing financial and other support for athletic and other activities for underserved youth and in so doing, promoting and enhancing student education.

Foundation funding through December 31, 1995, came from three sources. According to commission records, the foundation received \$1,917 from eight "wishing wells" located throughout the concourse of the Metrodome. The foundation also received \$100,537 from the sale of commemorative pieces of the Metrodome's prior AstroTurf, which the commission replaced in 1995. Finally, the commission gave the foundation a \$75,000 grant during 1995. As reported in the notes to the commission's financial statements, the foundation is a component unit of the commission. However, since the financial activity of the foundation was not material during fiscal year 1995, the foundation's financial activity is not included within the commission's financial statements for the year ended December 31, 1995.

The foundation's board of directors currently consists of the seven commission members. The foundation bylaws state:

Each person who is the appointed chair and an appointed member of the Metropolitan Sports Facilities Commission shall be a director of the Corporation (unless the person has declined to so serve, in writing, delivered to the Secretary of the Corporation) and shall serve as a director for so long as and only for so long as she or he is a member or the chair of the commission.

Metropolitan Sports Facilities Commission

The commission has provided substantial financial and administrative support to the foundation. In September 1995, the commission passed a resolution granting the foundation \$75,000 each year for 1995 and 1996. The commission also paid start-up costs of \$40,305 for the foundation from May through September 1995 and charged those expenses to the commission's marketing budget. From September through December 1995, the commission incurred additional expenses of \$105,821 on behalf of the foundation, but recorded those payments as a receivable from the foundation on December 31, 1995. The foundation has since repaid the commission. In addition, the commission accounting staff currently processes all of the financial transactions of the foundation and keeps the foundation's official financial records.

The commission's enabling act does not expressly contain language authorizing the commission to establish and finance this foundation. However, in an opinion dated April 17, 1996, the commission's legal counsel concluded that:

It is our view that the actions of the Commission, as supported by the determinations of the Commission set forth in the Resolution, in authorizing and appropriating the grants to the Foundation are authorized by law and are not inconsistent with the [commission's bond] Indenture. In expressing our opinion, we are stating our judgment, that if the actions of the Commission were challenged in the Minnesota courts, it is more likely than not that the courts would sustain and uphold the actions of the Commission. Our opinion is subject to the analysis stated herein, the facts as presented herein and the state of the law as of the date hereof.

The complete text of the commission's legal counsel opinion is included as Attachment 1 to this report. We remain concerned, however, that there is no evidence that the Legislature did, in fact, contemplate that the commission would create a non-profit foundation to support youth athletic activities when it assigned the commission its broad powers.

We are also concerned that the commission could use the foundation to exercise powers or participate in activities beyond those authorized by the Legislature. Furthermore, the foundation may not be subject to many of the same requirements, such as the open meeting law, as the commission. Therefore, it is important for the Legislature to consider whether the foundation is an appropriate extension of the commission's authority.

Recommendations

- *The commission should seek explicit legal authority for providing financial and administrative support to the foundation.*
- *The commission must clearly establish the extent to which the foundation, using commission contributions, can become involved in activities that extend beyond the commission's legal authority.*

Metropolitan Sports Facilities Commission

2. The commission did not charge admission tax on an event during 1995.

The commission has not clearly defined when to charge admission tax to users of the Metrodome. Part of the commission's philosophy is to use the Metrodome as much as possible and for a variety of events. The commission executes use agreements with many private organizations for the use of the Metrodome. The commission continually competes with other facilities for many individual events. As a result, market conditions often establish the financial terms the commission negotiates with users.

The commission differentiates two types of activities and charges for use of the Metrodome. Certain users pay the admission tax of ten percent of gross ticket receipts, in addition to rent and expenses. Other users pay rent plus expenses but do not have to pay admission tax. The commission has pricing policies for each of these categories. Although we realize that the admission tax may not apply to some events, the commission should clearly define when it will charge the admission tax to users.

Minn. Stat. Section 473.595, Subd. 1, generally requires the commission to impose a ten percent admission tax "for the privilege of admission to activities in the Metrodome." Pursuant to Subd. 1, the admission tax is not discretionary, except in the case of a superbowl. Because of this, the commission should assess the admission tax as part of the financial terms of any user organization that charges an admission fee to events within the Metrodome.

We found one example of a lack of consistency in how the commission structures the financial terms of its event agreements. In July 1995, the Promise Keepers held a men's religious conference in the Metrodome. Even though the Promise Keepers sold "wrist bands" which allowed participants access to activities within the Metrodome, the commission did not impose the admission tax on the receipts from this event. Rather, the commission charged the organization a rental fee and retained all profits from concessions sold during the events. Although the event was economically profitable for the commission, it appears in this case that the commission should have charged admissions tax. In fact, the commission has reversed its decision for the 1996 Promise Keepers event and is imposing the admissions tax for the upcoming event.

Recommendation

- *The commission needs to develop an explicit written policy regarding to what events the admission tax applies.*

3. PRIOR FINDING NOT RESOLVED: The commission did not properly follow certain portions of its internal procurement policy.

We identified four instances involving two employees where purchase orders were not prepared and approved in advance. This practice does not comply with the commission procurement policies. The employees' supervisors and the executive director are not approving and authorizing these purchases in advance. To avoid the risk of unauthorized purchases of goods and services, employees should adhere to purchasing policy provisions.

Recommendation

- *The commission should enforce its internal procurement policy.*

Metropolitan Sports Facilities Commission

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METROPOLITAN SPORTS FACILITIES COMMISSION
900 South 5th Street
Minneapolis, Minnesota 55415

April 24, 1996

James R. Nobles, Legislative Auditor
John Asmussen, CPA, Deputy Legislative Auditor
First Floor, Centennial Building
658 Cedar Street
St. Paul, MN 55155

Gentlemen:

Please accept this letter as a formal response to your financial and compliance audit of the Metropolitan Sports Facilities Commission (Commission) for the year ended December 31, 1995. The Commission is pleased that you have issued an unqualified opinion on the Metropolitan Sports Facilities Commission's financial statements for the year in question, and that your audit disclosed no instances of noncompliance with laws, regulations, contracts or grants applicable to the Commission.

In the section labeled "Current Findings and Recommendations", you discuss three matters involving the Commission's internal control structure:

1. The commission created and financed a foundation to support youth athletic activities without seeking explicit legislative authority.

During the course of the audit, the Legislative Auditor's staff raised the issue of the authority of the Commission to establish the Metropolitan Sports Facilities Commission Foundation (Foundation) to support athletic and other activities for underserved youth. In response to this concern, the Commission's legal counsel has provided a favorable opinion, a copy of which is included as Attachment 1 to your report.

We understand that the Legislative Auditor has not reached a legal conclusion contrary to the opinion of the Commission's legal counsel, but believes it is incumbent on the Legislative Auditor, in accordance with its mandate as established by the Legislative Audit Commission, to bring the matter to the attention of the Legislature. On that point we have no disagreement and we always welcome the opportunity to confer with the Legislature on subjects of their concern.

You also state that the Commission has provided "substantial financial and administrative support" to the Foundation, and further state your concern that the Commission could use the Foundation "to exercise powers or participate in activities beyond those authorized by the Legislature". As currently structured, the Foundation is a component unit of the Commission, as noted in footnote 1 of the financial statements, but the financial activities of

the Foundation in 1995 were not material to the Commission's financial statements and we understand you concur with that conclusion. Moreover, the administrative support provided by the Commission to the Foundation is de minimis.

It does not appear that the Legislative Auditor has found any basis for asserting that activities of the Foundation to date have been a vehicle for exercise of powers or activities on the part of the Commission beyond those authorized by the Legislature. Rather, your discussion suggests that this may be a potential concern in the future. As it has in the past, the Commission intends to remain fully cognizant of its proper scope of authority and powers in carrying out all of its activities, including those relating to the Foundation.

Finally, on the substantive issue: in the experienced and educated business opinion of the Commission, a positive, tangible and definable relationship exists between the marketing of the Metrodome and the Foundation's proposed aid to underserved youth athletics and other extracurricular activities. While addressing but part of this issue, this proposition is incontrovertible: youth who have the opportunity to be active now in baseball, football and the band, develop an abiding interest and affection in those adventures. They do and will in the future buy tickets to see the Twins, to attend concerts and to watch the Vikings (and, the youth and the community will benefit by their interest and active participation).

2. The commission did not charge admission tax on an event during 1995.

The Commission is required under Minnesota law to impose the 10% admission tax "for the privilege of admission to activities in the Metrodome," but as you point out, the admission tax does not necessarily apply to certain activities, such as conferences or meetings and the like, where the sponsoring organization does not charge an admission fee as a condition of attendance.

The Commission does have, as you acknowledge, policies for the two categories of activities, those where the user organization imposes a fee for admission to the event, and those where the user organization does not. However, you found one example, the 1995 Promise Keepers religious conference, which suggested that the Commission should further integrate its written policies regarding how activities are to be classified, i.e., to which events the admission tax applies. The Commission intends to address this issue appropriately in 1996.

3. **PRIOR FINDING NOT RESOLVED:** The commission did not properly follow certain portions of its internal procurement policy.

In your finding you note that you identified four instances, involving two employees, where purchase orders were not prepared and approved in advance. As you have noted previously, we have made significant improvement in this area after it was called to our attention. It is the nature of our business that among the thousands of individual items the Commission must routinely purchase each year is an item which, rarely but of necessity, is purchased without first completing the purchase order process with its appropriate authorizations. We intend to vigorously pursue further compliance with our procurement policy goals.

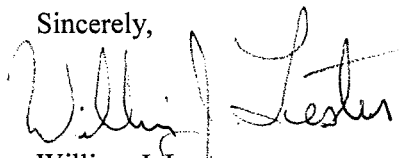
As part of our response, I would like to call your attention to the unique mission of the Commission. The Metrodome, which is operated by the Commission, must by statute be self-supporting. Through aggressive marketing and careful management of our resources, we have remained free of any public tax

since 1984. The Commission is a public body which must compete in the private marketplace to ensure our continued financial stability. The presence of the Minnesota Twins, Minnesota Vikings and University of Minnesota Gophers football team are crucial to our success.

Further, the Commission must continue to pursue other major athletic and other events for the Metrodome. Such events include the 2001 NCAA Final Four Basketball Tournament, 2000 Alcoholics Anonymous World Conference, as well as other events. The benefits which accrue to the community and the state through such events are substantial. Any review of the legitimacy and reasonableness of Commission activities should reflect this mission.

Finally, I would like to compliment you and your staff for the professional manner and thoroughness with which the audit was conducted. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Lester". The signature is fluid and cursive, with the first name "William" and last name "Lester" clearly distinguishable.

William J. Lester
Executive Director

MCGRANN SHEA FRANZEN CARNIVAL STRAUGHN & LAMB, CHARTERED

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April 17, 1996

Henry J. Savelkoul, Chairman
Metropolitan Sports Facilities Commission
Hubert H. Humphrey Metrodome
900 South Fifth Street
Minneapolis, Minnesota 55415

William J. Lester, Executive Director
Metropolitan Sports Facilities Commission
Hubert H. Humphrey Metrodome
900 South Fifth Street
Minneapolis, Minnesota 55415

Re: Metropolitan Sports Facilities Commission Foundation
Our File No. 60,045-187

Gentlemen:

In the course of its audit of the financial statements of the Metropolitan Sports Facilities Commission (the "Commission"), the Office of the Legislative Auditor (the "Auditor") inquired whether the Commission's grants to the Metropolitan Sports Facilities Commission Foundation (the "Foundation"), as described herein and other Commission expenditures and administrative support, were within the statutory authority of the Commission and consistent with the Indenture of Trust dated August 1, 1992 (the "Indenture"), entered into with respect to the Sports Facilities (Hubert H. Humphrey Metrodome) Revenue Refunding Bonds, Series 1992 (the "Bonds"). As you requested, this letter responds to the questions of the Auditor and provides our opinion in that regard. Further, we address here certain ancillary issues related to the Foundation which have been raised by the Auditor.

FACTS

In May 1995, the Foundation was formed as a Minnesota nonprofit corporation formed under Minnesota Statutes Chapter 317A, exempt from federal income tax as a Section 501(c)(3) charitable organization. As stated in the Foundation's Articles of Incorporation, the Foundation's purpose is to engage exclusively in, advance and promote educational and charitable activities in the public interest by providing financial and other support for athletic and other activities for

underserved youth. This purpose responds to the publicly acknowledged fact, that, because of school budgetary limitations, extracurricular activities of community youth have been severely curtailed.

As provided in the Articles of Incorporation of the Foundation, the board of directors of the Foundation is composed of the chair and members of the Commission in office from time to time, unless, in writing, any of such persons declines to so serve.

Resolution 95-13 was adopted by the Commission on September 20, 1995, authorizing the grant to the Foundation of \$75,000 from the Commission's marketing budget in each of the calendar years 1995 and 1996 specifically for the Foundation's purposes of supporting athletics and other activities for underserved youth (the "Resolution")¹.

In the Resolution, the Commission described its view of the legal and factual circumstances upon which its actions were based, made detailed findings of fact and set forth in considerable detail the nexus between the grants to the Foundation and the statutorily envisioned purposes and activities of the Commission. In view of the significance of the Resolution, an extensive summary of the Commission's determinations as made in the Resolution follows:

- A. The Commission's introductory recitals state:
1. The primary focus of the Commission is, of course, the ownership, operation, maintenance and improvement of the Metrodome;
 2. However, the Metrodome, itself, has been acknowledged by the legislature as serving a variety of public purposes, by promoting the contemplated major league and university sports and in serving broader public purposes;
 3. The attraction of fans and customers to the Metrodome to attend the sports and other activities held there is dependent, in part, upon the continuing development of interest and participation in athletic and other activities held at the Metrodome;
 4. The Commission's goal of promoting fan development activities in the long term requires financial commitment and public-private partnerships;

¹ As early as October 1994, as noted by the Auditor, the Commission discussed supporting such programs "for nurturing young fans" and "for the preservation of the Commission's fan base." Also, as noted by the Auditor, on April 19, 1995, the Commission directed counsel to incorporate the Foundation whose purposes were also to serve such programs. Since we view the direct expenditures of the Commission and its administrative support of the Foundation in the same light as the grants authorized by the Resolution, we do not separately address those matters.

5. The Commission has historically fostered and facilitated youth athletics, educational and cultural activities at the Metrodome encouraging the interest of youthful participants and their fans in the Metrodome and Metrodome events by their use of and attendance at a major league facility;
6. Certain of the proposed activities of the Foundation will directly promote fan interest in the Metrodome and in the prime tenants of the Metrodome, for example, inter alia, the sale and marketing of Metrodome astroturf (used, notably, in the 1987 and 1991 World Series);

B. The Commission made these findings of fact:

1. Fan development activities are integral to the success of the prime tenants of the Metrodome and to the other cultural and educational activities conducted at the Metrodome, thus insuring to the successful operation of the Metrodome;
2. Reasonable expenditures to develop and increase early development of a strong fan base will achieve the public purposes contemplated in and consistent with the Commission's statutory mandate;
3. To strengthen that interest and develop that fan base, it is reasonable and necessary to devise opportunities for youngsters of the community to develop their skills in athletic and other extracurricular activities, thus developing potential fans and attendees at Metrodome events; and
4. The purpose, goals and proposed activities of the Foundation are uniquely well suited to the goals and purposes described in the resolution (and, in the sense of the favored public-private partnerships) will permit the Foundation to raise additional funds from the private community to further promote these goals, purposes and activities.

ISSUES

The threshold issue is the authority of the Commission to appropriate and make grants from its marketing budget to the Foundation as provided in the Resolution to carry out the statutory purposes of the Commission and, secondarily, whether the action of the Commission is consistent with the Indenture.

STATUTORY AND CASE LAW

The Commission's enabling law is set forth in Minnesota Statutes §§ 473.551 through 473.599 (hereafter, the "enabling law" or "enabling act").

In addition to the specific powers granted by the legislature, the Commission has all powers necessary or convenient to discharge the duties imposed upon it by law, including but not limited to those specified in the Commission's enabling law. Minnesota Statutes § 473.556, subd. 1.

In its operation of the Metrodome, the Commission is granted broad discretion in permitting the use of the Metrodome, setting charges for its use and establishing the terms for the use and availability of its properties to all persons for "purposes that will provide athletic, educational, cultural, commercial or other entertainment, instruction or activity for the citizens of the metropolitan area." Minnesota Statutes § 473.556, subd. 12.

The Legislature intended and contemplated that the Commission would market and maximize its revenues from the Metrodome so that its revenues will be sufficient to meet costs of operation, maintenance and debt service without the imposition of the special Minneapolis sales tax. Minnesota Statutes §§ 473.552, subd. 2 and 437.595, subd 2.

In establishing the Commission, the legislature found that, among other things, the Commission's ownership and operation of the Metrodome contributes in part to the metropolitan area's need for sports facilities and promotes the economic and social interests of the metropolitan area, the state, and the public. Minnesota Statutes § 473.552.

In a number of cases, the Minnesota Supreme Court has addressed the broad public purposes and activities of the Commission.

The Court has recognized "the important part that professional sports plays in our social life" in sustaining the public purpose of the funds expended for the Metrodome. Lifteau v. Metropolitan Sports Facilities Commission, 270 N.W.2d 749, 754-755 (Minn. 1978). The Court has also recognized that the Metrodome was built primarily for entertainment and recreation purposes and provides direct and indirect economic benefits to the community. Decisions on how to finance the Stadium, were "economic and political decisions to be made by legislative bodies, not the courts." Id. at 755.

"In today's world, for better or worse, professional sports are not so much a leisurely diversion, but an industry." Metropolitan Sports Facilities Commission v. County of Hennepin, 478 N.W.2d 487, 490 (Minn. 1991) (sustaining the tax exempt status of Twins' and Vikings' exclusive use space within the Metrodome as contracted for by the Commission). "The Commission is a special public corporation formed to develop and operate a unique public enterprise." Id. The Court noted, in sustaining the tax exemption, that the determinations and arrangements made by the legislature and the Commission were in effect, appropriate responses

when "confronted with a substantial public project requiring complex financing arrangements and the cooperation and participation of private parties." Id. The Court concluded that, having found a rational basis for those actions, it was not necessary to show less "burdensome means to solve an economic problem." Id.

The Court has construed the legislative grant of authority to the Commission, as "a broad grant of power" in sustaining the Commission's decision to contract for exclusive advertising rights, citing the "all powers" clause of the legislation noted above. Hubbard Broadcasting v. Commission, 381 N.W.2d 842 at 847 (Minn. 1986). The Court noted that the absence of specific authority to sell or lease advertising was irrelevant because it was "contemplated by the legislature when it enumerated these broad powers" and, further, because there was no statutory prohibition of that Commission activity. Id.

The Court's analyses in these cases demonstrate substantial deference to the economic and social judgments reflected in the legislature's determinations as set forth in the Commission's enabling act, and in the Commission's own legislative determinations in conducting its unique activities.

This judicial deference is not unique to the Court's consideration of the Commission.

The Court has frequently been required to visit the constitutional mandate addressing the expenditure of public funds for public purposes, as in the Lifteau case. On numerous occasions, the Court has held that with initial responsibility for determining what is a public purpose rests with the legislature and with the governing bodies of municipal corporations and that their findings with respect thereto are entitled to great weight. City of Pipestone v. Madsen, 178 N.W.2d 594, 599 (Minn. 1970). Because courts believe that the legislature intended wide discretion to be vested in a governing body, they pay great deference to the initial legislative determination that a particular project serves a public purpose. R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331 at 337 (Minn. 1978). Courts also presume that public officials are properly performing their duties when making their decisions, and the governing body, in implementing the powers delegated to it by the legislature, is also vested with broad discretion in determining whether particular projects will serve a public purpose. Id. at 338. Therefore, while such decisions are reviewable, they can only be set aside if it is established that the governing body's action is manifestly arbitrary and capricious because the project primarily serves a private interest. Id.

In considering the validity of other actions of municipal corporations, similar deference is evidenced by the courts. While the determinations of a governing body may be examined by the courts, the standard for judicial reversal of those determinations is exceptionally high. "[O]rdinances as well as statutes are presumed to be valid and are not to be set aside by the courts unless their invalidity is clear." State v. Taubert, 148 N.W. 281 at 282 (Minn. 1914); quoted with approval in Lyons v. City of Minneapolis, 63 N.W.2d 585 at 588 (Minn. 1954) and St. Paul v. Kekedakis, 199 N.W.2d 151 at 153 (Minn. 1972). Even when the Supreme Court might think that the arguments against the policy, expedience, wisdom and propriety of an

ordinance outweigh those in favor of it, it is the duty of the courts to sustain the ordinance if there is any reasonable basis for it. Anderson v. City of St. Paul, 32 N.W.2d 538 at 548 (Minn. 1948) (this case, in hindsight, is an extraordinary example of judicial deference in view of then prevailing social and economic factors). Language similar to that used in Anderson is used by the Court in Village of Medford v. Wilson, 230 N.W. 2d 458 at 460 (Minn. 1975). A council's estimate of the general welfare should be followed unless it is plainly erroneous. City of Duluth v. Cerveney, 16 N.W.2d 779 at 783 (Minn. 1944). "The courts should declare an ordinance void only when its unreasonableness is so clear, manifest and undoubted as to amount to a mere arbitrary exercise of legislative power. State v. Clark, 56 N.W.2d 667 at 673 and cases cited therein. See also 13A Dunnell Minn. Digest 2d, Municipal Corporations, § 4.04.

PROVISIONS OF THE INDENTURE

Under the Indenture, revenues of the Commission from the Metrodome (and Met Center) are pledged to the payment of the Bonds. The Indenture establishes various funds and accounts, the monies in which may be applied only for certain purposes as specified in the Indenture.

Included as part of the Revenue Fund under the Indenture is, among other accounts, the Operating Account, from which the Commission pays its Operating Expenses. The Commission's grants to the Foundation were treated as part of the Commission's marketing budget, and paid from the Operating Account as an Operating Expense.

For purposes of the Indenture, "Operating Expenses" are defined in relevant part as follows:

[A]ll ordinary and necessary expenses incurred by the Commission for operation, administration, maintenance and repair or ordinary replacement of the [Metrodome and Met Center] or any part thereof which under generally accepted accounting principles constitute current expense items and do not constitute capital expenditures. . . .

Indenture, Section 1-1.

Pursuant to Section 6-4(2)(B) of the Indenture, the Commission is to transfer each month-

(i) to the Operating Account, the amount estimated (according to the budget of the Commission for the current Fiscal Year, as approved by the [Council]) to be required to pay Operating Expenses during the next succeeding month

The Commission is required by the Indenture to faithfully perform all covenants, undertakings, stipulations and provisions of the Commission contained in the Indenture and in the Minneapolis Tax Agreement. Indenture, Section 5-1. The Minneapolis Tax Agreement is

that certain agreement, dated as of July 31, 1979, among the Council, the Commission and the City of Minneapolis (the "City"), under which the City has agreed to impose a liquor tax and hospitality tax as necessary to support the Bonds and operation of the Metrodome. Minn. Stat. § 473.592, subd. 1. Pursuant to both the Minneapolis Tax Agreement and the Commission's enabling law, the Commission has covenanted that it will, to the maximum extent possible, impose rates, rentals and other charges in the operation of the Metrodome which will make the Metrodome self-supporting, so that the liquor tax and the hospitality tax will be at the lowest possible rate.

The Indenture further imposes on the Commission the obligation to -

operate the [Metrodome and Met Center] . . . in accordance with the provisions of the Act and in an efficient and economical manner, consistent with good business and operating practices in order to produce so far as possible the amounts needed for prompt and full payment of all Operating Expenses and the principal of, premium, if any, and interest on the Bonds

Indenture, Section 5-2 (emphasis added).

ANALYSIS

The unique role and purpose of the Commission and the Metrodome in promoting and supporting economic and social goals of the State is well supported in the enabling law and decisions of the courts. The Commission grants to the Foundation are consistent with those principles.

Ultimately, of course, the question is one of authority and of the reasonableness of the Commission in taking these actions.

There can be no doubt that the marketing of the Metrodome and the promotion of Metrodome event attendance is well within the powers of the Commission. Generally, greater attendance means increased revenues and it is the duty of the Commission to consider and adopt all prudent and reasonable measures necessary and appropriate to increase Commission revenues so as to assure the financial self-support of the Commission without the Minneapolis tax.

The Commission, in its Resolution, has acknowledged the necessity to implement long term goals in the development of an active and sustaining interest in athletic and other activities of the type carried on at the Metrodome. The Commission has found a proximate relationship between participation in youth extracurricular activities and the promotion of fan attendance at the Metrodome. That attendance may well be increased by the number of youth who, upon attaining economic self-sufficiency, will themselves be attending Metrodome events. It may also be even more immediate as the parents of youths involved in such activities are motivated by

their child's interest and participation to take the family to a game, a concert or any one of a great number of activities where youth extracurricular endeavors match and parallel and Metrodome events.

While the grants may support public charitable acts, most importantly, as determined by the Commission, they also support and promote the marketing of the Metrodome.

The Commission may also reasonably conclude that such expenditures are required to enhance the public's favorable perception, and thereby the economic performance of the Metrodome as a recreational and entertainment venue in the face of intense competition, both locally, with the Minneapolis Convention Center, the St. Paul Civic Center and Target Center, as well as nationally, for revenue generating events.

The Commission at the time of the adoption of the Resolution was also aware of the proposed activities of the Foundation, many of which related specifically to the Metrodome and prime tenant promotions as are cited in the Resolution.

It is appropriate to consider, as well, whether the grants to the Foundation are a reasonable method to achieve the long and short term promotion and enhancement of Metrodome revenues.

In this regard, the Commission has found that its grants would provide a start up source of funds which would permit additional fundraising and promotional activities which would ultimately result from the financial support for the intended activity. The public-private partnership was found to be an effective method to multiply the benefit of the grants themselves.

Further, the Foundation was found by the Commission to be uniquely well suited to conduct the intended activities. The governing board of the Foundation is composed of the members of the Commission as prescribed by the Foundation's Articles of Incorporation. In this manner, the individuals serving both the Commission and the Foundation are able to monitor and assure the intended focus of the Foundation.

The courts have acknowledged the broad powers of the Commission in performing its statutory duties. Hubbard Broadcasting, supra. The courts have deferred to the legislature and to the implementing acts of the Commission in structuring the Metrodome's complex financing scheme and the interrelationship of public and private purposes and activities. Metropolitan Sports Facilities Commission v. Hennepin County, supra. The courts have deferred to the Commission in its determinations as to appropriate methods in creating unique advertising arrangements with private third parties. Hubbard Broadcasting, supra.

The ultimate issue is whether, if challenged, the Commission's actions would be approved by the courts. That analysis, whether based solely on cases involving the Commission or, more generally, on cases involving other public corporations, such as municipalities, involves but one major consideration: Whether in view of the statutory authority of the Commission, the

Commission's actions constitute a rational exercise of its judgment. The exercise of authority need not be the best suited, nor the most expedient or desirable. It must simply be rationally related to its statutory purposes and authority.

The foregoing analysis, based on the Commission's findings of facts, establishes the rational nexus between the Commission's grants to the Foundation and its clearly established authority to market and promote the Metrodome and Metrodome events and, more particularly, the appropriateness of the Foundation as the grant recipient.

Our view with respect to the statutory authority of the Commission's actions leads, per force, to our conclusion with respect to the Indenture. While that conclusion need not always be the case, it cannot be subject to significant doubt when based on activities related to the promotion and marketing of the Metrodome. Nonetheless, some additional comments with respect to the Indenture may be in order.

As noted earlier, the Indenture establishes a standard of consistency with "good business and operating practices." "Good business and operating practices" certainly may include expenditures for promotion and marketing, so as to bolster receipts of admission taxes and rates and rentals from user activities in the Metrodome. The Commission's findings, as analyzed above, support the nexus between the expenditures and Commission revenues. It is our view that this nexus and the reasonableness of the Commission's actions are sufficient to meet the practices standard of the Indenture.

Indeed, the Indenture specifically provides that if revenues do not exceed operating expenses for two consecutive fiscal years, upon written request of the City the Commission must retain an independent management consultant to review the Commission's activities and affairs, its operation of Metrodome, and the Commission's sources of income and schedules of rents and charges. Indenture, Section 5-12. We would think it well within the reasonable discretion of the Commission to take appropriate action, including prudent expenditures for promotion and marketing of the Metrodome, to assure that this scenario is never confronted.

The Commission's annual budget historically has included amounts to be expended for marketing and promotion of the Metrodome, which have been paid from the Operating Account as Operating Expenses. We would suggest that Metrodome promotional and marketing expenses, incurred for the purpose of increasing the number and profitability of events and attendance at the Metrodome, clearly are a reasonable and necessary component of the Commission's operating expenses, in view of the statutory obligations of the Commission and the financial covenants of Commission under the Indenture and have been acknowledged as such by the Council's approval of the Commission's budgets.

Thus, we do not think that use of Commission funds to further the appropriately defined activities of the Foundation should be viewed as inconsistent with the provisions of the Indenture.

CONCLUSION

It is our view that the actions of the Commission, as supported by the determinations of the Commission set forth in the Resolution, in authorizing and appropriating the grants to the Foundation are authorized by law and are not inconsistent with the Indenture. In expressing our opinion, we are stating our judgment, that if the actions of the Commission were challenged in the Minnesota courts, it is more likely than not that the courts would sustain and uphold the actions of the Commission.

Our opinion is subject to the analysis stated herein, the facts as presented herein and the state of the law as of the date hereof.

ANCILLARY ISSUES

The Auditor has also questioned whether (1) the Commission has the authority to establish an "independent nonprofit foundation" and (2) whether the Foundation, using Commission contributions, can become involved in activities that extend beyond the Commission's legal authority. We address certain aspects of those issues here.

1. Authority of the Commission to Establish a Foundation

The question, as posed by the Auditor, concerns the establishment of an "independent" Foundation. At present, as provided in the Articles, the board of directors and the members of the Commission are identical. The Foundation is treated in the Commission's financial statements as a component unit of the Commission under standards promulgated by the Government Accounting Standards Board. Therefore, by the use of the term "independent", we assume the Auditor assumes that a change may, in the future, be made in the composition of the board of directors. Of course, by amendment to the Articles of Incorporation such a change may be accomplished, but whether that change may occur is, at this date, speculative and we do not now opine on that subject.

The authority of the Commission to found the Foundation, as presently governed, is based upon the existence and interrelationship of two statutory provisions in the Commission's Act.²

The first of those provisions is the "all powers" provision of the enabling act as construed by the courts and discussed above.

² It is arguable that the incorporation of the Foundation by counsel acting without compensation does not constitute the Commission's action. We believe, however, for purposes of this letter, the issue is better addressed directly.

The second provision authorizes the Commission to accept gifts from governmental and other persons, to enter into agreements with respect thereto and to use the gifts in accordance with the terms of the grant or agreement. Minnesota Statutes § 473.556, subd. 9.

The conjunction of these provisions forms the basis of the Commission's authority to establish the Foundation. We are unable to conclude that any express or implied limitation exists in the law which would preclude the Commission from directly and internally undertaking fundraising efforts for Commission authorized activities or from doing so by creating a separate legal entity, such as the Foundation, to conduct such activities.

Further, we note that the provisions of Minnesota Statutes, Chapter 317A (pursuant to which the Foundation was formed) prohibits private inurement or the payment of remuneration, directly or indirectly, to members of a Minnesota nonprofit corporation. However, that prohibition is not applicable, inter alia, to agencies of state or local government which serve as members. Minnesota Statutes § 317A.011, subd 6. The clear sense of the legislature encompasses and contemplates, even if indirectly, the prospect of governmental entities' active participation and governance of Minnesota nonprofit corporations.

2. Activities of the Foundation Beyond Commission Authority

This issue, as posed by the Auditor, as we take it, assumes that the Foundation may embark on substantive, material programs unrelated to the particular limitation currently contained in the Foundation's Articles of Incorporation and beyond the scope discussed above in our analysis of the Commission's grants to the Foundation. Again, since we are unaware of any such facts now present, we do not opine on the subject.

However, we do refer your attention once again to the provisions of the enabling act with respect to designated grants and agreements controlling the application of such grants. Minnesota Statutes § 473.556, subd. 9. That section contains no explicit limitation with respect to the purposes of or application of such gifts except as may be provided by the terms of the grant or agreement. If such a grant were to be conditioned upon application to purposes or activities beyond Commission authority, we believe the Foundation, by reason of this provision, may be authorized to accept such grants and apply them as directed. And, under such circumstances, we doubt that such gifts to the Foundation may be deemed "revenues" of the Commission. However, we decline to opine on this issue in the absence of specific, existing facts and circumstances.

Very truly yours,

MCGRANN SHEA FRANZEN CARNIVAL
STRAUGHN & LAMB CHARTERED

