



LEONARD S. RICE
(612) 343-7971
FAX (612) 340-2643
rice.len@dorsey.com

March 17, 2010

The Honorable Lori Swanson
Attorney General
102 State Capitol
St. Paul, MN 55155

Re: Proposed Fiber Optic Infrastructure Grant Program

Dear Attorney General Swanson:

You have requested that we review a proposed fiber optic infrastructure grant program (the "Program," copy attached) to determine if general obligation bonds of the State of Minnesota may be issued therefor.

General obligation bonds are "public debt" within the meaning of Article XI, Section 4 of the Constitution and consequently are subject to the limitations of Article XI, Section 5, which requires in part that public debt be issued:

"to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes...."

It appears to us that the Program authorizes capital expenditures that include (i) the acquisition or betterment of public land, (ii) the betterment of public buildings, or (iii) the acquisition of public improvements. With respect to the public improvement analysis, the decision of the Minnesota Supreme Court in Lietz v. Northern States Power Company, 718 N.W.2d 865 (Minn. 2006) is helpful. While individual projects would need to be analyzed for compliance with applicable constitutional provisions, the Program's purposes generally comport with the constitutional requirements for the use of general obligation bond proceeds.

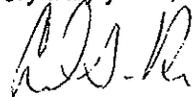
Article XI, Section 5 of the Constitution does not generally authorize the expenditure of bond proceeds for the acquisition of equipment, and the Program's definition of "fiber optic infrastructure" specifically excludes computers, telephones and cameras. To the extent individual projects include freestanding equipment that is not incorporated into the betterment of public land, buildings or improvements, such equipment should not be acquired with the proceeds of general obligation bonds.

Finally, we note that the Program's definition of "school district" includes charter schools. Charter schools are not state agencies or political subdivisions to which general obligation bond proceeds may be appropriated or loaned under Article XI, Section 5 of the Constitution.

The Honorable Lori Swanson
March 17, 2010
Page 2

I hope this is responsive to your needs. Please contact me with any questions.

Very truly yours,



Leonard S. Rice

LSR/pmh
Enclosure
cc: Kathy Kardell (w/encl)

1.1 A bill for an act
1.2 relating to capital investment; appropriating money for a public schools fiber
1.3 optic infrastructure grant program; establishing the grant program; authorizing
1.4 the sale and issuance of state bonds; proposing coding for new law in Minnesota
1.5 Statutes, chapter 126C.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [126C.75] FIBER OPTIC INFRASTRUCTURE GRANT PROGRAM.

1.8 Subdivision 1. Creation of accounts. Two public school fiber optic infrastructure
1.9 accounts are created, one in the general fund and one in the bond proceeds fund. Money
1.10 in these accounts may only be used for capital costs of fiber optic infrastructure for
1.11 eligible public school projects.

1.12 Subd. 2. Program purpose. The fiber optic infrastructure grant program is
1.13 established to provide the capital investment needed to bridge the gap between the federal
1.14 Schools and Libraries Program of the Universal Service Fund, commonly known as
1.15 "E-Rate," and the total cost of fiber optic infrastructure that will better public school
1.16 buildings to support 21st century learning capacity at each district school.

1.17 Subd. 3. General eligibility; state general obligation bond funds. Article XI,
1.18 section 5, clause (a), of the Constitution requires that state general obligation bonds be
1.19 issued to finance only the acquisition or betterment of public land, buildings, and other
1.20 public improvements of a capital nature. The legislature has determined that many
1.21 fiber optic infrastructure projects will constitute betterments and capital improvements
1.22 within the meaning of the Constitution and capital expenditures under generally accepted
1.23 accounting principles, and will be financed more efficiently and economically under this
1.24 section than by direct appropriations for specific projects.

1.25 Subd. 4. Definitions. For the purposes of this section:

2.1 (1) "School district" means an independent, common, special, or intermediate school
2.2 district or a charter school.

2.3 (2) "Fiber optic infrastructure" means the land, buildings, fiber optic connection
2.4 cable and end point hardware, including routers and switches. It does not include
2.5 computers, telephones, or cameras.

2.6 Subd. 5. Grant program established. The commissioner shall make grants to
2.7 school districts for fiber optic infrastructure projects.

2.8 Subd. 6. Eligible costs for grants. (a) "Eligible cost" for use of state general
2.9 obligation bond fund money means the acquisition of land or permanent easements;
2.10 preparation of land on which the fiber optic infrastructure will be located, including
2.11 demolition of structures and remediation of any hazardous conditions on the land; and
2.12 predesign, design, acquisition, and installation of publicly owned fiber optic infrastructure
2.13 in this state with a useful life of at least ten years that supports public school district
2.14 facility operation, administration, and instruction; the unpaid principal on debt issued by
2.15 the school district for a fiber optic infrastructure project, or the amount necessary to pay in
2.16 a lump sum all lease payments due if payment results in the school district owning the fiber
2.17 optic infrastructure. All uses under this paragraph must be for publicly owned property.

2.18 (b) "Eligible cost" for use of any other source of money will be determined by
2.19 limitations imposed on that source, but may include the costs of leases and reimbursement
2.20 of the costs of purchase and installation of fiber optic infrastructure.

2.21 Subd. 7. Application. The commissioner must develop forms and procedures for
2.22 soliciting and reviewing applications for grants under this section. At a minimum, a school
2.23 district must include the following information in its application:

2.24 (1) a resolution adopted by its school board certifying that the money required to be
2.25 supplied by the school district to complete the project is available and committed;

2.26 (2) a detailed and specific description of the project and an estimate, along with
2.27 necessary supporting evidence, of the total costs for the project;

2.28 (3) an assessment of the need for and benefits of the project;

2.29 (4) a timeline indicating the major milestones of the project and their anticipated
2.30 completion dates; and

2.31 (5) any additional information or material the commissioner prescribes.

2.32 Subd. 8. Criteria for grants. The commissioner must develop the criteria that will
2.33 be used to award grants if grant applications exceed available resources.

2.34 Subd. 9. Cancellation of grant. If, five years after execution of a grant agreement,
2.35 the commissioner determines that the grantee has not proceeded in a timely manner with
2.36 implementation of the project funded, the commissioner must cancel the grant and the

3.1 grantee must repay to the commissioner all grant money paid to the grantee. Section
3.2 16A.642 applies to any appropriations made to the commissioner under this section that
3.3 have not been awarded to grantees.

3.4 Subd. 10. Report. By January 15 of each year, the commissioner must submit to
3.5 the commissioner of management and budget and the chairs of the legislative committees
3.6 or divisions with jurisdiction over education policy, education finance, and capital
3.7 investment, a list of the projects that have been funded with money under this program
3.8 during the preceding calendar year, as well as a list of those priority projects for which state
3.9 bond proceeds fund appropriations will be sought during that year's legislative session.

3.10 EFFECTIVE DATE. This section is effective the day following final enactment.

3.11 Sec. 2. PUBLIC SCHOOLS; FIBER OPTIC INFRASTRUCTURE GRANTS.

3.12 Subdivision 1. Appropriation. \$80,000,000 is appropriated from the bond proceeds
3.13 fund to the commissioner of education for grants to public school districts under new
3.14 Minnesota Statutes, section 126C.75.

3.15 Subd. 2. Bond sale. To provide the money appropriated in this section from the
3.16 bond proceeds fund, the commissioner of management and budget shall sell and issue
3.17 bonds of the state in an amount up to \$80,000,000 in the manner, upon the terms, and with
3.18 the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the
3.19 Minnesota Constitution, article XI, sections 4 to 7.

3.20 EFFECTIVE DATE. This section is effective the day following final enactment.