

KANDIYOHI COUNTY AND CITY OF WILLMAR ECONOMIC DEVELOPMENT COMMISSION (EDC)
JOINT POWERS BOARD OF COMMISSIONERS MEETING
MINUTES
April 25, 2013
EDC Office, Willmar, MN

Present: Steve Ahmann, Denis Anderson, Jim Butterfield, Ron Christianson, Harlan Madsen and Dean Shuck

Staff: Steven Renquist, Executive Director, Jean Spaulding, Assistant Director and Leroy Petersen, Agriculture and Renewable Energy Development Specialist

Secretarial: Nancy Birkeland, Legal & Administrative Assistants, Inc. (LAA)

Chairperson Denis Anderson called the meeting to order at approximately 11:39 a.m. and welcomed new board member Steve Ahmann.

MINUTES—

IT WAS MOVED BY Dean Shuck, SECONDED BY Ron Christianson, to approve the minutes of the January 24, 2013 meeting of the Kandiyohi County and City of Willmar Economic Development Commission Joint Powers Board of Commissioners as e-mailed. Denis Anderson, Jim Butterfield, Ron Christianson and Dean Shuck voted in favor by roll call. Steve Ahmann abstained.

TREASURER'S REPORT— Steve Renquist presented the financial reports for periods ending January 31, February 28 and March 31, 2013. Renquist reviewed with the board the most recent Balance Sheet.

[Harlan Madsen joined the meeting.]

Renquist reviewed with the board the most recent Profit & Loss Budget Performance Report and informed the board the EDC may need to use reserves this year. Renquist anticipates an overall five percent increase for the 2014 budget.

IT WAS MOVED BY Harlan Madsen, SECONDED BY Ron Christianson, to accept the Kandiyohi County and City of Willmar Economic Development Commission financial reports for periods ending January 31, February 28 and March 31, 2013, subject to audit. All present voted in favor by roll call.

UNFINISHED BUSINESS

Agriculture and Renewable Energy Development Specialist. Renquist introduced Leroy Petersen, the EDC's new Agriculture and Renewable Energy Development Specialist. Petersen informed the board of his education and employment background. The board welcomed Petersen.

There was no other unfinished business.

NEW BUSINESS

Willmar Lakes Area Chamber of Commerce membership. Renquist presented an invoice for membership in the Willmar Lakes Area Chamber of Commerce (WLACC) at a cost of \$450 per year. Renquist stated it is the staff's recommendation for the EDC to be a member of WLACC. Opinions by Flaherty Hood and attorney Dean Anderson as to membership by the EDC were included for information (see attached). Following discussion,

IT WAS MOVED BY Harlan Madsen, SECONDED BY Dean Shuck, to approve membership by the Kandiyohi County and City of Willmar Economic Development Commission in the Willmar Lakes Area Chamber of Commerce at a cost of \$450. Denis Anderson, Jim Butterfield, Harlan Madsen and Dean Shuck voted in favor by roll call. Steve Ahmann and Ron Christianson voted against. MOTION CARRIED.

Policies and Procedures Manual. Jean Spaulding informed the board minor revisions were made to the Policies and Procedures Manual and an Employee Manual was created to comply with the conditions of a federal grant the EDC received. The Policies and Procedures Manual was approved by the Joint Operations Board on February 14, 2013.

IT WAS MOVED BY Ron Christianson, SECONDED BY Jim Butterfield, to ratify the revised Kandiyohi County and City of Willmar Economic Development Commission's Policies and Procedures Manual as presented. All present voted in favor by roll call.

Other locations for board meetings. A suggestion was made by Harlan Madsen for the Joint Powers Board to hold one or two meetings each year outside of Willmar. It was the board's consensus to try holding board meetings outside of Willmar to increase public participation.

REPORTS

Economic development activities. Renquist provided information on the EDC's work to keep Molenaar LLC in Kandiyohi County, including a \$5 million financing package to assist a local buyer. The business was subsequently sold to Fey Promotional Products Group and will be moved to Edgerton, Minnesota. The state has been informed that the building is for sale. Spaulding informed the board the EDC's ability to provide gap financing is minimal at \$50,000 and the maximum loan amount should be addressed in order for the EDC to adequately assist local companies in staying in Kandiyohi County. At the board's request, **Renquist** will provide information on the economic impact of this sale. Renquist provided information on three tax abatements he will present to the Kandiyohi County Board of Commissioners on May 7—one for Sondrol Service Station in Sunburg, Sunburg Trading Post and Torgerson Properties of Willmar. Spaulding has been asked to attend an Atwater city meeting to inform them of the tax abatement process. Christianson recommended cities approve tax abatement policies before abatements are approved. Spaulding informed the board that the robotics competition, which was supported by the EDC, was successfully held. The New London-Spicer robotics team is moving on to the state competition. The EDC is working with MinnWest Technology Campus and local realtors on marketing local properties. The EDC has also become a member of the Minnesota Commercial Association of Realtors to promote local properties. Spaulding continues to work with the Willmar Area Multicultural Business Center (WAM-BC) and recently met with legislators who are interest in using WAM-BC as a model for other communities. Renquist distributed an article from the April 2013 *Farm Progress* magazine announcing Ted Huisinga and Ray Norling were recipients of the 2013 Siehl Prize in Agriculture (see attached).

IT WAS MOVED BY Dean Shuck, SECONDED BY Ron Christianson, to adopt a resolution acknowledging Ted Huisinga and Ray Norling as recipients of the 2013 Siehl Prize in Agriculture. All present voted in favor by roll call.


Renquist will prepare the resolution. Ahmann informed the board that residents of New Guinea will be moving into the area soon—it is unknown how this may affect the local economy and business climate.

ADJOURNMENT—There being no further business,


IT WAS MOVED BY Ron Christianson, SECONDED BY Harlan Madsen, to adjourn the meeting.

The meeting was adjourned at approximately 1:16 p.m.

NEXT MEETING—The next regular board meeting is **11:30 a.m., Thursday, July 25, 2013**, at a place to be determined.


Steve Ahmann, Secretary

APPROVED 8/1/2013:


Denis Anderson, Chairperson

MEMORANDUM

To: Mayor Frank Yanish and Members of the Willmar City Council

cc: City Administrator Stevens **VIA EMAIL ONLY**

From: Robert T. Scott and Christopher M. Hood

Date: January 17, 2012

Re: Membership of City Organizations in the Lakes Area Chamber of Commerce

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The following memorandum addresses the issue of the legality of the memberships that various boards, commissions, and instrumentalities of the City of Willmar (City) maintain in the Willmar Lakes Area Chamber of Commerce (WLACC). Specifically, this memorandum addresses the respective legal authority of the City, the Willmar Municipal Utilities (WMU), Rice Memorial Hospital (Rice), the Willmar Housing and Redevelopment Authority (HRA), the Kandiyohi Economic Development Commission (EDC), and Rice Health Foundation and Rice Home Medical, LLC to be members of the WLACC. The authority to join the WLACC of the Willmar Public Library, which is a branch of a broader multi-county library system that acts independent of the City, is not addressed in this memorandum.

INTRODUCTION

All expenditures of public funds by a city or other local unit of government are required to (1) serve a public purpose and (2) have specific or implied authorization in state statute or a city's home rule charter. (*See* Minn. Const. Art. X, § 2 and Art. XI, § 1). Any expenditure that does not satisfy both of these requirements is illegal.

Regarding the first requirement, the Minnesota Supreme Court has concluded that an expenditure serves a public purpose if (1) the activity will benefit the community as a body; (2) the activity is directly related to the functions of government; and (3) the activity does not have as its primary objective the benefit of a private interest. *Visina v. Freeman*, 252 Minn. 177, 184, 89 N.W.2d 635, 643 (1958). It has also held that the general objective of a public purpose is to promote the following for all of a city's residents:

- Public health.
- Safety.
- General welfare.
- Security.
- Prosperity.
- Contentment.

City of Pipestone v. Madsen, 287 Minn. 357, 367, 178 N.W.2d 594, 600 (Minn. 1970). It is fundamentally the role of the members of the governing body charged with performing a given government function to determine valid public purposes and to act in their service.

Regarding the second requirement for a valid public expenditure, state statute grants each entity covered in this memorandum separate authority from that granted to city governments, and this distinct authority must be consulted for each entity to determine if the entity's expenditure—in this case membership in the WLACC—is authorized. In other words, it does not follow that if the City itself lacks authority to be a member in the WLACC (which we conclude it does), then all of its boards and commissions and affiliated entities similarly lack authority; a separate inquiry is necessary for each entity given the separate grants of authority to each such entity in statute.

Our analysis applying the dual criteria for a valid public expenditure in an attempt to determine the authority for each of the City, WMU, Rice, the HRA, the EDC, and Rice Home Medical, LLC and Rice Health Foundation to be members of the WLACC, as well as the potential consequences to the City, the City Council, or any of its members of unauthorized expenditures made by any of these City-affiliated entities, follows.

ANALYSIS

I. LEGAL AUTHORITY FOR WLACC MEMBERSHIPS.

A. CITY

The application of the above principles to the City itself is fairly straightforward, and indicates that the City lacks authority to be a dues paying member in the WLACC. This is true despite the fact that the City has statutory authority “to appropriate not more than \$50,000 annually to any incorporated development society or organization of the state for promoting, advertising, improving, or developing the economic and agricultural resources of the city,” which would include a local Chamber of Commerce. Minn. Stat. § 469.191. The Attorney General has addressed this issue in an informal advisory opinion and concluded that this statutory authority to appropriate money to a local Chamber of Commerce does not allow for a city government to actually join such an organization, although the opinion allowed for the possibility that such membership could serve a public purpose and could be authorized separately by a city's charter. (See Minn. A.G. Op. (June 27, 997)(informal letter to Staples), attached hereto as Appendix A). The Willmar City Charter contains no such authorization, so the City may not legally join the WLACC itself.

B. WMU

WMU is a commission established by the City through its Charter. WMU has been granted significant autonomy from the City itself through the Charter (see § 4.05, subd. 2), and is additionally recognized by and granted powers directly from the State of Minnesota in Minn. Stat. Ch. 453. While WMU has been granted full control of the operation and management of the City's utility facilities, the City Council has retained some oversight authority over WMU in the Charter, requiring WMU to submit its capital improvement budget to the City Planning

Commission and City Council (see § 4.05, subd. 2), and additionally reserving the authority to override any action taken by WMU pursuant to specific procedures established in the Charter (see § 4.05, subd. 5).

WMU has broad authority under statute to exercise all powers not inconsistent with the state and federal constitutions, so long as such authority is reasonably necessary or appropriate for or incidental to carrying out its purpose, and to generally exercise such rights as a private person or corporation may exercise in connection with its property and affairs. Minn. Stat. § 453.54, subd. 21; § 453.58, subd. 1. The public purpose served by WMU is to “secure an adequate, economical, and reliable supply of energy (for the community).” *See* Minn. Stat. § 453.51. The Charter does not appear to provide any independent authority to WMU on this issue, however the statutory power granted to WMU is broad, and would allow the WMU to join the WLACC so long as the WMU reasonably determines that such membership would be somehow beneficial to its purpose of “(securing) an adequate, economical, and reliable supply of energy.” This is not a high legal standard to satisfy, but some demonstration of benefit to its core purpose by WMU would be necessary to justify its continued Chamber membership.

WMU has maintained a membership in the WLACC for many years, but as of the date of this memorandum, WMU has not yet renewed its Chamber membership for 2013. Flaherty & Hood, P.A. anticipates that WMU will consult us in determining if there are public benefits to its Chamber membership such that continued membership is authorized.

C. RICE

Similar to WMU, the Rice Memorial Hospital Board is a board established by the City in its Charter, and has been granted full control of the operation and management of Rice Memorial Hospital, subject to City Council oversight similar to that which the City Council exercises over WMU.¹

Additionally, as a municipally owned hospital, Rice possesses independent statutory authority pursuant to Minn. Stat. § 144.581, including the authority and legal capacity of a nonprofit corporation under Ch. 317A “relative to the delivery of health care services” (subd. 1).² Nonprofit corporations can certainly be members of a local Chamber of Commerce, but the issue with Rice’s membership is whether such membership relates to the delivery of healthcare services, as required by statute. The Charter does not provide any independent authority to Rice for such membership, so unless Rice can demonstrate that its membership in the WLACC relates to its “delivery of health care services,” it does not have legal authority to continue its membership.

As of the date of this memorandum, Rice has not taken action to renew its membership for 2013, and we anticipate that we will be consulted to assist Rice in determining if it can demonstrate that it can satisfy the legal standard for its continued membership in the WLACC.

¹ The City Council has reserved the right to review Rice’s capital improvement budget and to override specific actions taken by the Hospital Board pursuant to specific procedures set forth in the Charter. § 4.04, subds. 2, 5.

² Such authority also specifically includes the authority to “join or sponsor membership in organizations intended to benefit the hospital or hospitals in general,” but this authority would not seem to extend to an organization such as the Chamber of Commerce that is not organized primarily for the benefit of the hospital or hospitals in general.

D. HRA

The HRA is a public body, corporate and politic, which was established by the City in 1965. Though it is an instrumentality of the City, it operates independently of the City, with the exception that the City Council sets its levy and appoints its members.

The HRA's powers are set forth in Minn. Stat. § 469.012, which does not specifically authorize an HRA to join an organization such as the WLACC, but which does broadly authorize an HRA to take action that is "necessary or convenient to carry out the purposes of (the HRA Act)" (subd. 1f), which are as follows:

- (1) to provide a sufficient supply of adequate, safe, and sanitary dwellings in order to protect the health, safety, morals, and welfare of the citizens of this state;
- (2) to clear and redevelop blighted areas;
- (3) to perform those duties according to comprehensive plans;
(and)
- (4) to remedy the shortage of housing for low and moderate income residents, and to redevelop blighted areas, in situations in which private enterprise would not act without government participation or subsidies.

Minn. Stat. § 469.02. The Charter does not appear to provide any independent authority to the HRA on this issue. Accordingly, the HRA's legal authority to maintain its membership in the Chamber of Commerce hinges on whether it can demonstrate that such membership is necessary or convenient to one or more of the above purposes. Similar to the legal standard applicable to the WMU's WLACC membership, this legal standard is not particularly demanding, but some showing of benefit to one of the four statutory purposes of the authority would be required for such membership to be legally authorized.

We understand that the HRA made the decision to continue its membership in the WLACC, and that it was advised of our opinion on the legality of such membership in which we set forth the legal standard it would need to satisfy for such membership to be authorized in advance of its decision. We also understand that the HRA has separate legal counsel that advised it through this process.

E. EDC

The Kandiyohi County/City of Willmar Economic Development Commission is a public body, corporate and politic, a political subdivision of the State, and its own special taxing district that was formed by a joint powers agreement between the City and Kandiyohi County pursuant to special legislation. The City's formal connection to the EDC appears to be limited to appointing three of its six board members and approving the City portion of the EDC's annual levy pursuant

to the terms of the joint powers agreement. The City does not exercise direct oversight over the EDC.

The joint powers agreement grants the EDC all powers granted to a city EDA in the Economic Development Authority Act, Minn. Stat. §§ 469.090-107, which include the power to “join an official, industrial, commercial, or trade organization . . . to further an authorized purpose” (subd. 16). Additionally, this statute grants the EDC the power to exercise any of the powers granted to HRAs for the purposes for which EDAs exist, which is to promote economic development in the City (subd. 12). It is probably legal for the EDC to join the WLACC under either of these two statutory provisions as it is very likely the EDC would be able to make the requisite demonstration that its membership in the WLACC is beneficial to its efforts to promote and encourage economic development within Kandiyohi County and the City.

F. RICE HEALTH FOUNDATION AND RICE HOME MEDICAL, LLC

Rice Health Foundation is a nonprofit corporation and Rice Home Medical, LLC is a limited liability company; each were created by Rice Memorial Hospital pursuant to statutory authority granted to public hospitals (*see* Minn. Stat. § 144.581, subd. 1). The City exercises no oversight over these corporations.

Minn. Stat. § 144.581 imposes certain requirements on these corporations (such as requiring that they adhere to competitive bidding, open meeting law and data practices regulations) but does not enumerate specific powers granted to them. There is no statutory prohibition against these entities joining an organization like the WLACC, so as long as such membership serves a legitimate interest of the corporations, and is not merely an attempt by Rice to circumvent the law and accomplish through the corporations they’ve formed what it is not authorized to do itself, these corporations probably have the authority to join.

As of the date of this memorandum, our understanding is that these entities have not yet decided whether to join the WLACC in 2013.

II. CITY COUNCIL LIABILITY FOR UNAUTHORIZED EXPENDITURES

Neither the City Council nor any individual member thereof is exposed to liability as the result of actions taken by the City’s boards, commissions, or other instrumentalities with respect to their WLACC membership decisions, for two reasons. First, and most simply, the City Council does not make these operational decisions for these autonomous entities; a City Council member cannot be personally liable for a decision that the member does not make, and is indeed not authorized to make. Any personal liability that might result from an unauthorized expenditure of public funds would be limited to the officers that actually made the decision to spend the funds, but as discussed below, it would take an egregious factual scenario for personal liability to result from such a decision that is simply not present in the respective public entities’ consideration of membership in the WLACC.

The second reason that the City Council and its members are not exposed to liability in this situation is that as public officers, they enjoy official immunity, which is a common law doctrine that protects them from personal liability for their discretionary actions

taken in the course of their official duties as long as their conduct was not malicious. *Rico v. State*, 472 N.W.2d 100, 106-07 (Minn. 1991); *Elwood v. Rice County*, 423 N.W.2d 671, 677 (Minn. 1988). The purpose of official immunity is to protect the public official (or employee) from the fear of personal liability that might deter independent action and impair effective performance of their duties. *Kari v. City of Maplewood*, 582 N.W.2d 921, 924 (Minn. Ct. App. 1999).³ The issue of a public body's membership in an organization like WLACC, and whether a public purpose is served by such membership, is a discretionary action, therefore in the absence of malice, the officials responsible for making such decision would enjoy official immunity with respect thereto.

In the context of official immunity, malice means the intentional doing of a wrongful act without legal justification or excuse. *Rico* 472 N.W.2d at 108-09; *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 662-63 (2004). The courts have established a high standard for a finding of malice, by requiring the defendant to have reason to know that the challenged conduct is prohibited. *Id.* Based on our understanding of the issues addressed in this memorandum, neither the City Council nor the members of the governing bodies of the various public entities discussed herein are exposed to liability as a result of the discretionary decisions of the respective bodies regarding membership in the WLACC.

SUMMARY AND CONCLUSION

Apart from the City itself, which lacks the authority to be a dues paying member of the WLACC, the issue of whether the various City-affiliated public entities discussed in this memorandum are authorized to be members of the WLACC depends on the factual circumstances of each such membership, and is not susceptible of 'black and white' or 'yes or no' analysis. Generally, the separate statutory powers granted to each such entity would authorize membership in the WLACC if the circumstances of such membership actually further the narrow public purpose served by the respective public entity. It seems apparent that the EDC and, to a lesser extent the HRA, would have a relatively easy time satisfying this standard as compared to the other public entities discussed in this memorandum, but in each case the judgment is discretionary and must be made by the members of the governing bodies of each respective entity.

The City Council and its members are not exposed to civil liability on this issue because the City Council is not authorized to make the operational decisions regarding WLACC membership for the entities discussed herein, and because the decisions themselves are discretionary in nature such that the public officials making the decisions would enjoy official immunity with respect to the decisions.

Should you have any questions or require additional information, please contact us at (651) 225-8840.

RTS-CMH

³ Generally, if official immunity is found to apply to an officer or employee's action, vicarious official immunity will protect the governing body of the public entity from liability as well because the threat of liability against the city would influence public officials and employees and hinder them from exercising independent judgment and discretion. *Wiederholdt v. City of Minneapolis*, 581 N.W.2d 312, 316-17 (Minn. 1998).



HUBERT H. HUMPHREY III
ATTORNEY GENERAL

APPENDIX A

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

June 27, 1997

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 200
ST. PAUL, MN 55103-2104
TELEPHONE: (612) 297-2040

215H1
A.g. Op
Internal
6-27-1997

Hans B. Borstad
Staples City Attorney
208 North Fourth Street
Staples, MN 56479

Re: Staples Chamber of Commerce Membership

Dear Mr. Borstad:

I am in receipt of your letter asking whether the City of Staples is authorized to pay membership dues to the Staples Chamber of Commerce. After reviewing prior opinions of the Attorney General on this issue as well as the relevant Minnesota statutes, it is my opinion that, while the City of Staples would be authorized by statute to appropriate up to \$50,000 annually to the Staples Chamber of Commerce in certain circumstances, the City would not be permitted to contribute this money in the form of membership dues absent specific authority to do so in the City Charter.

It is well settled in this state that a municipal corporation has only such powers as are expressly conferred upon it by statute or its charter, or necessarily implied therefrom. It has no inherent power. Borgelt v. City of Minneapolis, 271 Minn. 249, 135 N.W.2d 438 (1965); see generally 13A Dunnell, Minn. Digest 2d Municipal Corporations § 3.01a (3rd Ed. 1981). This longstanding principle was relied upon by our office in Op. Atty. Gen. 63-b-1, May 11, 1944, which concluded that the City of New Ulm, a home rule charter city, was without authority, under state law or local charter provision, to subscribe and pay for one or more memberships in a civic and commerce association which was a reorganization of a businessmen's association. Similarly, in Op. Atty. Gen. 218r, February 24, 1949 (1950 Attorney General Report No. 103), we concluded that the Village of Buffalo (now a statutory city) could not join or pay dues to a local chamber of commerce since no such power was conferred upon it by statute. In connection with this issue, your letter refers to three statutes as potential sources of authorization to take the action you describe.

Minn. Stat. § 469.189 (1944), authorizes the governing body of certain cities to appropriate money to advertise the municipality, its resources and advantages. This Office has taken the position that there is a distinction between statutory authorization to appropriate and use money for a purpose, and authorization to contribute money to a body generally committed to advancing a purpose. See, e.g., Op. Atty. Gen. 59a3, January 15, 1959, wherein we determined that statutory authority for a city to "appropriate money" for purposes of historical preservation and observances permitted the city to contract with the county historical society for specific services, but not to donate funds to the society to expend in its own discretion. For the

Hans B. Borstad
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same reasons, we conclude that section 469.189 (1996) does not authorize the city to donate funds or purchase a "membership" in the local chamber of commerce.

Minn. Stat. § 469.191 (1996) provides:

A home rule or statutory city or town described in section 368.01, subdivision 1 or 1a, may appropriate not more than \$50,000 annually out of the general revenue fund of the jurisdiction to be paid to any incorporated development society or organization of this state for promoting, advertising, improving, or developing the economic and agricultural resources of the city or town.

It is our understanding that this section was first enacted in 1989 primarily to allow small rural towns to participate in an organization called the Minnesota Initiative Fund, an organization which received grants from the McKnight Foundation matching certain contributions from towns and cities. However, contemporaneous legislative history indicates an understanding by the legislature that this law would also allow a city or town to contribute up to \$50,000 annually to a local chamber of commerce. This seems to be a reasonable interpretation of the language of Minn. Stat. § 469.191, and it is my opinion that this provision would authorize the City of Staples to contribute up to \$50,000 annually to the Staples Chamber of Commerce.

Authority to contribute does not necessarily permit membership, however. In general, it has been our view that authority of local units of government are not authorized to form or join "private" organizations absent specific statutory authority. See, e.g., Op. Atty. Gen. 92a-30, January 29, 1986; 733, July 29, 1988. For example, Minn. Stat. § 144.581 (1996), which is mentioned in those opinions, authorizes hospital authorities to join and sponsor memberships in certain organizations.

In addition, the Legislature has addressed the authority of municipalities to provide for municipal membership in certain local, state and national associations. In addition, cities are expressly authorized by Minn. Stat. § 465.58 (1996) to pay annual dues in the League of Minnesota Cities and the expenses of delegates attending the meetings thereof. Neither of these sections would apply to your situation, however.

A broader grant of authority is found in Minn. Stat. § 471.96, subd. 1 (1996), which provides as follows:

The governing bodies of cities, counties, and towns are hereby authorized to appropriate necessary funds to provide membership of their respective municipal corporations or political subdivisions respectively in county, regional, state, and national associations of a civic, educational, or governmental nature which have as their purpose the betterment and improvement of municipal

Hans B. Borstad

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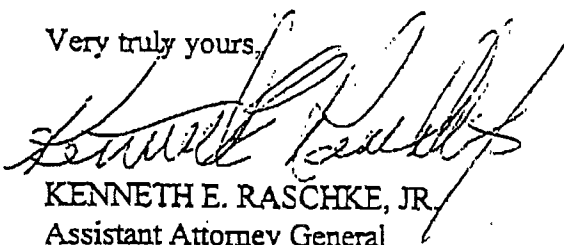
governmental operations. Cities, counties, and towns are also authorized to participate through duly designated representatives in the meetings and activities of such associations, and the governing bodies of cities, counties and towns respectively are authorized to appropriate necessary funds to defray the actual and necessary expenses of such representatives in connection therewith. For purposes of this section, the governing body of a town is the town board.

From our understanding of the nature of such organizations, it does not appear that chambers of commerce can be characterized as "associations of a civic, educational, or governmental nature which have as their purpose the betterment and improvement of municipal government operations" within the purview of this statute, even though their interests may include such objectives.

Subdivision 2 goes on to provide that the statute does not affect "any statutory, charter or common law power of cities" to provide for membership and participation in state and national associations. I am aware of no general statutory or common law power on the part of cities to provide for membership.

For the foregoing reasons, we conclude that the city lacks statutory authority to purchase membership in the local chamber of commerce. While it is possible that such authority might be contained in the City's Charter, your letter does not refer to any such charter provision, and we do not ordinarily undertake in our opinions to construe provisions of local charters. See Op. Atty. Gen. 629a, May 9, 1975.

Very truly yours,



KENNETH E. RASCHKE, JR.
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Date: 12-31-12

FACSIMILE TRANSMITTAL COVER SHEET

TOTAL NO. OF PAGES (including this page): 3

TO: *Steve*

FACSIMILE NO.: *320-231-2320*

COMPANY NAME: *EDA*

RE: *Chamber dues*

FROM: *Dean*

If there are problems receiving this fax, please call
320-235-3171

ORIGINAL TO FOLLOW BY MAIL: *No*

COMMENT: *Steve, note EDA can join such organizations whereas city can appropriate funds for such purposes.*

The information contained in the facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify this office by telephone and return the original facsimile message to this office at the above address via the United States Postal Service.

LOCAL ECONOMIC DEVELOPMENT

of its departments, with persons, public corporations, political subdivisions, commissions, or agencies, on any matter related to using the authority's powers. The authority may contract to purchase and sell property. An obligation or expense must not be incurred together with the reasonably expected revenue of the authority if the revenues are sufficient to discharge the obligation or the obligation. The state and its municipal subdivisions are not

contracts. For all contracts for construction, alteration, or repair work, the authority may award contracts to the lowest bidder, and "best value" shall be defined and applied as provided in subdivision 4a, and 16C.28, subdivision 1, paragraph (c). Alternatively, the authority may award contracts for construction, alteration, repair, or maintenance work to the lowest bidder, reserving the right to reject any or all bids. The economic development authority may be a public body whose purpose is consistent with the authority's

powers. The economic development authority may exercise its powers for a term of years or perpetually for development in an economic development district.

materials. The economic development authority may exercise its powers if it needs to carry out this section.

public property. The economic development authority may exercise its powers for other assistance, whether by gift, loan or otherwise, from the federal or state government, or an agency of either, or a public body, to carry out sections 469.090 to 469.108 for an economic development district and its facilities

in an economic development district. The economic development authority may exercise its powers around land held by it for economic development in an economic development district. The authority may acquire, sell, or lease single or multiple parcels of land, regardless of size, to be developed as a part of the economic development district under sections 469.090 to 469.108.

development zone. The economic development authority may exercise its powers in a development zone. The authority may exercise its powers in a development zone provided in United States Code, title 19, sections 81a to 81d, the authority may use the powers. One authority may exercise its powers in a development zone.

other redevelopment powers. The economic development authority may exercise powers and duties of a redevelopment agency

ECONOMIC DEVELOPMENT

§ 469.101

sections 469.001 to 469.047 and 469.090 to 469.108 for a purpose in sections 469.152 to 469.165.

Subd. 13. Public facilities. The authority may operate and maintain a public parking facility or other public facility to promote development in an economic development district.

Subd. 14. Government agent. An economic development authority may cooperate with or act as agent for the federal or the state government, or a state public body, or an agency or instrumentality of a government or a public body to carry out sections 469.090 to 469.108 or any other related federal, state, or local law in the area of economic development district improvement.

Subd. 15. Studies, analysis, research. An authority may study and analyze economic development needs in the city, and ways to meet the needs. An authority may study the desirable patterns for land use for economic development and community growth and other factors affecting local economic development in the city and make the result of the studies available to the public and to industry in general. An authority may engage in research and disseminate information on economic development within the city.

Subd. 16. Public relations. To further an authorized purpose, an authority may (1) join an official, industrial, commercial, or trade association, or another organization concerned with the purpose, (2) have a reception of officials who may contribute to advancing the city and its economic development, and (3) carry out other public relations activities to promote the city and its economic development. Activities under this subdivision have a public purpose.

Subd. 17. Accept public land. An authority may accept conveyances of land from all other public agencies, commissions, or other units of government, if the land can be properly used by the authority in an economic development district, to carry out the purposes of sections 469.090 to 469.108.

Subd. 18. Economic development. An authority may carry out the law on economic development districts to develop and improve the lands in an economic development district to make it suitable and available for economic development uses and purposes. An authority may fill, grade, and protect the property and do anything necessary and expedient, after acquiring the property, to make it suitable and attractive as a tract for economic development. An authority may lease some or all of its lands or property and may set up local improvement districts in all or part of an economic development district.

Subd. 19. Loans in anticipation of bonds. After authorizing bonds under sections 469.102 and 469.103, an authority may borrow to provide money immediately required for the bond purpose. The loans must not exceed the amount of the bonds. The authority shall by resolution decide the terms of the loans. The loans must be evidenced by negotiable notes due in not more than 12 months from the date of the loan payable to the order of the lender or to bearer, to be repaid with interest from the proceeds of the bonds when the bonds are issued and delivered to the bond purchasers. The loan must not be obtained from any commissioner of the authority or from any corporation, association, or individual.

RELEVANT LINKS:

A.G. Op. 59-a-3 (May 21, 1948).
 A.G. Op. 218-r (Aug. 15, 1951).
 A.G. Op. 59-a-22 (Aug. 7, 1951).
 A.G. Op. 476-b-2 (Apr. 20, 1944).
 A.G. Op. 218-r (Feb. 10, 1942).
 A.G. Op. 476-b-2 (Apr. 29, 1954).

Minn. Stat. § 412.221, subd. 2.
 Minn. Stat. § 349.213.

Minn. Stat. § 471.941.

Minn. Stat. § 469.191.
 A.G. Op. (Jun. 27, 1997)
 (informal letter opinion to Staples).
 See Part III - J - Dues.

1. Nonprofit organizations in general

The attorney general has considered the question of donating public funds to various groups and found the following public expenditures to be improper due to a lack of specific authority to donate:

- To support the Boy Scouts.
- To sponsor a local bowling team.
- To sponsor a local kittenball team (similar to softball).
- To help the American Legion build a Legion Hall.
- To help support the Red Cross.
- To support a campaign to stop expansion of a neighboring city airport.

There are, however, other options. One idea is for the city to use the contracting power to give effect to another power of council, such as contracting for a club to spend a Saturday cleaning up public grounds in exchange for money. Also, if a city maintains a fund created from gambling proceeds, those proceeds may be used for many types of charitable contributions.

2. Artistic organizations

Counties, cities, and townships may appropriate money to support artistic organizations. The appropriation may be divided among multiple artistic organizations in proportions determined by the governing body.

An "artistic organization" is an association, corporation, or other group that provides an opportunity for people to participate in the creation, performance, or appreciation of artistic activities. The statute provides examples of "artistic activities" cities can support with this appropriation, but it is by no means an exclusive list.

3. Chamber of commerce

State law authorizes cities "to appropriate not more than \$50,000 annually to any incorporated development society or organization of the state for promoting, advertising, improving, or developing the economic and agricultural resources of the city." The attorney general's office has opined that while this authority allows a city to contribute up to \$50,000 annually to a chamber of commerce, it does not allow a city to become a member of the chamber of commerce, or to pay dues to it.

Kandiyohi County
& City of Willmar
Economic Development Commission



**POLICIES AND
PROCEDURES MANUAL**

MASTER COPY

ADOPTED BY JOINT OPERATIONS BOARD 2/14/2013
RATIFIED BY JOINT POWERS BOARD __/__/2013

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**RECEIPT AND ACKNOWLEDGMENT OF
KANDIYOHI COUNTY AND CITY OF WILLMAR ECONOMIC DEVELOPMENT COMMISSION
POLICIES AND PROCEDURES MANUAL**

This Policies and Procedures Manual is an important document intended to help you become acquainted with the Kandiyohi County and City of Willmar Economic Development Commission, (EDC). This Manual will serve as a guide; it is not the final word in all cases. In the case of a conflict, the Bylaws govern. The contents of this Manual may be changed at any time at the discretion of the EDC boards. Please read the following statements and sign below to indicate your receipt and acknowledgment of the Manual.

I have received and read a copy of the Manual. I understand the policies, rules and the benefits described in it are subject to change at the sole discretion of the EDC at any time. I understand that this Manual replaces all other previous manuals for the EDC.

I understand that should the content be changed in any way, the EDC may require an additional signature from me to indicate that I am aware of and understand any new policies.

Printed Name: _____

Signature_____

Date: _____

I.
GENERAL INFORMATION

A. **INTENT.** The Kandiyohi County and City of Willmar Economic Development Commission (EDC), acting through its Joint Powers Board of Commissioners (EDCJP) and its Joint Operations Board of Directors (EDCOB), recognizes the need for written policies and procedures that will assure continuity of function, both internal and external, and will serve to:

Give direction to officers, board members, committees and staff in carrying out the mission of the organization.

Policies shall be a declaration of intent and an adoption of a course of action by the EDCJP/EDCOB and the institution of policy shall be a function of the boards of commissioners/directors. Commissioners, directors, committees and staff personnel shall implement and execute the requirements of policy.

B. **MISSION STATEMENT.** To be a catalyst for economic growth of the greater Kandiyohi County area.

C. **PURPOSE.**

1. Provide leadership for an effective volunteer network that will act as both liaison and enabler developer between industry and communities within the county.
2. Develop an effective and varied method of marketing the county and communities within.
3. Develop a means to retain existing industry, including an ongoing communication with industries.
4. Develop a means to assist existing industry to expand and new industry start up.
5. Develop target markets and contact industry outside of the county.
6. Set up long-term economic plan.
7. Facilitate educational opportunities in economic development for board members, volunteers, local community leaders and local industries.
8. Promote and administer the Revolving Loan Fund, the Industrial Initiatives Loan fund, the Entrepreneurs' Loan Guarantee Program and other finance vehicles.

D. **GOALS.**

1. **Five-Year.** Five-year goals shall be established or reviewed at a planning session of the EDC boards at least every five years. (see Appendix C)
2. **Annual.** Annual goals shall be established at a planning session each calendar year. (see Appendix D)

II. BOARDS

A. **EDC JOINT POWERS BOARD MEMBER TERMS AND APPOINTMENTS.** The EDCJP Board of Commissioners shall consist of six members. Each member shall be appointed to serve for three years or until a successor is appointed and qualified. Kandiyohi County and the City of Willmar shall each appoint three elected representatives to serve on the EDC. Any vacancy must be filled for the unexpired term in the manner in which the original appointment was made. A vacancy shall occur when a member is no longer an elected member of the County Board of Commissioners or the Willmar City Council. **In the case of a conflict, the Joint Powers Agreement governs** (see Appendix B).

B. **EDC JOINT OPERATIONS BOARD MEMBER TERMS AND APPOINTMENTS.** The EDCOB shall consist of seven. The EDCOB shall be appointed by the EDC Joint Powers Board of Commissioners and shall include representation from communities throughout the county, education providers, business and consumer groups. The terms of the EDCOB shall be for three years, it being provided however, that in the first year of appointment a sufficient number of members shall be appointed to one- and two-year terms to assure that no more than five members' terms expire in any given year. The EDCOB members shall be limited to three full three-year terms. **In the case of a conflict, the Joint Powers Agreement governs** (see Appendix B).

C. **REMOVAL.** Board members may be removed by the appointing board(s) for inefficiency or neglect of duty, or misconduct in office, a board member may be removed by the governing body of the municipality. The board member must be given a copy of the charges at least 10 days prior to a hearing at which the board member has the opportunity to be heard in person or by counsel. When charges in writing have been preferred against a board member, pending final action thereon the governing body may temporarily suspend the board member. If it is found that those charges have not been substantiated, the board member shall immediately be reinstated to the board. When any board member is removed, a record of the proceedings, together with the charges and findings thereon, shall be filed.

D. **LIABILITY.** Board members shall have no personal liability for corporate obligations of the EDCJP/EDCOB or the methods of enforcement and collection thereof. **In the case of a conflict, the Bylaws govern** (see Appendix E).

E. **CONFLICTS OF INTEREST.** Board members shall avoid real or apparent organizational conflicts of interest. No board member shall be an officer, employee, director, shareholder or member of any corporation, firm or association with which the EDC has entered into any operating or lease agreement. This section shall not apply to the deposit of funds of the agency in any bank in which a board member shall have an interest, if the funds are deposited and protected in accordance with M.S.A. § 118A (see Appendices F and G).

In instances other than those covered by the above paragraph, where a board member has a real or apparent conflict of interest, that board member shall declare the conflict of interest for the record and shall abstain from any vote or discussion of the matter.

F. **CONFIDENTIALITY.** Confidentiality is essential to economic development work. Verbal and/or written information received by board members concerning individuals and/or businesses working with the EDC must be kept confidential unless authorization is obtained from the businesses or individuals to release information for public dissemination.

III. COMMITTEES

A. **STANDING COMMITTEES.** The following standing committees are set forth by the EDCOB and reviewed annually:

Agriculture and Renewable Energy Development
Business Retention and Expansion/Recruitment
Finance
Marketing and Public Relations

Each standing committee shall include an EDCOB member, who shall report to the EDCOB. A chairperson shall be appointed annually.

B. **SUBCOMMITTEES AND SPECIAL COMMITTEES.** Subcommittees and special committees may be determined by the boards of directors as they deem fit. Each subcommittee and special committee shall be composed of a chairperson and members who shall report to the EDCJP and/or EDCOB.

C. **MEMBER TERMS AND APPOINTMENTS.** Committee members shall be appointed by the EDCOB to serve for a term of one year or for as long as they agree to serve. The appointment of committee members shall be made to reflect representation of the entire county by population.

D. **REGULAR MEETINGS.** Committee chairpersons shall call regular meetings of the committees at least quarterly or more often as needed. Written notice stating the place, day and hour of the meeting shall be sent to the members.

E. **ANNUAL MEETINGS.** Committee chairpersons shall call annual meetings within a reasonable time following January 1 of each year. At this meeting, committees shall set their goals and plan for the calendar year.

F. **QUORUM.** At all committee meetings a majority of the members shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the members present at any meeting in which there is a quorum shall be the act of the committee.

G. **REMOVAL.** Committee members may be removed by the appointing board(s) for inefficiency, neglect of duty or misconduct. Members who are absent three meetings in a row may be eliminated from the committee by EDCOB action.

H. **COMPENSATION.** Committee members shall receive no compensation for serving on a committee.

I. **BUDGET PREPARATION.** The annual budget expenditures for each committee shall be prepared by the chairperson and Executive Director upon receipt of the annual committee budget set by the EDCOB and submitted to the EDCOB for approval.

J. **EXPENSE REIMBURSEMENT.** Committee members can be reimbursed for their expenses per the Expense Reimbursement Guidelines adopted by the EDCOB. (see Appendix H)

IV. OTHER POLICIES

A. **ANNUAL LEVY.** The EDCJP Board will submit a proposed levy amount to the Kandiyohi County Auditor/Treasurer by September 15 of each year.

B. **BUDGET PREPARATION.** An annual budget shall be prepared by the Executive Director with assistance from the President and the Treasurer using the following time lines:

1. Submit single preliminary levy amount to the EDCJP no later than September 1.
2. Final budget approved by EDCOB at its October board meeting.
3. Present final budget to the EDCJP after it is approved by the EDCOB, but no later than the EDCJP's October board meeting.

C. **APPROVAL OF BUDGETED EXPENDITURES.** Budgeted expenditures that do not exceed \$1,000 accumulative in one month may be paid without prior approval of the board, but a list of these bills paid will be presented to the board at each meeting.

D. **REPORTS TO EDCJP.** Oral and/or written reports on EDCOB activities shall be presented to the EDCJP at least monthly.

E. **JOB DESCRIPTIONS.** A current job description shall be on file for every staff member. Job descriptions shall be reviewed annually.

F. **FEDERAL TRADE COMMISSION RED FLAG RULES.** The EDC will comply with the Federal Trade Commission's Red Flag Rules, which require businesses and organizations to implement a written identity theft prevention program. The EDC has identified itself at low risk for identity theft because there is little confidential data retained at the EDC and files containing confidential information are kept within easy sight of employees and are locked in a secure location when the office is unattended. Additionally, the EDC infrequently is requested to supply confidential information nor does it regularly request and retain such information. Also, the EDC is generally familiar with its customers and rarely receives or provides confidential information to those unfamiliar with the organization. The EDC has identified the following items that could contain confidential information, such as names, address, birthdays, social security numbers, federal ID numbers: corporate books, loan program binders and personnel binder. This information is not released without specific written authority of the individual and/or business. The policy of identification protection states that all files containing the confidential information identified above will be locked in a secured location when the office is unattended. The Executive Director and Assistant Director are designated to administer the program and train other employees on the policy. This policy will be reviewed and tested annually. Should a red flag or other identification of theft occur, the staff member involved will make a written documentation of the occurrence and supply the documentation to the designated staff person responsible for responding to Red Flags (the executive in charge of administration). The policies and procedures under this section are required to be modified if any indication of identity theft or other Red Flag Rule violation occurs.

G. **DATA PRIVACY POLICY.** The EDC adopts the Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended.

H. **FINANCIAL POLICIES.** The EDC adopts the most recent Financial Policies of Kandiyohi County (see Appendix I).

I. **CREDIT CARD POLICY.** The EDC adopts the most recent Credit Card Policy of Kandiyohi County (see Appendix J).

J. **POLICY ADOPTION, AMENDMENT OR REPEAL.** Policies may be adopted, amended or repealed by the EDCOB at any regular meeting. The date a policy is adopted, amended or repealed shall be included for each policy.

V.
PROGRAMS

A. **FUNDING REQUESTS AND GUIDELINES.** Funding requests shall be processed by a Committee and the EDCOB in accordance with the guidelines adopted by the EDC boards (see Appendix K).

B. **INDUSTRIAL INITIATIVES LOAN PROGRAM OPERATION**

1. **Operation.** The Industrial Initiatives Loan Program should be operated in accordance with the Manual adopted March 10, 1998 and amended December 14, 1999, May 14, 2001 and June 11, 2001 (see Appendix L).
2. **Transfer From Willmar Opportunities, Inc.** The Kandiyohi County Economic Development Partnership, Inc. (KCEDP), at its January 9, 1990 meeting, officially accepted the transfer of the Industrial Initiatives I and II programs as of January 1, 1990.

C. **ENTREPRENEURS' LOAN GUARANTEE PROGRAM OPERATION.**

1. **Operation.** The Entrepreneurs' Loan Guarantee Program should be operated in accordance with the Manual adopted October 14, 2004 (see Appendix M).

D. **REVOLVING LOAN FUND.**

1. **Operation.** The Revolving Loan Fund program should be operated in accordance with the Manual adopted by the Kandiyohi County Economic Development Partnership, Inc. Board November 10, 1998 and adopted by the EDC Joint Operations Board on 5/13/2010 and ratified by the EDC Joint Powers Board on October 28, 2010 (see Appendix N).

E. **BOND POLICY.** The EDC will act as a conduit bond issuer in accordance with the Bond Policy adopted May 10, 2007 (see Appendix O).

APPENDIX

The following pages contain copies of the
original documents for the establishment of the



**A MASTER COPY OF THE POLICIES AND PROCEDURES MANUAL, INCLUDING ORIGINALS OF THE APPENDICES
WILL BE MAINTAINED AT THE EDC OFFICE**

Appendix

Minnesota Senate Bill, S.F No. 1505, 3 rd Engrossment: 83 rd Legislative Session (2003-2004), Article 12, Section 30.....	A
Joint Powers Agreement, Kandiyohi County and City of Willmar Economic Development Commission Dated: July 1, 2003.	B
Five-Year Goals (2011-2015).	C
Annual Goals.....	D
Amended Bylaws Dated: January 26, 2006.	E
Chapter 118A, Section 118A.02. Depositories; investing; sales, proceeds, immunity [Relative to section V, paragraph I, Conflicts of Interest].	F
Minnesota Statutes, Section 469.113. Conflict of interest [Relative to section V, paragraph I, Conflict of Interest].	G
Expense Reimbursement Guidelines.	H
Adopted March 8, 2012 by EDCOB and ratified April 26, 2012 by EDCJP	
Financial Policies of Kandiyohi County Adopted: April 2010.	I
Kandiyohi County Credit Card Policy.....	J
Adopted: 3-03-09	
Funding Request Guidelines and Application.....	K
Adopted March 8, 2012 by EDCOB and ratified April 26, 2012 by EDCJP	
Industrial Initiatives Loan Program Manual Amended: November 12, 2009 by EDCOB.	L
Entrepreneurs' Loan Guarantee Program Manual Adopted October 14, 2004 by EDCOB and 4/28/2005 by EDCJP Revised: August 13, 2009 by EDCOB.	M
Revolving Loan Fund Manual Adopted May 13, 2010 by EDCOB and ratified October 28, 2010 by EDCJP..... [Kandiyohi County Economic Development Partnership, Inc. Board Adopted November 10, 1998]	N
Bond Policy.	O
Current EDCJP Member List.....	P

Current EDCOB Member List.....	Q
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Minnesota NewsWatch

2013 laureates announced for Siehl Prize in Agriculture

A WORLD-RENOWNED expert in wheat diseases, an executive who developed important new packaging and food safety techniques, and a pair of entrepreneurs who lead an international technology company grounded in the poultry industry are this year's recipients of the prestigious Siehl Prize in Agriculture.

The prize is awarded annually by the University of Minnesota's College of Food, Agricultural and Natural Resource Sciences. Recipients are chosen in three categories: knowledge (teaching, research and outreach); agribusiness; and production agriculture.

This year's winners are:

■ **Yue Jin** (knowledge): He is among the leaders of two major global projects aimed at stopping the spread of rust in wheat and barley, which is a significant threat to the world's food supply. His laboratory at the U.S. Department of Agriculture Cereal Disease Lab on the U-M's St. Paul campus is a unique resource for testing and analyzing deadly rust samples from around the world.



YUE JIN

He's also recognized as a mentor to the next generation of top wheat rust scientists.

■ **Philip Minerich** (agribusiness): As vice president of research and development at Hormel Foods, he has led innovations in packaging, food technology and food safety during his 36-year career with this Minnesota-based company. His team also is known for its work in hunger relief, as the creator of Spammy shelf-stable poultry

spread, which is fortified with vitamins and minerals to address childhood malnutrition in Guatemala. The U-M alumnus also has been active in a number of food-industry groups and as an adviser to the U's food science and nutrition department.

■ **Ted Huisinga and Ray Norling** (production agriculture): The son and nephew of Willmar Poultry Co.'s founders have built the company into a multifaceted firm with a dozen affiliated companies, all related to the turkey industry. Two of those companies recently purchased a former state hospital and repurposed it to a high-technology campus aimed at expanding biotechnology, genetics, engineering and agriculture in west-central Minnesota. They're also well-known in the industry for their active work in food safety and animal health.

The recipients were announced last month as part of the celebration of National Ag Week. They will be honored at a ceremony on May 23 on the university campus.

The Siehl Prize was created

in the early 1990s by a generous gift from New Ulm-area livestock breeder and businessman Eldon Siehl, a dedicated philanthropist who had a lifelong interest in agricultural systems. Siehl was concerned that people were losing touch with their agrarian roots and wanted his gift to ensure that achievements in agriculture would be recognized and celebrated. Recipients receive a \$50,000 award as well as a sculp-



PHILIP MINERICH

ture and lapel pin designed by Minnesota artist Thomas Rose especially for the Siehl Prize.

Source: U-M



TED HUISINGA AND RAY NORLING

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