

ORDER AMENDING
ORDER OF COMMISSIONER OF FINANCE
RELATING TO USE AND SALE OF STATE
BOND FINANCED PROPERTY

IT IS HEREBY ORDERED by the Commissioner of Finance of the State of Minnesota that the Commissioner's Order entitled "Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 14, 1994, be amended to read as follows:

Section 1. Authorization; Purpose; Necessity.

1.01. Authorization. This Order is adopted pursuant to Minnesota Statutes, Section 16A.95, as amended, for the purpose of establishing requirements to be complied with by public officers and agencies in entering into contracts relating to the use or sale of state bond financed property.

1.02. Purpose. The purpose of the requirements is to ensure that the proceeds of state general obligation bonds authorized by the legislature to be issued to finance the acquisition or betterment of public land and buildings and other improvements of a capital nature by the state and its political subdivisions are used for such purposes, and that the interest to be paid thereon is and will continue to be (whenever possible) exempt from federal income taxation. Essentially, state general obligation bonds can be issued only to finance publicly owned land, buildings or improvements to be used to conduct governmental programs of the state and its instrumentalities and political subdivisions. Where state bonds are to be issued to finance property which is to be leased, managed, operated or otherwise used by a non-public party, or where state bond financed property is to be sold to a non-public party, questions may arise as to the legality and tax-exempt status of the bonds. Accordingly, the requirements set forth herein are to be complied with by a public officer or agency in entering into lease, management or other similar contracts relating to the use of state bond financed property pursuant to state law, and in selling state bond financed property, to ensure the legality and tax-exempt status of the bonds.

1.03. Necessity. The provisions of this Order are determined to be necessary to ensure the legality and tax-exempt status of state general obligation bonds and compliance with the act.

Section 2. Definitions. For purposes of this Order the terms defined in this Section shall have the meanings given to them in this Section.

2.01. Act. "Act" means Minnesota Statutes, Section 16A.95, as amended.

2.02. Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

2.03. Commissioner. "Commissioner" means the Commissioner of Finance or his or her designated representative.

2.04. Fair Market Value. "Fair market value" means, with respect to the sale of state bond financed property, the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property, or the price bid by a purchaser under a public bid procedure after reasonable public notice.

2.05. Non-Public Party. "Non-public party" means a person or entity other than a public officer or agency.

2.06. Outstanding State General Obligation Bonds. "Outstanding state general obligation bonds" and "outstanding state bonds" mean the dollar amount certified by the commissioner, upon the request of a public officer or agency, to be the principal amount of state bonds, including any refunding bonds, issued with respect to the state bond financed property, less the principal amount of state bonds paid or defeased as of the date of certification.

2.07. Public Officer or Agency. "Public officer or agency" means a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or other public entity, or any officer or employee thereof. It does not include the United States or any agency or instrumentality of the United States.

2.08. State Bond Financed Property. "State bond financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds. "Acquired" and "bettered" shall have the meanings given the terms "acquisition" and "betterment", respectively, in Minnesota Statutes, Section 475.51, and shall include planning and design activities related to a specific project.

2.09. State General Obligation Bonds. "State general obligation bonds" and "state bonds" mean state general obligation bonds authorized to be issued under Article XI, Section 5, clause (a) of the Minnesota Constitution, or any bonds issued to refund those bonds.

2.10. Use Contract. "Use contract" means a lease, management contract or other similar contract relating to state bond financed property, between a public

officer or agency which owns or has jurisdiction over the property and another public officer or agency or a non-public party.

Section 3. Application. This Order shall apply only as provided in this Section, and the provisions of Sections 4 through 6 are subject to the provisions of this Section.

3.01. In General. This Order applies to transactions involving state bond financed property, regardless of when acquired or improved, unless otherwise provided by law, or unless such application would impair the obligations of a public officer or agency to a non-public party under a contract entered into pursuant to law, which contract was in effect on May 17, 1994. The commissioner will, from time to time, issue, revise and publish a list of transactions exempted from the provisions of the act and this Order pursuant to law.

3.02. Certain Use Contracts. If the public officer or agency having jurisdiction over or which owns state bond financed property determines that it is permanently or currently not needed for governmental purposes, and the determination is approved by the commissioner, the requirements set forth herein relating to governmental programs shall not be applicable to use contracts relating thereto.

3.03. Transactions Between Public Officers and Agencies. This Order applies to transactions between and involving only public officers or agencies which are entered into pursuant to state law, except as specifically provided in Sections 4 and 5.

Section 4. Requirements for Use Contracts.

4.01. Statutory Authorization. (a) Use contracts relating to state bond financed property can be entered into only where authorized by state law other than the act; the act itself does not authorize, but only regulates, such contracts.

(b) A use contract must comply with the substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

4.02. Requirements for Non-Public Party Use Contracts. Use contracts between a public officer or agency and a non-public party are governed by the provisions of Section 4.01 and this Section.

(a) The use contract must be entered into for the express purpose of carrying out a governmental program established by law or authorized by law and

established by official action of the contracting public officer or agency. The governmental program and its purpose must be set forth in the use contract.

(b) The term of a use contract relating solely to land shall be governed by the state law authorizing it. The term of a use contract relating to buildings and improvements, including all renewal terms that are solely at the option of the non-public party, shall be substantially less than the useful life of the buildings or improvements. Ordinarily a use contract term not exceeding 50% of the useful life of the property to which it relates will be considered to be for a period substantially less than the useful life of such property. A use contract may allow renewal beyond the end of the original (or any previous renewal) term, upon determination by the public officer or agency by official action that such renewal is necessary or desirable to continue to carry out a governmental program.

(c) The use contract must provide for program oversight by a public officer or agency. A use contract which requires the non-public party to provide to the contracting public officer or agency an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenues and expenses, will be considered to provide for program oversight by a public officer or agency.

(d) The use contract must allow for termination by a public officer or agency in the event of default by the non-public party, or in the event the governmental program is terminated or changed, and may provide for notice of default for a specified period which is reasonable under the circumstances prior to termination.

(e) The use contract must require the non-public party to pay all costs of operation and maintenance of the state bond financed property allocable to it, unless the public officer or agency is authorized and agrees to pay such costs pursuant to state law. A use contract need not require the non-public party to pay to the public officer or agency any compensation for use of the state bond financed property unless required by a state law other than the act or required by the commissioner.

(f) If during any year of the term of a use contract relating to state bond financed property, state general obligation bonds issued to acquire or better such property are outstanding, a percentage of all moneys received by a public officer or agency pursuant to the use contract in excess of the amount needed and authorized to be used to pay operating costs of the state bond financed property, or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to the property other than state bonds, must be paid to the commissioner by the public officer or agency and used by the commissioner to pay and redeem or defease state bonds issued to finance the property. Such percentage shall be

determined by the commissioner and, absent circumstances which would indicate a different method, will be determined by dividing the total principal amount of all state bonds issued with respect to the state bond financed property by the total principal amount of all public debt financing incurred with respect to such property by any public officer or agency (other than debt issued by a public officer or agency for which it has no financial liability), without regard to the amount of bonds outstanding at any time.

4.03. Requirements for Public Officer or Agency Use Contracts. Use contracts between two public officers or agencies are governed by the provisions of Section 4.01 and this Section. The provisions of Section 4.02, paragraphs (a), (c), (d) and (f) shall apply to such use contracts.

4.04. Approval by Commissioner. (a) No public officer or agency shall enter into a use contract with respect to state bond financed property, or the renewal or amendment of an existing use contract, without the prior written approval of the commissioner.

(b) Proposed use contracts, renewals and amendments and, with respect to use contracts involving a non-public party the related information described below, should be submitted to the commissioner not less than 60 days before their proposed date of execution, except that in the case of a use contract described in Section 4.05, paragraph (a), the use contract should be submitted not less than 90 days before such date, and the submission should indicate that Section 4.05 is applicable. Such related information should include, if not evident from the use contract, state law authorization; the name, address, nature, financial condition, and reason for selection of the non-public party; the initial or current program implementation plan and budget (except in cases of leases of excess property); and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change in use contract terms within a reasonable period after receipt of the proposed use contract and the related information, but failure to approve or provide comments on a proposed use contract shall not constitute approval.

4.05. Tax Considerations. (a) Except as provided in paragraph (b), if under the terms of a proposed use contract the commissioner reasonably expects to receive money pursuant to Section 4.02, paragraph (f), the public officer or agency shall, upon direction by the commissioner, take, and/or require the contracting non-public party to take, such actions and furnish such documents to the commissioner as the commissioner determines to be necessary to ensure that the interest to be paid on the state bonds issued to finance the property to which the use contract relates is exempt from federal income taxation. Such actions may include either (i) compliance with procedures intended to classify the state bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, or (ii) changing the nature

and/or terms of the use contract so that it complies with Revenue Procedure 93-19; or (iii) compliance with Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

(b) The commissioner may determine that under the Code the state bonds will not be subject to federal income taxation without regard to compliance with paragraph (a), or that compliance with the requirements of paragraph (a) is not practical or economically feasible, in which event compliance with paragraph (a) may not be required. In most cases, and barring special circumstances, compliance will not be required where the total amount of state bonds authorized by law to be issued with respect to a governmental project or program is less than \$1,000,000.

Section 5. Guidelines and Procedures for Sale of Bond Financed Property.

5.01. Authorization of Sales. (a) State bond financed property can be sold or transferred to a non-public party or a public officer or agency only where authorized by state law; the act itself does not authorize, but only regulates, such transactions.

(b) A sale or transfer must comply with substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

5.02. Requirements for Sales. (a) Except as provided in paragraph (c), no public officer or agency shall sell state bond financed property unless the public officer or agency determines by official action that the property is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, the sale is made for fair market value, and the sale is approved by the commissioner.

(b)(i) If any state bond financed property which is sold was acquired or improved solely with state bond proceeds, all of the net proceeds of such sale shall be paid to the commissioner, and so much of the net proceeds of sale as is necessary to pay and redeem or defease the outstanding State bonds deposited in the state bond fund, and used for this purpose, and any balance of the net proceeds deposited in the general fund or other state fund designated by law; and (ii) if the state bond financed property which is sold was acquired or improved partly with state bond proceeds and partly with other money, the net proceeds of sale shall be used: (x) first, to pay to the commissioner an amount equal to the state bond proceeds used to acquire or better the property; (y) second, to pay in full any outstanding public or private debt incurred to acquire or better the property; and (z) third, any net sale proceeds not needed for these purposes shall be divided between or among and paid to the interested public and private parties which provided money for such acquisition or betterment (other than any private lender already paid in full), in proportion to the

amounts of money provided by them for such purpose, which division shall be agreed to in writing between or among all of them. Amounts received by the commissioner shall be used in the same manner as provided in clause (i) of this paragraph.

For purposes of this paragraph (b), the acquisition of state bond financed property by a lender in satisfaction of a debt, either by foreclosure sale or acceptance of a deed in lieu of foreclosure or by enforcement of a security interest, is not a sale; but a subsequent sale by the lender is subject to the act and this section and must be made as authorized by law and for fair market value. While held by the lender the state bond financed property shall not operate the property in a manner inconsistent with the governmental program established with respect to the property. The lender shall exercise its best efforts to sell the state bond financed property to a third party as soon as feasible following acquisition of marketable title to the property.

When all of the net proceeds of sale of any state bond financed property have been applied as provided in this paragraph, the act and this Order no longer apply to the property.

(c) State bond financed property may be transferred between public officers or agencies for a nominal consideration where authorized by state law, if the transferor public officer or agency determines by official action that the state bond financed property to be transferred is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, and the transferee public officer or agency determines by official action that the property is needed or useful for a governmental program of the transferee, the official action is filed with the commissioner, and the transferee public officer or agency acknowledges that any sale of the property by the transferee is subject to the provisions of this Order.

(d) Paragraphs (a) through (c) do not apply to transfers of control of state-owned property between state departments or agencies which are regulated by Minnesota Statutes, Section 15.16. So much of the moneys transferred to a state department or agency as a result of the transfer of control of state bond financed property as is necessary to pay and redeem or defease outstanding state bonds issued to finance the acquisition or improvement of the property, shall be transferred to the state bond fund and used for this purpose.

5.03. Approval by Commissioner. (a) No public officer or agency shall enter into a contract for the sale of state bond financed property or any amendment thereto affecting the sale price without the approval of the commissioner.

(b) Proposed sale contracts and amendments, and the related information described below, should be submitted to the commissioner not less

than 60 days before their planned date of execution. Such related information should include, if not evident from the sale contract, state law authorization; the name, address and nature of the purchaser, if known; the proposed method of sale; the sales price and how it was determined; any appraisal upon which the sale price is based; and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change within a reasonable period after receipt of the proposed sale contract and the related information, but failure to approve or provide comments on a proposed sale contract shall not constitute approval.

Section 6. Grant and Loan Agreements; Title Records.

6.01. Grant and Loan Agreements. Every state officer or agency to which proceeds of state general obligation bonds are appropriated to fund a grant or loan to another public officer or agency shall enter into a grant or loan agreement with respect to such proceeds whereby the public officer or agency receiving the grant or loan acknowledges that use agreements relating to and sales of property acquired in whole or in part with the state bond proceeds: (a) are subject to the provisions of the act and this Order, and (b) will be used in a manner which will not cause the interest on the state bonds to be or become subject to federal income taxation, due to their classification as "private activity bonds" within the meaning of Section 141 of the Code, or as "arbitrage bonds" within the meaning of Section 148 of the Code, or for any other reason.

6.02. Title Records. Every public officer or agency which expends state general obligation bond proceeds to acquire or improve real property shall, not later than thirty (30) days after the first such expenditure or as soon thereafter as practical, cause to be recorded in the official real estate title records maintained by the county recorder for the county or counties in which the property is located, a declaration or other appropriate instrument in the form or substantially the same form attached hereto as Exhibit 1. Upon full compliance with the provisions of this order and when appropriate, upon request, the Commissioner of Finance shall execute and deliver to the party requesting it, a written release evidencing the release of the subject property from the provisions of the act and this Order.

Section 7. Amendments; Publication; Effective Date.

7.01. Amendments. The Commissioner retains the right to amend this Order at any time as necessary to accomplish the purposes of the act.

7.02. Publication. The Commissioner intends to publish this Order and any amendments thereto in such manner and at such times as are likely to provide access to its contents by all affected persons, but the Order or any amendment shall be effective upon its issuance without regard to its publication.

7.03. Effective Date. This Order is effective as of its date of execution set forth below.

Executed: July 20, 1995.



Laura M. King,
Commissioner of Finance

