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May 29, 2020

MEMORANDUM

RE: DEC Structure/ Non-profit Corporation Status

The District Energy Corporation was created in 1989 to finance energy facilities (heating and cooling) and provide for the energy requirements (heating and cooling) of governmental structures in Lincoln and Lancaster County) Originally formed as a non-profit corporation in 1989, it was converted to an interlocal joint agency in 1992, but nevertheless retained its status as a non-profit corporation.

In recent years, this dual nature has created a couple of potential problems for the DEC.

First, the elected officials (county board members and city council members) serving on the DEC board have, according to the Nebraska Accountability and Disclosure Commission, a potential conflict of interest in their status as elected officials when the City Council or County Board are considering and will be voting on DEC matters, such as, when by-laws amendments are placed on the city council or county board agenda.

Second, the DEC, as a joint agency created under the Interlocal Cooperation Act, clearly is entitled to the exemptions and limitations on tort liability set forth in the Political Subdivisions Tort Claims Act, but some have questioned whether the PSTCA would apply to the DEC in its status as a corporation.

For these reasons, it has been suggested that the DEC Board consider dissolution of DEC as a non-profit organization and be structured solely as a "joint entity" under the Interlocal Cooperation Act. This would require a number of steps, including amendment of the existing interlocal agreement between the city and county that calls for creation of the non-profit corporation; action by board approving dissolution; public notice; notices to the Attorney General since DEC is a public benefit corporation; filing articles of dissolution with the Secretary of State; etc., all as set forth in the provisions of the Nebraska Non-profit Corporation Act relating to dissolution.

At the same time, the Board might consider whatever other changes regarding governing structure, e.g., board composition, as the Board, the City Council, and the County Board may deem desirable.

The above would necessarily be conditioned upon the opinion of bond counsel that this potential change would have no adverse effect upon the bond rating of DEC or the impairment or breach of any of its bond covenants (DEC has over \$72 million in outstanding indebtedness). Further, bond counsel would have to feel comfortable that any such change occurring now, when the DEC Board of Directors is considering a major bond issue, will have no adverse effect upon the same. If bond counsel should consider this an inopportune time to make changes as described above, then the idea would be tabled.

Subject to that opinion, however, if the City Council and County Board are agreeable, the DEC Board of Directors will initiate the process to dissolve” DEC corporate.”

Sincerely,



William F. Austin

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