

**CITY OF SHOREWOOD  
CITY COUNCIL WORK SESSION  
MONDAY, OCTOBER 25, 2021**

**5755 COUNTRY CLUB ROAD  
COUNCIL CHAMBERS  
6:30 P.M.**

For those wishing to listen live to the meeting, please go to [ci.shorewood.mn.us/current\\_meeting](https://ci.shorewood.mn.us/current_meeting) for the meeting link. Contact the city at 952.960.7900 during regular business hours with questions.

### **AGENDA**

#### **1. CONVENE CITY COUNCIL WORK SESSION**

##### **A. Roll Call**

Mayor Labadie \_\_\_\_\_  
Siakel \_\_\_\_\_  
Johnson \_\_\_\_\_  
Callies \_\_\_\_\_  
Gorham \_\_\_\_\_

##### **B. Review and Adopt Agenda**

#### **2. DONATION POLICY DISCUSSION**

#### **3. ADJOURN**

### **ATTACHMENTS**

**City Administrator Memo**



## City of Shorewood Council Meeting Item

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**Title/Subject:** Donation Policy

Meeting Date: October 25, 2021

Prepared By: Greg Lerud, City Administrator

Reviewed By: Tim Keane, City Attorney

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MEETING  
TYPE  
WORK  
SESSION

**Attachments:** League of MN Cities informational memo, State Auditor  
Position Statement

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**Background:** Earlier this year, the City Council requested staff prepare a donation policy for Council review. Prior to preparation of the policy, staff wants to receive council input based on what is permissible and not permissible according to statute and position statements. The city's policy cannot be less restrictive than state law but can be more restrictive.

**Next Steps and Timeline:** Following the discussion, staff will work on preparing a policy that is consistent with council guidance.

## RELEVANT LINKS:

Section II-L, *Economic development*

Minnesota Department of Employment and Economic Development, 332 Minnesota Street, Suite E-200, St. Paul, MN 55101; (651) 259-7114 or (800) 657-3858.

Minn. Stat. § 412.221, subd. 9.

Minn. Stat. § 471.84.  
Minn. Stat. § 410.01.

Minn. State Auditor,  
Statement of Position Public  
Expenditure: Donations and  
Dues.

Minn. Stat. § 38.12.

Likewise, there is limited authority to provide low-cost land for housing redevelopment purposes.

These different programs are discussed briefly in a later section of this memo. For further information, contact the League or the Minnesota Department of Employment and Economic Development (DEED).

## F. Cemeteries

Statutory cities may acquire, hold, and manage cemetery grounds. These cities may acquire cemeteries by purchase, gift, devise, condemnation, or otherwise.

Any statutory city, town, or fourth class home rule charter city may appropriate up to \$10,000 per year to any public or privately owned cemetery located within or outside the city's boundaries. The cemetery must be used for burial of the dead without restriction. The statute does not specify a particular use of the money by the cemetery. Alternatively, a city may enter a joint powers agreement with another governmental entity for the operation of a cemetery. In addition to the joint powers agreement, neighboring cities and towns may jointly agree to maintain a cemetery, with the same \$10,000-per-year restriction for each.

## G. Community celebrations

City officials often ask if the city may hold a celebration for the community or contribute to an organization that will be holding a community celebration. Although no general authorization exists for festival expenditures, some statutory authority does support these types of expenditures in limited circumstances. The League cautions against spending money on celebrations outside of parameters set forth below and recommends consulting with city attorneys regarding expenditures on fairs or celebrations.

### 1. County fairs

Any city or town hosting the fairs of county and district agricultural societies or associations may appropriate money to the agricultural society or association if both:

- The society or association is a member of the Minnesota State Agricultural Society; and
- The fair is held within the city's or town's corporate limits or within close-proximity to the corporate limits.

## RELEVANT LINKS:

[Minn. Stat. § 465.50.](#)

[Minn. Stat. § 471.93.](#)  
[Section II-R, \*Historical\*.](#)

[Minn. Stat. § 471.935.](#)  
[Minn. Stat. §§ 471.15-.191.](#)  
[Office of State Auditor,](#)  
[Statement of Position:](#)  
[Expenditure of Public Funds](#)  
[to Schools and Senior](#)  
[Programs, Oct. 14, 2016.](#)

[Minn. Stat. § 412.221, subd.](#)  
[34.](#)

[A.G. Op. 59-a-22 \(Dec. 4,](#)  
[1934\).](#)

[MN State Auditor, Statement](#)  
[of Position Public](#)  
[Expenditure: Donations and](#)  
[Dues.](#)

[Minn. Stat. § 469.191.](#)

[Handbook, \*Community\*](#)  
[Development and](#)  
[Redevelopment.](#)

## 2. Memorial Day observances

All cities have the authority to spend money for Memorial Day observances in commemoration of the noble and valiant deeds of the nation's dead soldiers. Cities may spend up to \$300 annually for each 75,000 of population.

## 3. Centennial and historical celebrations

The statutes do not specifically authorize cities to spend money for city centennial celebrations.

An argument can be made, however, that cities may spend money on such local celebrations under a statute allowing cities to spend money to commemorate important historical events that occurred in the city. A later section of this memo discusses this authority in more detail.

## H. Community centers

Any city may appropriate money to support the facilities, programs, and services of a public or private nonprofit senior citizen or youth center. No specific authority expressly allows cities to finance other community centers, but many cities have done so through the state recreation statutes.

## I. Decorations

Statutory cities may spend money on decorations, signs, plaques, and attached accessories for public streets, buildings, and parks. Cities should use caution to ensure that decorations, such as those for the Christmas holidays, are not primarily religious in nature.

## J. Donations

Cities often get asked to make donations to organizations operating for good causes. Generally, without express authority by charter or statute, cities do not have authority to appropriate or give away public funds as donations to any person, corporation or private institution. This does not mean, however, that a city can never contribute to an association or a corporation; but, to do so, the expenditure must further a public purpose and must be authorized by a statute or charter. Indeed, some statutes specifically allow support for certain organizations and causes.

For example, a specific state law exists that allows cities to give donations (of up to \$50,000 per year) to any incorporated developmental society or organization.



## RELEVANT LINKS:

[Minn. Stat. § 465.03.](#)  
[Minn. Stat. § 465.04.](#)  
[Minn. Stat. § 471.895.](#)

[Accepting Donations, LMC  
Model Resolution.](#)

[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 \(Apr. 29,  
1954\).](#)  
[Office of State Auditor,  
Statement of Position:  
Expenditure of Public Funds  
to Schools and Senior  
Programs, Oct. 14, 2016.](#)

[Minn. Stat. § 412.221, subd.  
2.](#)  
[Minn. Stat. § 349.213.](#)  
[Minn. Stat. § 349.12.](#)

[Minn. Stat. § 471.941.](#)

Also, various statutory economic development tools make it possible for cities to make certain contributions toward development and redevelopment. Again, cities should consult with their city attorneys or bond attorneys regarding allowable expenditures for development.

Cities may also accept gifts of real or personal property, including money, and use them in accordance with the terms prescribed by the donor. However, a city may not accept or use gifts for religious or sectarian purposes.

A resolution accepting the gift and the donor's terms must receive an affirmative vote of two-thirds of the members of the council.

## 1. Nonprofit organizations in general

The attorney general and the state auditor, over the years, have considered the question of whether cities can donate public funds to various groups. Public expenditures to the following groups or organizations do not have statutory authority and are invalid:

- Supporting the Boy Scouts.
- Sponsoring a local bowling team.
- Sponsoring a local kittenball team (like softball).
- Helping the American Legion build a Legion Hall.
- Supporting the Red Cross.
- Supporting a campaign to stop expansion of a neighboring city airport.
- Supporting schools.

Cities have other options to support nonprofits. For example, the city could use its contracting power to indirectly support nonprofits, such as contracting with 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 that further a lawful purpose. The city should consult with its city attorney to ensure that the use of gambling proceeds complies with the statutory requirements of a lawful purpose expenditure.

## 2. Artistic organizations

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

## RELEVANT LINKS:

Minn. Stat. § 469.191.  
A.G. Op. (June 27, 1997)  
(informal letter opinion to  
Staples).  
Section II-K, *Dues*.

Minn. Stat. § 465.039.  
Minn. Stat. § 465.037.  
Minn. Stat. § 469.191.  
Sections II-S, *Hospitals and  
EMS* and II-L, *Economic  
development*.

Minn. Stat. § 343.11.

Minn. Stat. § 465.90.

An association, corporation, or other group that provides an opportunity for people to participate in the creation, performance, or appreciation of artistic activities qualifies as an “artistic organization”. The statute provides examples of “artistic activities” that cities can support; however, it, by no means, represents an exclusive list.

### **3. Incorporated development societies or organizations**

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.” Because of the limitations regarding donations, cities interested in donating up to \$50,000 in any given year to an incorporated development society or organization should consult their city attorney. For example, 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.

### **4. Community food shelves**

Any city, town, or county may appropriate an amount to provide grants to nonprofit organizations that operate community food shelves and provide food to the needy without charge. Authority also exists to provide public money to support hospitals and certain economic development organizations. These circumstances are discussed in more detail in a later part of this memo.

### **5. Prevention of cruelty to animals**

If a city has a society for the prevention of cruelty to animals (“SPCA”), it may appropriate monies, not otherwise appropriated, for the maintenance and support of that SPCA “in the transaction of the work for which they are organized”.

However, no part of such an appropriation may go to pay the salary of any officer of the society.

### **6. Solicitation of donations by firefighters**

Despite any law or ordinance to the contrary, any city may, by resolution, allow full-time firefighters employed by the city and while on duty, or volunteer firefighters serving the city while not on duty, to solicit charitable contributions from motorists.





REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
[state.auditor@osa.state.mn.us](mailto:state.auditor@osa.state.mn.us) (E-mail)  
1-800-627-3529 (Relay Service)

### Statement of Position

#### Public Expenditures: Donations and Dues

Public entities are often asked to give funds to support various groups and activities. While the causes may be worthwhile, public entities need to be cautious when making any financial commitments involving public funds.

In most circumstances, public entities have no authority to give away public funds as donations. Generally, in order to spend money, a public entity must have authority to do so. Authority for an expenditure may be specifically stated in a statute or charter, or it may be implied as necessary to do what an express power authorizes. In addition, the expenditure must be for a "public purpose."

#### Gifts/Donations to Private Individuals/Organizations

Following these general principles, donations to people, non-profits, charities, or other groups are not permitted unless they are based upon specific statutory or charter authority. For example, the Minnesota Attorney General's Office has issued opinions finding that cities have no authority to donate city funds to organizations such as the Red Cross or the Boy Scouts.<sup>1</sup> The assumption is that a gift of public funds to an individual or private entity serves a private rather than a public purpose.

Before a public entity makes a contribution, it is important for that entity to determine that it has specific authorization to make the expenditure. Here are some examples of specific, statutorily authorized appropriations:

- **Artistic Organizations.** A county, city or town may appropriate money to support artistic organizations.<sup>2</sup>
- **Historical Causes.** A town or city may appropriate annually a specified amount to a county historical society so long as the society is affiliated with, and approved by, the Minnesota Historical Society.<sup>3</sup> Cities have express authority to commemorate important and outstanding events in city history, and to appropriate money to collect, preserve and distribute its history data for future generations.<sup>4</sup> The Attorney General's Office recognizes that a city can advance money to a

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<sup>1</sup> See, for example, Op. Att'y Gen. 59-A-3 (May 21, 1948).

<sup>2</sup> Minn. Stat. § 471.941.

<sup>3</sup> Minn. Stat. § 138.053.

<sup>4</sup> Minn. Stat. § 471.93.

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2007-1017



- nonprofit to sponsor a centennial celebration.<sup>5</sup>
- **Prevention of Cruelty to Animals.** A county may appropriate money for maintenance and support of the local society for the prevention of cruelty to animals.<sup>6</sup>
  - **Food Shelves.** Cities and counties may donate funds in the form of grants to food shelves providing food to the needy without charge.<sup>7</sup>
  - **Senior/Youth Centers.** A county, city or town may appropriate money to support the facilities, programs, and services of a public or private, not-for-profit senior citizen center or youth center.<sup>8</sup>
  - **Public Recreation Programs.** Counties, cities, towns and school districts may spend funds to operate programs of public recreation, recreational facilities, and playgrounds.<sup>9</sup> These programs may be conducted independently or with any nonprofit organization.
  - **Promotion.** A city or urban town may appropriate up to \$50,000 annually to an incorporated development society or organization of this State, for promoting, advertising, improving, or developing the economic and agricultural resources of the city or urban town.<sup>10</sup> A city may appropriate money to advertise the city and its resources and advantages.<sup>11</sup> Similarly, a county may appropriate funds to a similar entity for promoting, advertising, improving or developing the economic and agricultural resources of the county.<sup>12</sup> The county statute does not contain an annual spending limit.
  - **Employee Recognition.** Towns may spend funds to recognize volunteers, service efforts, and retiring town officers.<sup>13</sup> Counties and cities may spend funds for preventive health and employee recognition services.<sup>14</sup>
  - **Community Celebrations.** Towns may spend funds to host or support a community celebration.<sup>15</sup> Cities or towns may spend funds on Memorial Day observances,<sup>16</sup> and may appropriate money for county or district fairs,<sup>17</sup> centennial and historical celebrations.<sup>18</sup> Statutory cities may spend funds to provide free musical entertainment.<sup>19</sup> The authority to purchase fireworks seems to be implied.<sup>20</sup>

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<sup>5</sup> See Op. Att’y Gen. 59a-3 (Jan. 18, 1968) (citing Minn. Stat. § 471.93).

<sup>6</sup> Minn. Stat. § 343.11.

<sup>7</sup> Minn. Stat. § 465.039.

<sup>8</sup> Minn. Stat. § 471.935.

<sup>9</sup> See generally, Minn. Stat. §§ 471.15 to .1911. Minn. Stat. Minn. Stat. § 469.189., and 471.16, subd. 1.

<sup>10</sup> Minn. Stat. § 469.191. In addition, Economic Development Authorities (EDAs) have authority to conduct activities advancing the city and its economic development, and to carry out other public relations activities to promote the city and its economic development. See generally, Minn. Stat. §§ 469.090-.1081 and Minn. Stat. § 469.1082 (county EDAs).

<sup>11</sup> Minn. Stat. § 375.83.

<sup>12</sup> Minn. Stat. § 469.189.

<sup>13</sup> Minn. Stat. § 365.10, subd. 12 (but electors must approve).

<sup>14</sup> Minn. Stat. § 15.46.

<sup>15</sup> Minn. Stat. § 365.10, subd. 12 (but electors must approve).

<sup>16</sup> Minn. Stat. § 465.50.

<sup>17</sup> Minn. Stat. § 38.12.

<sup>18</sup> Minn. Stat. § 471.93.

<sup>19</sup> Minn. Stat. § 412.221, subd. 15.

<sup>20</sup> Minn. Stat. § 624.22, subd. 1(a) (2) (A municipality may stage a fireworks display after obtaining a permit).



As an alternative to a donation, a public entity may enter into a contract with an organization to accomplish tasks that the entity is authorized to perform by statute or charter. For example, a city could not give money to the Boy Scouts for a recycling program, but the city could enter a contract with the Boy Scouts to do part of its recycling program. The amount of money paid to the Boy Scouts must be related to the value of the services they provide to the city.

## **Memberships and Dues**

There is no general authorization for cities to join “private” organizations; but there may be specific statutory or charter authority to join specific organizations. For example, cities and urban towns in Minnesota may pay dues to become members of the League of Minnesota Cities.<sup>21</sup>

Similarly, cities, counties, and towns may appropriate money for membership in county, regional, state, and national associations of a civic, educational, or governmental nature. These associations must have as their purpose the betterment and improvement of municipal governmental operations.<sup>22</sup> This authorization also allows public entities to participate in the meetings and activities of these associations.

A school board may authorize and pay for the membership of the school district or of any district representative designated by the board in those local economic development associations or other community or civic organizations that the board deems appropriate.<sup>23</sup>

The Attorney General’s Office has determined that local units of government may *not* pay dues to a local chamber of commerce<sup>24</sup>. However, because cities and urban towns may appropriate up to \$50,000 to an incorporated development society or organization for promotional activities, a city or urban town could contribute to a local chamber of commerce for one of the purposes authorized by statute, such as promoting the city or urban town.<sup>25</sup> Counties have similar authority but do not have the \$50,000 monetary cap.<sup>26</sup> The use of public funds would be limited to statutorily authorized activities. As a result, the OSA recommends that counties, cities, and urban towns create and maintain documentation that shows the funds have been given for specific statutory purposes.<sup>27</sup>

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<sup>21</sup> Minn. Stat. § 465.58.

<sup>22</sup> Minn. Stat. § 471.96.

<sup>23</sup> Minn. Stat. § 123B.02, subd. 24.

<sup>24</sup> See Attorney General Letter dated June 27, 1997 (attached).

<sup>25</sup> Minn. Stat. § 469.191. An EDA has broader authority to join an official, industrial, commercial or trade association, or other organization concerned with one of the EDA’s authorized purposes.

<sup>26</sup> Minn. Stat. § 375.83.

<sup>27</sup> Documentation includes, but is not limited, to minutes, resolutions and contracts.





# STATE OF MINNESOTA

## OFFICE OF THE ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION  
525 PARK STREET  
SUITE 200  
ST. PAUL, MN 55103-2106  
TELEPHONE: (612) 297-2040

HUBERT H. HUMPHREY III  
ATTORNEY GENERAL

June 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



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

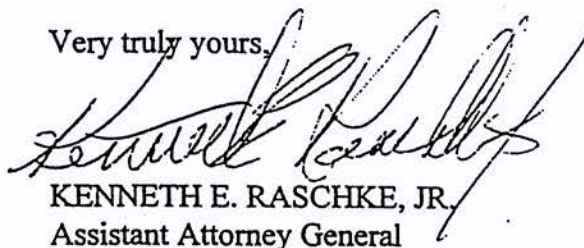
governmental operations. Cities, counties, and towns are also authorized to participate through duly designated representatives in the meetings and activities of such associations, and the governing bodies of cities, counties and towns respectively are authorized to appropriate necessary funds to defray 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.  
Assistant Attorney General

(612) 297-1141