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January 5, 1994

Mr. Peter Sausen
Assistant Commissioner of Finance
Minnesota Department of Finance
658 Cedar Street, 4th Floor
St Paul, Minnesota 55155

Re: General Obligation Bond Financing of Certain
Fiber Optic Cable Installations

Dear Mr. Sausen:

You have asked whether we could issue an unqualified legal opinion approving the issuance of state general obligation bonds to finance the purchase and installation of fiber optic cable. The cable would connect (1) major state-owned facilities (e.g. the capitol complex and the state university system campuses with each other; and (2) state buildings within a complex (e.g. state university system campus buildings). The cable would be located on state-owned property, or in state, county or city owned rights-of-way or easements. After reviewing the constitution, various earlier memoranda interpreting it, and other relevant information, we have concluded that, except as noted below with respect to the acquisition of land and permanent easements, we could not issue an unqualified opinion approving the issuance of state general obligation bonds for this purpose without a test case.

The Minnesota Constitution, Article XI, governs the issuance of general obligations bonds by the State. Article XI, Section 5, provides in part that State bonds may be issued:

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

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adopted by the vote of at least three-fifths
of the members of each house of the
legislature." [Emphasis added.]

As we understand it, the projects involve the acquisition of some land and permanent easements for location of the cable and to this extent could be bond financed. However, the purchase of the cable and the installation of it do not comprise the acquisition of land and buildings or clearly comprise (1) the betterment of "land" or (2) the acquisition and betterment of "other public improvements." As it has been explained to me, the cable would merely be buried in the land, typically inside existing conduits or a plastic conduit tube. The cable could be easily removed without damage to the land in which it is buried, and as easily, although not as desirably, be installed above ground on telephone poles for example. It would not enhance the usefulness of the land in which it was buried or become an integral part of it and would likely not constitute a "fixture." Thus it doesn't seem to "better public land."

With respect to the meaning of the phrase "other public improvements" we have previously concluded that it most likely refers to additions to real estate, not personal property. In view of the facts cited above we think the fiber optic cable when installed will not lose its character as personal property and thus will not constitute an "improvement" under Article XI.

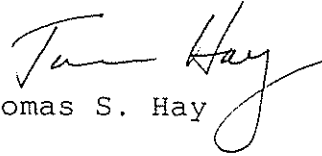
In order to approve the issuance of bonds under Article XI we, as bond counsel, must determine that there is no reasonable doubt as to the authority for their issuance. In view of the facts set forth above, we think there is reasonable doubt as to whether the project would "better public land" or constitute an "improvement" within the meaning of Article XI. Thus, we could not issue the opinion in question.

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I hope this is satisfactory for your purposes at this time; however, if additional comment or explanation is needed, please let me know.

Very truly yours,


Thomas S. Hay

TSH/vm

cc: C. Eller