

February 8, 1938

Mr. Herman Aufderheide, Administrator,
State Relief Agency,
Room 323, State Capitol,
St. Paul, Minnesota.

Dear Sir:

Re: S.R.A. Minnesota Point Project
Duluth, Minnesota

I am enclosing a copy of a letter dated January 31, 1938, from Mr. H. S. Campbell, Assistant City Attorney of Duluth, addressed to Mr. Norbert Willwerscheid, Special Assistant Attorney General, engaged in land acquisition for the State Relief Agency.

To the end that you fully understand the contents of the letter, I think it might be well to give you a short history of this project.

This project, in its inception, originated with the city officials of Duluth as a public park project, to be ultimately merged into the general park system of the City of Duluth. It is my recollection that the distinct understanding between the Executive Council and the city officials of Duluth at the time they obtained the allocation of State relief funds for the acquisition of lands was to the effect that when the lands were acquired by condemnation in the State of Minnesota, the Executive Council and the City of Duluth would request the Legislature to enact legislation authorizing the State of Minnesota to convey all of the lands acquired to the City of Duluth, to the end that the City of Duluth, through its park system, would be charged with the complete obligation of the subsequent maintenance of the project after the Works Progress Administration had completed the same.

In other words, it was my understanding that the Executive Council was willing to acquire the lands for the City of Duluth so that work relief might be afforded and as the State's contribution to the work relief project, but with the distinct understanding that the State would be under no obligation of any kind for the maintenance of the public park project after completion.

All parcels of land have been acquired with the exception of an appeal pending by one owner of three parcels of land, known as Parcels 91, 91A and 91B. The trial of this appeal has been continued from time to time and, under the order of Judge Magney of the District Court of Duluth, must positively be tried as the first case on the calendar at the March 7th term in Duluth, or dismissed from the calendar. The aggregate award by the commissioners for these three parcels of land was \$19,427.00. There are delinquent taxes and special assessments, including penalties, against these three parcels in excess of \$32,000.00, so that in the event the property owner is to derive any moneys for himself,

Mr. Herman Aufderheide

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February 8, 1938.

after payment of the taxes and special assessments, the verdict would have to be in excess of the taxes, either as assessed or compromised. For this reason it is doubtful if the case will ever be tried and perhaps same will be dismissed on the State's motion for lack of prosecution, and the award paid to the County Auditor of St. Louis County for distribution among the various tax units in payment of such taxes and special assessments. Therefore, shortly after March 7th, the State will actually have acquired the title to all of the Parcels of land in this project and nothing would remain except the filing of final certificate which would vest the title in the State of Minnesota as of the date of the filing of the award of commissioners, viz: November 4, 1936.

I am of the opinion that the State of Minnesota cannot actually convey the parcels of land involved in this project to the City of Duluth without additional legislation authorizing the same. However, if after March 7th, the State Executive Council were requested by you to adopt a resolution in substance to the effect that they would recommend legislation to be passed at the next session of the Legislature, either special or general, so that the City of Duluth would be obligated to maintain this park project, and the Executive Council and the State relieved from such burden, upon the passage of such resolution, I see no reason why the City of Duluth could not hold its dedication ceremonies which it desires to hold in June under the joint auspices of the Lakeside and the David Wisted Posts of the American Legion. It would not be necessary for the City of Duluth to await the actual conveyance of the parcels to the city after the passage of enabling legislation.

Incidentally, there had not been sufficient funds appropriated by the Executive Council to purchase all parcels of land and they refused to allocate any more relief funds to the project, whereupon the City of Duluth allocated \$10,000.00 out of a comparatively recent bond issue of the City of Duluth which has been drawn upon for the payment of the acquisition of the more recent parcels and settlements of appeals with respect to the same. This was done by the City Council, as stated above, to the effect that it was the intention to convey these lands to the City of Duluth. However, I am placing this entire matter before you and would appreciate your views on the situation as soon as convenient, so that the City of Duluth officials may be advised with respect to the same.

Yours very truly,

Ordner T. Bundlie
Assistant Attorney General

OTB:VAL
enc.

STATE RELIEF AGENCY

State Capitol

Saint Paul, Minnesota

February 10, 1938

HERMAN J. AUFDERHEIDE

Administrator

Mr. Wm. H. Lamson
Secretary
State Executive Council
State Capitol
St. Paul, Minnesota

Dear Mr. Lamson:

I am enclosing copy of Assistant Attorney General Ordner T. Bundlie's letter to me of February 8th, regarding acquiring of lands for the Minnesota Point Project at Duluth.

A perusal of my file indicates, as stated by Mr. Bundlie, the Executive Council was willing to acquire the lands for the City of Duluth so that work relief might be afforded and as the State's contribution to the work relief project but further, with the distinct understanding that the State would be under no obligation of any kind for the maintenance of the public park project after completion.

For your file, am enclosing copy of Mr. Zimmerman's letter to the Mayor, City Council, City Comptroller and City Treasurer of Duluth, dated July 27th, 1937, wherein he states:

"The acquisition of these lands for this project were directly under my supervision as State Relief Administrator, appointed as such by the Executive Council of the State of Minnesota, and I agree that if the City of Duluth will pay directly for such parcels of land as are necessary, I will, as such State Relief Administrator, do my utmost toward having the next regular session of the Legislature of the State of Minnesota pass an act authorizing the Governor of the State of Minnesota to transfer the legal title to all of the lands acquired in this project to the City of Duluth and that I will further present and urge the same action on behalf of the State Executive Council."

You will recall the State agreed to buy lands up to the amount of \$90,000 and the purchase by the City direct amounts to \$10,000 representing the purchase of any land necessary over and above the State appropriation of \$90,000.

Will you please confirm that it is the intent of the State Executive Council that the title vested in the State of Minnesota be transferred to the City of Duluth, contingent, of course, upon action by the Legislature, so that the City of Duluth may be advised accordingly? From information to hand, it appears that the City of Duluth would like

STATE RELIEF AGENCY

State Capitol
Saint Paul, Minnesota

February 10, 1938

HERMAN J. AUFDERHEIDE
Administrator

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to hold dedication services under the joint auspices of the Lakeside and David Wisted Posts of the American Legion some time in June of this year.

Yours very truly

STATE RELIEF AGENCY

A handwritten signature in cursive script, reading "Herman J. Aufderheide".

Herman J. Aufderheide
Administrator

A:M

March 16, 1938

*Minnesota Park
Lac qui Parle Project*

Mr. Herman J. Aufderheide,
Administrator, State Relief Agency
State Capitol
St. Paul, Minnesota

Dear Sir:

Re: State Relief Agency-Land Acquisition
Chapter 459, Laws of 1937--Authority
of the Executive Council to Lease or
Sell Lands Acquired under the State
Relief Acts in Connection with Work
Relief Projects.

I am in receipt of your request for opinion dated March 4, 1938, wherein you call attention to Chapter 459, Laws of 1937. You request my interpretation of this law, particularly with reference to the legal effect of the alleged powers of the Executive Council in connection with the leasing, renting, sale or other disposition of lands and improvements thereon, acquired under the State Relief Acts in connection with work relief projects when such lands or any part thereof are not presently needed for the purpose or purposes for which same were acquired.

Chapter 459, passed in the 1937
Legislative Session is very brief and reads as follows:

"An Act authorizing the Executive Council to lease, rent, sell or dispose of lands and improvements, which have been acquired in certain cases, and providing for the disposition of funds received in such case.

Be it enacted by the Legislature
of the State of Minnesota:

Section 1. Executive Council to acquire and dispose of lands. In all acquisitions of lands, made by the Executive Council, involving flood control, water supply, water diversion, control of erosion, reforestation, afforestation, and recreation and not presently needed for such purpose or purposes, which may be or have been purchased or acquired under the terms of House File No. 182 and/or Laws 1935, Chapter 51, and/or Extra Session Laws 1935-1936, the Executive Council is hereby authorized to lease, rent, sell, or otherwise dispose of or deal with, upon such terms and conditions as it may deem advisable, and all of the lands, buildings, or

improvements thereon so acquired.

Section 2. Receipts to be credited to improvement fund.-- Any sum or sums of money received from such leasing, sale or disposition of said lands or improvements thereon shall be credited to the \$2,500,000 fund created by House File No. 182 and re-allocated and expended in the same manner and for the same purposes for which said fund was created.

Section 3. This act shall take effect and be in force from and after its passage.

Approved April 24, 1937."

You have also made inquiry in the event that it is held that this law is operative, as to the mechanics or method of affecting transfer of the lands, buildings or leases.

Chapter 141
You will note particularly that Sections 1 and 2 of Chapter 459 make specific reference to lands which may be or have been purchased or acquired under the terms of House File 182 and/or Laws of 1935, Chapter 51, and/or Extra Session Laws 1935-6, the last mentioned laws being the relief acts.

An examination of the records and of House File 182 discloses that at the time of the passage and approval of Chapter 459, Laws of 1937, House File 182, was the proposed new state relief bill which was generally expected to be passed in one form or another during the regular 1937 session. However, House File 182 was not passed at the regular session but a special session in 1937 was called during the summer months for the primary purpose of passing a state relief bill, and as a result of the special session Chapter 89 of the special session laws, 1937, being the present state relief act, was passed and was approved on July 24, 1937. Said Chapter 89 as passed and House File 182 of the regular session which was not passed, are both state relief measures and both have the same characteristics of a general, complete emergency relief act and are direct and cover the same manner; so in principle as well as in subject matter, House File 182, and Chapter 89 of the 1937 special session are for all practical purposes the same. Unquestionably at the time of the enactment of Chapter 459, the legislature had fully intended to pass a state emergency relief act and wished to tie 459 Chapter into the act to be passed, as well as the former relief act of 1935, and the relief act of the special session of 1935-1936. The intent, therefore, of the Legislature, appears to the writer to be clear, and that the selling or leasing of lands or improvements thereon, not presently needed for work relief projects and which were acquired or would be acquired under the new relief act, as well as the two prior relief acts, would be a matter for the Executive Council to administer.

The courts have long held in substance that an act should be held effective and constitutional if at all possible to reconcile the act with the Constitution and the legality of the subject matter. The general provisions of

of Chapter 459 might well have been incorporated in the relief act as passed by the 1937 special session, and it is further brought to your attention that there was no specific repeal in the special session of Chapter 459, thereby indicating an intention of the legislature that the terms of Chapter 459 would likewise be applicable to the last enacted relief act, as well as the two prior state relief measures.

In the case of Congdon v. Congdon, 160 Minn. 343, the court said:

"We must construe a statute with reference to the object it was intended should be accomplished by it. In order to learn this object it is proper to consider the occasion and necessity of the enactment. That construction must be applied that will best advance its object."

In State ex rel v. St. Paul, M. & M. Ry Co., 98 Minn. 380, it is stated that:

"A rigid and literal reading would in many cases defeat the very object of the statute and exemplify the maxim that 'the letter killeth, while the spirit keepeth alive.'"

The operation of statutes is often extended, by construction, to matters of subsequent creation and applied to conditions that accrue after their passage, as well as to those that existed before.

In Minn. and Pac. R.R. Co. vs. H.H. Sibley, 2 Minn. 1, it is held:

"In construing a law, the history of its passage is often of great assistance; if it be an amendment, the court will recur to the condition of the law prior to the amendment, and consider the occasion, necessity, and object of the change."

In J. F. Mushel vs. C.G. Schulz and others, 139 Minn. 234, the court said:

"In construing a statute, we may, in case of doubt, take into account the object or purpose of the act, the events leading up to it, the history of the passage of the act through the legislature, and modifications made during its course."

In Minne Heim vs. American Alliance Insurance Company of New York, 147 Minn. 283, the court said:

"The statute is a remedial one, and, therefore, it is to be construed literally for the suppression of the mischief it was designed to do away with, it was enacted to promote beneficial public objects

and, therefore, a broad construction is to be given to it."

The writer is familiar with the land acquisition activities under the State Relief Acts in furtherance of work relief projects, and in some of the acquisitions, particularly the Lac qui Parle Project which extends into four counties and covers a great amount of acreage, it was found in the condemnation proceedings and negotiations, that in many cases where large areas of land were taken, leaving only small portions of land under private ownership, that the State could obtain entire tracts at the same consideration as the smaller acreages and in such cases the entire tracts were acquired.

Some of the lands, particularly in the Lac qui Parle Project, will be subjected to flowage or flooding only periodically and in some of such cases, I understand that leases could be negotiated for use of the land to private parties for a consideration, subject to the State's flowage rights, and in other cases the parcels of land not actually needed could perhaps be sold to an adjacent owner at a fair consideration.

One of the problems presented by the vast land acquisition is that of buildings of various natures which are situated upon the lands acquired, particularly the larger areas. Some means should be made available to sell and dispose of the structures or have same razed and the salvage realized. Chapter 459 would give this right if this chapter is valid.

In view of the history of House File #182, the passage of Chapter 459, and the subsequent enactment of Chapter 89 of the Special Session Laws of 1937, a similar measure, and construing the legislative intent, I am of the opinion that Chapter 459 is an act enabling the Executive Council to sell or dispose of the excess lands, buildings and other improvements, particularly with the view in mind of the preservation of the emergency relief funds.

Section 2 of Chapter 459 provides that any funds received from such leasing or sale or disposition of lands and structures would be credited to the fund created by House File 182 and be re-allocated and expended in the same manner and for the same purposes as such fund was created. Under Chapter 89 of the relief bill, a fund is set up for the purposes described therein. For the reasons hereinabove stated, I am of the opinion that any sums realized from the sale or leasing or disposition of the excess lands and improvements may be credited to the funds allocated for land acquisition as to such projects. This, I believe to be proper inasmuch as the sale or leasing represents salvage or decrease of the purchase price of land acquisitions and the moneys realized should properly be credited and supplement such fund.

Under Chapter 459, the Executive Council is expressly authorized to sell, lease, rent or dispose of such excess

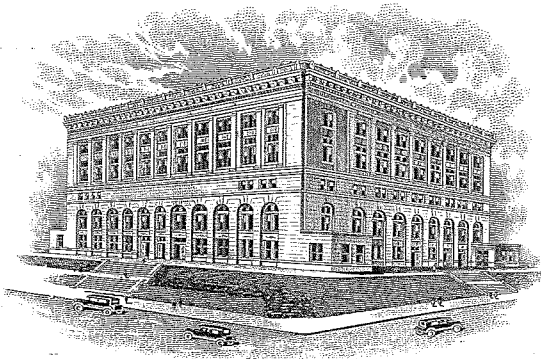
land and buildings. I believe it would be proper and it is recommended, that the Executive Council by resolution designate you or some other person or persons as its agent to handel such sale, leasing and disposition of the excess lands. The leases bills of sale or deeds, of course, will have to be executed in writing and the Executive Council may well, if it desires, by motion or resolution authorize the Governor and the Secretary of the Executive Council or other persons, to execute such instruments as may be necessary to effect such transfers.

Yours very truly,

Ordner T. Bundlie,
Assistant Attorney General

OTB:HD

COPY



THE CITY OF DULUTH

LEGAL DEPARTMENT

DULUTH, MINNESOTA

HARRY E. WEINBERG
CITY ATTORNEY

ROBERT JAQUES
ASS'T. CITY ATTORNEY

ROLAND J. HENNING
ASS'T. CITY ATTORNEY

H. S. CAMPBELL,
ASS'T CITY ATTORNEY

March 18, 1938.

In re: Minnesota Point Project Condemnation

Secretary of the State Executive Council for
the State of Minnesota,
Capitol Building,
St. Paul, Minnesota.

Dear Sir:

At the request of Mr. O. T. Bundlie, I am writing you this letter with reference to the above matter.

On the 16th day of March, Mayor Berghult and myself, representing the City of Duluth, appeared before your Council and requested that some immediate action be taken relative to the situation confronting the City of Duluth at the present time; and at that meeting Mayor Berghult gave you a brief outline of the situation, which I will attempt to set forth in the following paragraph more in detail.

The State of Minnesota, by order of the Executive Council, commenced condemnation proceedings on a large tract of land on Minnesota Point, with the explicit understanding that the State would pay the sum of \$90,000 toward the cost of the acquisition of said land; and the City agreed, by a resolution of its council, to pay for and acquire, or to pay the awards in the condemnation proceedings of all sums in excess of said \$90,000 which were necessary for the completion of this project. The State commenced condemnation proceedings, and has expended in payment of the awards under such proceedings the full amount of the \$90,000. The City has expended, in addition to such \$90,000, the sum of \$11,609.43, and acquired the title to this property in the name of the City of Duluth, and has expended the sum of \$2,248.94 in payment of awards in the condemnation proceedings, the title to which property became vested in the City of Duluth under the condemnation proceedings. The City has also spent \$51,544.87 for its share as the sponsor's contribution towards the improvement of this property for recreational and park purposes; and the local W.P.A. office informs the City that there is only \$14,500 of the Federal appropriation still unspent, and that said balance is entirely inadequate to finish up the present plans for the development of this project. This leaves the City in the position of devising some means of revenue from the project in order to complete the same; and there are negotiations pending at the present time for the installation of certain amusement devices on Minnesota Point in order to obtain which it will be necessary for the City of Duluth to enter into written leases with the people installing the same for in some instances up to a period of five to ten years, and the proper location for these devices is on land the title to which is now vested in the State of Minnesota under the con-

March 18, 1938.

Secretary of State Executive Council, - page 2.

demnation proceedings, and the City is not in a position to enter into a written agreement covering the leasing of land which it does not own.

After appearing before your Council, and at the suggestion of some of the council members, we called upon the Conservation Department with reference to this matter, and finally obtained the information that the management and control of this project had been turned over to the Highway Department for the State of Minnesota; and upon consulting with Mr. Bundlie of said department, we were informed by him that he had written an opinion to the Attorney General's office relative to the land in this project and other lands in other projects of a similar nature throughout the State of Minnesota, and asked for a ruling from the Attorney General's office to the effect that the Executive Council had at this time, under Chapter 459 of the 1937 Session Laws, and Chapter 89 of the 1937 Special Session Laws, the authority to lease and dispose of property acquired for the uses and purposes which were in this case to provide employment

The last appeal in the above condemnation proceedings has been settled by the City of Duluth through the purchase of the land covered in the appeal in the name of the City; and there is nothing now to stop the Attorney General's office from filing the certificate in the condemnation proceedings which will vest the title to all of the property in said project in the State of Minnesota and under the enabling acts above quoted it would be possible for the Executive Council to deed all of this property direct to the City of Duluth should the Attorney General's office rule in conformity with Mr. Bundlie's opinion that they have the authority to do so.

It is the intent of the City of Duluth to open this project to the public partially, at least, this coming spring; and it would greatly simplify matters for the City, the Mayor, and the Commissioners, if your Honorable Body could see its way clear to transfer the title to this property to the City of Duluth by resolution to be passed at your next regular meeting.

Thanking you in advance for your prompt consideration of this matter, and if possible the transfer of title to the property involved in said project to the City of Duluth, I remain

Yours respectfully,



Assistant City Attorney

March 22, 1938

Hon. William S. Ervin,
Attorney General,
B U I L D I N G

Dear Mr. Ervin:

At the meeting of the Executive Council held on March 16, 1938, Mayor Berghuit and Commissioner Campbell of Duluth appeared personally before the Council with the request for a lease to the City of Duluth of certain property acquired by the state as part of the Minnesota Point Project. It was agreed informally that the Executive Council would be willing to make the lease providing the Council would have authority and jurisdiction to lease the property, the question involved being as to whether or not the Executive Council or the Department of Conservation has the authority to lease such property.

Apparently the same question is more or less involved with the lands acquired for water conservation, recreation, wild life management, and forestry, which lands were purchased for the purpose of carrying on unemployment relief work. Some of these projects have been completed and others are nearing completion, and the Department of Conservation is interested in the adoption of a plan for the immediate operation and maintenance of such land for the purpose of a longtime development program. In the Lac qui Parle area, for instance, there are a number of parcels on which are located old farm buildings. Some of these buildings are old and delapidated, and there is a question as to whether or not certain of said buildings should not be dismantled and others repaired. Likewise there is a question of removing fences from such land and of closing up gaps in fences on the boundary line of farms within the pool area, placing concrete markers to fix the boundaries of state-owned properties, planting trees, shrubs, and food for game on lands to be used for conservation purposes. If these matters and similar matters pertaining to like questions are within the jurisdiction of the Executive Council, the Executive Council would have to act upon and approve all such proposals and would have to care for and maintain such lands, otherwise, such state-owned lands would be maintained, improved, and cared for by the Conservation Department without authority from the Executive Council.

We should appreciate your
opinion on these questions. Very truly yours,

April 5, 1938

*Copy for
Mr. Morton
Executive Council
Secy.*

Mr. Hiel Campbell
Assistant City Attorney
Duluth, Minnesota

Dear Sir:

Re: Minnesota Point Project

Herewith find copy of opinion released today interpreting Chapter 459, Laws of 1937, with reference to the authority of the Executive Council to lease or sell lands acquired under the State Relief Acts in connection with work relief projects.

The question arose particularly in connection with the Lac qui Parle Project and this decision clarifies the situation with respect to the authority of the Executive Council to lease, sell or dispose of lands not presently needed for the purposes of acquirement. From a reading of the act and the opinion construing same, there appears to be no question now but what the Executive Council might lease or sell portions of the lands acquired pursuant to the State Relief Acts and which are not now needed for the purposes of acquirement.

The Minnesota Point Project presents a somewhat different picture. As I understand it, the City of Duluth has requested the State through its Executive Council to convey or lease to the City of Duluth all of the lands acquired in the name of the State. There is some question in my mind whether or not the Executive Council, even in view of the opinion released and which is attached hereto, has the right to lease or sell all of the lands acquired in its name under the relief act.

Mr. Berghuht told me yesterday relative to this matter of some of the questions confronting the City. I have discussed this matter at length with the Attorney General and I feel that we could recommend to the Executive Council a proposition of a temporary nature which perhaps would work out the matter pending legislative enactment.

It is suggested that a proposed agreement between the State and the City of Duluth be submitted to the Executive Council for action, based on the premise that the City of Duluth act as the agent of the State and particularly the Executive Council in the operation and maintenance of the Park Point Project, beginning about this time and terminating on or before May 1st, 1939. Inasmuch as the regular legislative session convenes in January 1939, no doubt an enabling act would be presented to the legislature

Mr. Hiel Campbell

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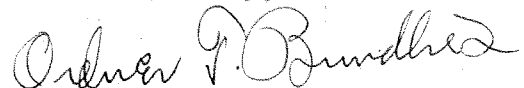
directly authorizing the State to convey all the lands acquired by it to the City of Duluth. Such agreement would provide, it is suggested, that the City of Duluth have the power and authority to enter into leases or concessions and collect the income or rentals therefor, out of which the City would be permitted to retain, if the sums collected are sufficient, all operating and maintenance expenses, the surplus, if any, to be either deposited in a separate trust fund or remitted to the Executive Council to be held in a separate trust fund. The legislature could then, if it sees fit in its enabling act, permit such surplus moneys to be turned over to the City of Duluth. Under Chapter 459, Laws of 1937, and in line with the opinion, it is contemplated that receipts for the sale or rental of lands not presently needed be credited to the relief fund.

It would appear to me that if the proposed agreement is submitted and recommended to the Council, and if the Council adopts and passes same, that Duluth would be in a position as agent of the State, and pending legislative enactment, to open and operate the public facilities and be furnished with at least some money for the operation of same, pending the enactment of a law authorizing full conveyance of the premises to Duluth and disposition of any funds accruing from such operation.

As a result of my conference with the Attorney General, it is suggested that you, in conjunction with the city officials, submit to us your thoughts in detail as to the proposed agreement. I have heretofore outlined to you the thoughts of the writer and the Attorney General with relation to this matter and what we felt we could legally do in the matter at this time.

I wish to assure you of our cooperation in this matter and would be pleased to hear from you at your convenience, after which we will submit to you a tentative form of agreement which we could recommend to the Executive Council for consideration.

Yours very truly,



Ordner T. Bundlie
Assistant Attorney General

OTB:HD

cc—William S. Ervin
Herman J. Aufderheide
S. Rex Green

EXCERPT FROM THE MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL

April 11, 1938

"On motion of Mr. Ervin, seconded by Mr. Halverson, the following resolution was duly adopted:

"BE IT HEREBY RESOLVED, by the Executive Council of the State of Minnesota, that the said Council does hereby authorize the members of said Council to convey, by quit claim deed, to the City of Duluth, all of the following described land:

"All that portion of Minnesota Point in the City of Duluth, County of St. Louis, and State of Minnesota, together with all riparian rights thereto appertaining, acquired by the State of Minnesota under condemnation proceedings commenced and carried on in the District Court of the Eleventh Judicial District, during the year 1936 and subsequently, under and by virtue of Chapter 51, of the Session Laws of Minnesota, 1935, and Chapter 101 of Extra Session Laws of Minnesota, 1935-1936, under actions entitled, State of Minnesota, by Harry H. Peterson, Attorney General, v. Laura Barnes, et al., and State of Minnesota, by Harry H. Peterson, Attorney General, v. Lydia S. Anneke, et al., such conveyance to be executed by the members of the Executive Council when all proper papers connected with said condemnation proceedings shall have been filed for record in the office of the Register of Deeds in and for the County of St. Louis and State of Minnesota.

"Said conveyance shall be made upon the condition that the City of Duluth shall use said land for purposes of public recreation and public health and that the facilities provided on said land shall be open upon equal terms to all persons whether residents of the City of Duluth or elsewhere, and that title to said land shall revert to the state and the state shall be entitled to take possession thereof upon breach of the aforesaid conditions."

* * * * *

I, Julian E. Morten, Secretary of the Executive Council of the State of Minnesota, do hereby certify that the foregoing resolution was duly adopted at a meeting of the Executive Council held April 11, 1938; that I have in my custody and control the original minutes of said meeting; and that I have compared the foregoing resolution with such original record thereof, and that the same is a true and correct transcript therefrom.

Dated at Saint Paul, Minnesota, this 27th day of April, 1938.

Julian E. Morten
Secretary

E/s/

EXCERPT FROM THE MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL
April 11, 1938

"On motion of Mr. Ervin, seconded by Mr. Halverson, the following resolution was duly adopted:

"BE IT HEREBY RESOLVED, by the Executive Council of the State of Minnesota, that the said Council does hereby authorize the members of said Council to convey, by quit-claim deed, to the City of Duluth, all of the following described land:

All that portion of Minnesota Point in the City of Duluth, County of St. Louis, and State of Minnesota, together with all riparian rights thereto appertaining, acquired by the State of Minnesota under condemnation proceedings commenced and carried on in the District Court of the Eleventh Judicial District, during the year 1936, and subsequently, under and by virtue of Chapter 51, of the Session Laws of Minnesota 1935, and Chapter 101 of Extra Session Laws of Minnesota 1935-6, under actions entitled, State of Minnesota, by Harry H. Peterson, Attorney General, v. Laura Barnes, et al., and State of Minnesota, by Harry H. Peterson, Attorney General, v. Lydia S. Anneke, et al., such conveyance to be executed by the members of the Executive Council when all proper papers connected with said condemnation proceedings shall have been filed for record in the office of the Register of Deeds in and for the County of St. Louis and State of Minnesota.

Said conveyance shall be made upon the condition that the City of Duluth shall use said land for purposes of public recreation and public health and that the facilities provided on said land shall be open upon equal terms to all persons whether residents of the City of Duluth or elsewhere, and that title to said land shall revert to the state and the state shall be entitled to take possession thereof upon breach of the aforesaid conditions."

I, Wm. H. Lamson, Secretary of the Executive Council of the State of Minnesota, do hereby certify that the foregoing resolution was duly adopted at a meeting of the Executive Council held April 11, 1938; that I have in my custody and control the original minutes of said meeting; and that I have compared the foregoing resolution with such original record thereof, and that I have compared the foregoing resolution with such original record thereof, and that the same is a true and correct transcript therefrom.

Dated at Saint Paul, Minnesota, this 5th day of December, 1939.


Secretary

150741

This indenture made this 13th day of September, A. D. 1939, between the State of Minnesota, having its seat of government at the City of St. Paul, Minnesota, and acting by and through its Executive Council pursuant to and in accordance with Minnesota Laws of 1937, Chapter 459, party of the first part, and the City of Duluth, a municipal corporation under the laws of the State of Minnesota, party of the second part;

Whereas the State of Minnesota, acting by and through its Executive Council, did authorize the conveyance, by Quit Claim Deed, of the premises hereinafter described, pursuant to its Resolution duly passed and adopted at its meeting held on the 11th day of April, 1938, at the State Capitol, St. Paul, Minnesota, in the following form and words, to-wit:

"BE IT HEREBY RESOLVED, by the Executive Council of the State of Minnesota, that the said Council does hereby authorize the members of said Council to convey, by quit claim deed, to the City of Duluth, all of the following described land:

"All that portion of Minnesota Point in the City of Duluth, County of St. Louis, and State of Minnesota, together with all riparian rights thereto appertaining, acquired by the State of Minnesota under condemnation proceedings commenced and carried on in the District Court of the Eleventh Judicial District, during the year 1936 and subsequently, under and by virtue of Chapter 51, of the Session Laws of Minnesota, 1935, and Chapter 101 of Extra Session Laws of Minnesota, 1935-1936, under actions entitled State of Minnesota by Harry H. Peterson, Attorney General, v. Laura Barnes, et al., and State of Minnesota by Harry H. Peterson, Attorney General, v. Lydia S. Anneke, et al., such conveyance to be executed by the members of the Executive Council when all proper papers connected with said condemnation proceedings shall have been filed for record in the office of the Register of Deeds in and for the County of St. Louis and State of Minnesota.

"Said conveyance shall be made upon the condition that the City of Duluth shall use said land for purposes of public recreation and public health and that the facilities provided on said land shall be open upon equal terms to all persons whether residents of the City of Duluth or elsewhere, and that title to said land shall revert to the State and the State shall be entitled to take possession thereof upon breach of the aforesaid conditions."

Now, therefore, pursuant and subject to Minnesota Laws of 1937, Chapter 459, and in accordance with the terms of the Resolution above set forth, all proper papers connected with the condemnation proceedings referred to therein having been filed for record in the office of the Register of Deeds in and for the County of St. Louis and State of Minnesota, the said party of the first part, in consideration of the sum of One and 00/100 Dollar (\$1.00) and other valuable considerations, to it in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does

hereby grant, bargain, quit claim and convey unto the said party of the second part, its successors and assigns, forever, all of the tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit:

All that part of a parcel of land in Parcel Four (4), REFEREE'S PLAT OF MINNESOTA POINT, according to the recorded plat thereof, situate in St. Louis County, Minnesota, lying south and westerly of the East line of Minnesota Avenue projected south and easterly in a straight line continued as the same is laid out and established in the recorded plat of Oatka Beach Addition east and southerly of 43rd Street, together with all riparian rights and submerged lands contiguous thereto; of that part of Parcel Four (4), REFEREE'S PLAT OF MINNESOTA POINT, as the same is recorded in Book G of Plats at Page 38 in the office of the Register of Deeds of St. Louis County, Minnesota, which lie between two lines drawn through said Parcel Four (4), the first of said lines being parallel with the northerly line of said Parcel Four (4) and distant Two hundred and Twenty-five (225) feet southerly therefrom, and the second of said lines being parallel with said northerly line of said Parcel Four (4) and distant Four hundred (400) feet southerly therefrom, located in Lot One (1), Section Thirteen (13), Township Forty-nine (49) North, Range Fourteen (14) West, of the 4th P. M. in St. Louis County, Minnesota, and shown and indicated in green on the plat attached hereto, marked Exhibit "D", and hereby made a part hereof;

Together with a Ten (10) foot easement for water, gas and utility purposes, in, over and across the following described tract or parcel of land lying and being in the County of St. Louis and State of Minnesota, described as follows:

All that part of Lot One (1), Section Thirteen (13), Township Forty-nine (49) North, Range Fourteen (14) West, of the 4th P. M., also known as Parcel Four (4) of the REFEREE'S PLAT OF MINNESOTA POINT, as the same is recorded in Book G of Plats, on Page 38, in the office of the Register of Deeds of St. Louis County, Minnesota, which lies southerly of a line drawn through said Parcel Four (4), parallel with the northerly line thereof, and distant Two hundred Twenty-five (225) feet southerly therefrom; and the second of said lines being parallel with said northerly line of said Parcel Four (4), and distant Four hundred (400) feet southerly therefrom. The center line of said easement being more particularly described as commencing at a point on the north line of said foregoing described property, One hundred Nineteen and ten-hundredths (119.10) feet easterly on said line from the intersection of the easterly line of Minnesota Avenue extended southerly with the northerly line of said foregoing described property, thence in a southerly direction to the south line of said foregoing described property, at a point One hundred Thirty-four and twenty-hundredths (134.20) feet easterly from the intersection of the easterly line of Minnesota Avenue extended, with the southerly line of the said foregoing described property; said easement covered herein being shown and indicated in red on the plat attached hereto, marked Exhibit "D", and hereby made a part hereof;

Together with the rights and privileges arising from the covenants and conditions contained and imposed in that certain instrument of conveyance dated November 14, 1936, naming Wallace Hankins and Beatrice

Hankins as grantors, and the State of Minnesota as grantee, and filed in the office of the Registrar of Titles of St. Louis County, Minnesota, as Document No. 136553 on March 3, 1937, at Ten (10) o'clock a.m., and duly registered in Book 244 of Register of Titles, Page 351 and Page 352.

This conveyance is executed and delivered subject to all the terms and conditions of the Resolution of the Executive Council hereinabove specifically set forth, and such conveyance is expressly subject to the reversionary right of the party of the first part, State of Minnesota, and the said party of the first part shall be entitled to immediate possession of the premises described herein upon the breach of any or all of the aforesaid covenants and conditions contained in said Resolution and in this conveyance.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, its successors and assigns, forever.

In testimony whereof the said first party has caused these presents to be executed in its sovereign name by its Executive Council and the Seal of the State of Minnesota to be hereunto affixed the day and year first above written.

In the Presence Of:

STATE OF MINNESOTA

W. H. Larsson
Dona Emerson

by

W. D. Hassen
Governor

J. B. Burquist
Attorney General

L. J. Thompson
State Auditor

Julius A. Schuch
State Treasurer

W. H. H. H.
Secretary of State

THE EXECUTIVE COUNCIL



State of Minnesota }
County of Ramsey } ss

On this 13th day of September, A. D. 1939,

before me, a Notary Public, personally appeared Harold E. Stassen, J. A. A. Burnquist, Stafford King, Julius A. Schmahl, and Mike Holm, to me personally known, who being each by me duly sworn, did say that they are, respectively, the Governor, the Attorney General, the Auditor, the Treasurer and the Secretary of State of the State of Minnesota named in the foregoing instrument and comprising and acting as its Executive Council; that said instrument was duly signed and sealed in behalf of the State of Minnesota by authority of its Executive Council, and the said Harold E. Stassen, J. A. A. Burnquist, Stafford King, Julius A. Schmahl and Mike Holm acknowledged said instrument to be the free act and deed of the State of Minnesota and its Executive Council.



Wm. H. Lamson, Notary Public, Pine Co.
My Commission expires July 31, 1944.

