

## City officials are warned to hold their tongues

Article by: , Star Tribune

Updated: July 27, 2011 - 10:54 PM

Recent lawsuits against vocal City Council members in Minneapolis and St. Paul are reminding elected officials around the state to be careful about speaking their minds on some decisions they'll eventually vote on -- things as small as minor planning approvals or as big as major development projects.

It's muddying the waters in civic debates where council members are often used to being able to talk freely -- even feeling that taking a public position is part of their job description.

The Wild Onion, a bar/restaurant on Grand Avenue in St. Paul, recently accused the city of unfairly denying it a license to serve alcohol on its patio. In the lawsuit, the Wild Onion says that Council Member Dave Thune improperly had discussions about the request outside of council meetings when he was to be acting in a quasi-judicial role.

In May, a state appeals court ruled in a similar case that Minneapolis City Council Member Lisa Goodman was biased in her opposition to a developer's proposal for a condo tower in the Loring Park neighborhood. She was found to have mobilized community opposition to the project and

lobbied other council members.

The appeals court agreed with a district court, which said Goodman "adopted an advocacy role in opposition to [the developer's] proposed project well before she discharged her quasi-judicial duties." While the developer wasn't awarded damages, the council was ordered to rehear the case.

"Quasi-judicial" is the key phrase: Both cases involved decisions in which the council was expected to impartially rule on a request by applying rules and ordinances already in place. That's different from being able to express opinions about the budget or road maintenance.

Several city attorneys agreed that the Goodman decision puts council members in a difficult position.

"Elected officials are almost always going to be asked opinions on things," said Tom Grundhoefer, general counsel for the League of Minnesota Cities.

"The hardest part is when you're a public official, people always want to talk about it," Edina City Council Member Josh Sprague said.

Sprague said that council members regularly face an ethical dilemma about opining on issues they will later have to vote on.

"It gets kind of difficult for people who are supposed to represent constituents. I don't know how realistic

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that is," for them to keep quiet, Grundhoefer said.

Jim Thomson, the city attorney for Brooklyn Park and Shakopee, agreed.

"They're not judges. They're elected officials ... Judges know not to talk about their decision outside the courtroom," Thomson said.

Making the issue more confusing, determining when a council member is in a quasi-judicial role can be hard for even lawyers to do, he said.

In West St. Paul, the confusion was enough to nearly derail discussions about whether the city should build a sports campus. The mayor and city attorney proposed barring council members from speaking for or against the plan outside a public meeting, a move they say was meant to protect the city but which one vocal council member likened to a gag order. The idea was eventually dropped.

City officials have always been warned not to be biased before hearing the facts when they are in those quasi-judicial roles, Grundhoefer said. The Minneapolis decision should be applied on a case-by-case basis, he said.

"Would a simple comment like, 'I have concerns about this project,' would that be enough to taint the decision-making? I'm not so sure it would," he said.

Roger Knutson, the attorney for Edina, Lakeville and several other cities, said that in light of the court

cases, council members may be more careful.

"It's a learning moment. It got high visibility ... This is a good point to remind them about that issue."

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