

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0346
A19-0355**

John Hayden,
Respondent/Cross-Appellant,

Paul Ostrow,
Respondent/Cross-Appellant,

vs.

City of Minneapolis,
Appellant (A19-0346),

The Minneapolis Parks and Recreation Board,
Appellant (A19-0355),

The Minnesota Sports Facilities Authority,
Cross-Respondent (A19-0355),

Minnesota Vikings Football, LLC, et al.,
Cross-Respondents (A19-0355).

**Filed January 21, 2020
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-17-16643

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Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

S Y L L A B U S

The Minneapolis City Council lacks authority to operate and manage a park because the Minneapolis City Charter reserves the authority to establish, govern, administer, and maintain parks to the Minneapolis Park and Recreation Board.¹

O P I N I O N

SLIETER, Judge

Appellants City of Minneapolis (the city) and the Minneapolis Park and Recreation Board (the park board) challenge the district court’s conclusion that the Minneapolis City Charter prohibits the Minneapolis City Council (the city council) from operating and managing a city park. Respondents/cross-appellants John Hayden and Paul Ostrow challenge the district court’s conclusion that they lack standing to contest two agreements: (1) a memorandum of understanding (MOU) between the city council and the park board,

¹ The caption in the district court referred to the Minneapolis Parks and Recreation Board (with Parks as plural), and that spelling is used in the caption on appeal. *See* Minn. R. Civ. App. P. 143.01 (directing that the title of an action “not be changed in consequence of [an] appeal”). Because that party indicates that its name is spelled “Minneapolis Park and Recreation Board,” we use that spelling throughout the body of this opinion.

and (2) a use agreement that provides certain rights regarding a park to cross-respondent Minnesota Vikings Football, LLC (the Vikings).

Because the Minneapolis City Charter prohibits the city council from acting in areas reserved for a different board, commission, or committee, and the charter specifically reserves the power to establish, govern, administer, and maintain parks to the park board, the city council is prohibited from operating and managing a park. Additionally, Hayden and Ostrow lack standing to challenge the use agreement and the MOU. For these reasons, we affirm the district court.

FACTS

This appeal involves a two-block area immediately west of U.S. Bank Stadium, known as the Commons. The city council is currently operating the Commons as a park. Construction of the stadium started in 2012. Ryan Companies negotiated with the city, the Minnesota Sports Facilities Authority (MSFA), and the Vikings regarding development of the stadium and the surrounding area. These negotiations led to a term sheet that proposed a mixed-use project that would occupy five blocks to the west of the stadium, including the two blocks of designated green space that would become the Commons. The term sheet provided that Ryan Companies would construct the Commons and then sell it to the city.

In December 2013, the city council approved the mixed-use project. The city council also approved \$65 million in general obligation bonds for the purchase of the Commons and a parking ramp.

A few months after the city secured funding, Ryan Companies and the MSFA entered into the Urban Park Use Agreement (use agreement). The use agreement specified

conditions for the use of the Commons. Although the city was not a party to the use agreement, it consented to the use agreement and acknowledged that, once it acquired title to the Commons, it would be subject to its terms.

In January 2015, the city council and the park board entered into a MOU. The MOU laid out a plan for the Commons: Ryan Companies would convey the land to the city, the city would convey the land to the park board for \$1 by quitclaim deed, and finally, the park board would lease the land back to the city.

In January 2017, the city council and the park board executed the ground lease in which the park board leased the Commons to the city. Under the lease, the city is “authorized to operate and manage” the Commons. The city acts through its city council to operate and manage the Commons. It requires the city to maintain the Commons “at standards consistent with other urban parks located in Minneapolis, Minnesota, including . . . the maintenance of the surface of the park and the clearing of snow from public walkways.”

In October 2017, Hayden, a Minneapolis resident, sued the city, the park board, the MSFA, and the Vikings, seeking declaratory and injunctive relief. Ostrow joined the suit in February 2018. In count 1, Hayden and Ostrow allege that the city council has no authority to operate or fund the Commons. Hayden and Ostrow seek a permanent injunction “barring the use of City funds for the construction, operation, and maintenance of the Commons.” In count 2, they seek declarations that the use agreement and the MOU are invalid, and that the Vikings have no legally enforceable rights under the use agreement.

All parties moved for summary judgment or judgment on the pleadings. The district court denied the city's motion for judgment on the pleadings related to count 1, but it granted the city's motion dismissing count 2 concluding that Hayden and Ostrow lacked standing to challenge the use agreement and the MOU. Hayden and Ostrow, the city, and the park board subsequently moved for summary judgment on count 1. The district court granted Hayden and Ostrow's motion, holding that the Minneapolis City Charter precluded the city council from operating and managing the Commons. The district court permanently enjoined the city council from operating or maintaining the Commons, contracting with a third party to operate or maintain the Commons, or expending any funds pursuant to an agreement that gives the city council authority to operate or maintain the Commons.

This appeal follows. The city and the park board challenge the district court's conclusion that the city council cannot operate the Commons. Hayden and Ostrow filed a notice of related appeal challenging the district court's dismissal of count 2 for lack of standing.

ISSUES

- I. Did the district court properly conclude that the city charter prohibits the city council from operating the Commons?
- II. Did the district court properly conclude that Hayden and Ostrow lack standing to challenge the use agreement and the MOU?

ANALYSIS

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district court] erred in [its]

application of the law.” See *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo.” See *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006).

I. The city charter prohibits the city council from operating the Commons.

Minneapolis is a home rule charter city. See Minn. Const. art. XII, § 4 (allowing “[a]ny local government unit . . . [to] adopt a home rule charter for its government”); Minn. Stat. § 410.04 (2018) (“Any city in the state may frame a city charter for its own government in the manner” prescribed by chapter 410). Because this appeal requires us to interpret the Minneapolis City Charter, we begin by looking at the city charter’s terms. Section 1.3(d) of the charter governs its construction. It provides that “each term used in this charter has the same meaning as in the Minnesota constitution and statutes, and other law relating to the same subject.” Minneapolis, Minn., City Charter (MCC) § 1.3(d)(1) (2019). The charter also provides that “the canons of construction and other principles of interpretation in the Minnesota Statutes apply to this charter.” *Id.* at § 1.3(d)(3). We therefore use general principles of statutory interpretation when interpreting the Minneapolis City Charter.

“When interpreting statutes, our function is to ascertain and effectuate the intention of the legislature.” *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). “[W]e first look to see whether the statute’s language, on its face, is clear or ambiguous.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). In doing so, “[W]ords and phrases are construed according to the rules of grammar

and according to their common and approved usage.” Minn. Stat. § 645.08(1) (2018). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Schroedl*, 616 N.W.2d at 277 (quotation omitted).

“If the statute is free from ambiguity, we look only at its plain language.” *Anker*, 541 N.W.2d at 336. “[I]n the absence of ambiguity, [this court] will not disregard the letter of the law in pursuit of its purpose.” *State v. Hicks*, 583 N.W.2d 757, 759 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). “A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Schroedl*, 616 N.W.2d at 277 (quotation omitted). But “if the statute’s literal meaning leads to an absurd result . . . we may look beyond the language and examine other indicia of legislative intent.” *Anker*, 541 N.W.2d at 336. This rule, however, “is not available to override the plain language of a clear and unambiguous statute, except in an exceedingly rare case in which the plain meaning of the statute utterly confounds the clear legislative purpose of the statute.” *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (quotation omitted).

Lastly, “this court cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked.” *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). The court’s duty is to “interpret the policy that the Legislature has already determined in the statutory language at issue.” *See In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 n.10 (Minn. 2014). We are limited to “correcting errors” and do not create public policy. *LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000), *review denied* (Minn. May

16, 2000). Any change to a statute’s language “must come from the legislature.” *Martino v. Hastings*, 122 N.W.2d 631, 638 (Minn. 1963). In this context, the charter is the equivalent of legislation.

With these statutory interpretation principles in mind, we consider the relevant charter provisions. Sections 4.1(b) and 6.2(a)(1) govern the authority of the city council and the park board, respectively. These read:

§ 4.1. Function

....

(b) Scope. The [city] [c]ouncil may act on the City’s behalf in any matter, except where—

(1) this charter reserves the action for a different board, commission, or committee[.]

....

§ 6.2. Functions and powers

(a) General function and powers.

(1) Charter powers. The [park] [b]oard establishes, governs, administers, and maintains, and may design, develop, and improve—

(A) the parks, parkways, and recreational opportunities in and adjacent to the City.

MCC §§ 4.1(b)(1), 6.2(a)(1)(A) (2019).

The district court concluded, and Hayden and Ostrow urge, that these sections, read together, mean the city council is precluded from operating a park. We agree.

The charter unambiguously provides that the city council may act “except where” the charter “reserves the action for a different board, commission, or committee.” This conclusion is consistent with the supreme court’s recent statement that “The City Council acts on the City’s behalf unless the ‘charter reserves the action for a different board,

commission, or committee.”” *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 470 (Minn. 2016) (quoting MCC § 4.1(b)(1)).

The charter expressly reserves the authority to establish, govern, administer, and maintain parks to the park board. MCC § 4.1(b)(1). Accordingly, the city council cannot establish, govern, administer, or maintain a park. The lease between the park board and the city provides that the city will “operate and manage” the Commons. Neither the city nor the park board argues that “operate and manage” is not synonymous with “establish, govern, administer, and maintain.” Thus, the city council cannot operate and manage the Commons.²

Though they conceded the charter language is unambiguous, the city and park board argue (a) the park board can lawfully delegate its authority back to the city council, (b) the district court’s interpretation conflicts with state law, and (c) the prior Minneapolis City Charter shows that the city council may operate a park. We analyze each argument in turn and conclude that none are persuasive.

a. Delegation of Authority

The park board first points us to its broad powers under section 6.2 of the charter, which grants it “any power necessary and proper for exercising its enumerated powers or for performing its lawful functions.” The park board argues that, under this broad power, it may delegate its authority to another entity, and here it has delegated its authority to operate the Commons back to the city council.

² For readability, we will henceforth use the terms “operate” or “operating” when referencing “establish, govern, administer, and maintain.”

We are not persuaded. It is undisputed that the park board may delegate its authority. This, however, does not answer the question of whether the city council, consistent with the limitation of the charter, may accept such a delegation. We conclude that by the plain language of the charter, the city may not accept such a delegation.

As alternative support for its argument that it may accept a delegation of authority from the park board, the city contends that pursuant to section 1.4(a), the city council is granted “any power that a municipal corporation can lawfully exercise at common law.” MCC § 1.4(a). This broad power, the city argues, must include acceptance of delegated authority; and because the park board has lawfully delegated its authority to operate a park to the city, the city may accept that delegation.

This argument requires inserting language into the charter that is absent. The charter does not say that an action is reserved to a different board *unless that board, commission, or committee has delegated that action back to the city*. We “cannot add to a statute what the legislature has either purposefully omitted or inadvertently overlooked.” *Christiansen*, 733 N.W.2d at 159. The city charter prohibits the city council from accepting the park board’s delegation of authority over the Commons.

b. Conflict with State Law

Next, the city council and park board argue that interpreting the charter as prohibiting the city council from operating a park conflicts with state law. The city cites Minn. Stat. § 471.15(a) (2018), which provides that “[a]ny home rule charter . . . city . . . or any board thereof may expend funds available to it . . . [t]o acquire, equip, and maintain land, buildings, or other recreational facilities.” The city interprets this statute as meaning

the city council “has the authority” to operate the park, and if the charter prohibits the city council from operating a park, the charter conflicts with the statute. We disagree that section 4 conflicts with this statute.

First, it is not clear that Minn. Stat. § 471.15 is relevant because the issue here is the city council’s authority to operate a park, not the expenditure of funds. Second, to the extent that the statute is implicated, we see nothing in section 471.15 that prohibits the city from assigning the authority to expend funds on parks to the park board. The word “may” is permissive, Minn. Stat. § 645.44, subd. 15 (2018), and it is the city’s charter, not the statute, which prohibits the city council from operating a park. Thus, because the charter permits the park board to expend funds on parks, the charter and the statute are not irreconcilable. The charter does not permit what the statute forbids, and the charter does not prohibit what the statute expressly permits. *See Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313 (Minn. 2017) (“A conflict exists between state law and a municipal regulation when the law and the regulation contain express or implied terms that are irreconcilable with each other, when the ordinance permits what the statute forbids, or when the ordinance forbids but the statute *expressly* permits.”) (quotation omitted)).

The park board focuses on a companion statute, Minn. Stat. § 471.16 (2018), in support of its conflict argument. This statute provides:

Any city, however organized, or any town, county, school district, or any board thereof may operate such a program [of public recreation] independently, or they may cooperate among themselves or with any nonprofit organization in its conduct and in any manner in which they may mutually agree; or they may delegate the operation of the program to a recreation board created by one or more of them,

and appropriate money voted for this purpose to such board which may in turn support or cooperate with a nonprofit organization.

Minn. Stat. § 471.16, subd. 1.

The park board argues this statute means that the park board and city council must be permitted to cooperate by allowing the park board to delegate its authority over the Commons to the city council. For the reasons explained above, we disagree. Initially, it is unclear that this statute is relevant to this issue because a park board is neither a separate nonprofit organization nor a recreation board. *Id.* To the extent that it is relevant, nothing in the statute mandates that cooperation between the city council and park board *must* occur. Further, nothing in this court’s interpretation of the charter’s plain language prohibits cooperation between the city council and the park board. Instead, what is prohibited is the city council’s operation of the Commons. There is no conflict between the charter and section 471.16.

c. Prior Minneapolis Charter

Lastly, the city and park board contend that section 4.1(b) of the current city charter should be interpreted using the previous city charter as a guide. The current charter provides that a “settled interpretation” of the previous charter can be used to interpret the current charter *if* the current charter “carries forward the interpreted provision or term.” MCC § 1.3(d)(4) The current charter also states the charter does not affect “the existence, status, function, composition, powers or duties of any board, commission, committee, department, or other public body.” *Id.* at § 1.3(b)(2).

The city argues that, because there are “numerous” examples of partnerships between the city council and the park board under the old charter, these partnerships should be carried into the new charter and in the interpretation of section 4.1(b). This argument is unavailing.

First, as correctly noted by the district court and undisputed by the parties, the language of section 4 is unambiguous. Therefore, we look only to its plain words. *See Anker*, 541 N.W.2d at 336. The charter clearly prohibits the city from accepting delegation of the operation of a park. Second, section 4 is a new section that contains language not present in the previous charter. There is no “settled interpretation” relevant to its language. Third, nothing in our ruling adversely affects the apparent history of cooperation between the city council and the park board or cooperation among other boards, commissions, and committees. To the extent that the city and the park board interpret “cooperation” to mean they may ignore an unambiguous charter provision that prohibits the city council from operating a park, they are mistaken.

II. Hayden and Ostrow lack standing to challenge the use agreement and the MOU.

In count 2, Hayden and Ostrow seek to invalidate both the use agreement and the MOU. The district court concluded that Hayden and Ostrow lacked standing to challenge these agreements and granted judgment on the pleadings dismissing count 2. Appellate courts review matters of standing *de novo*. *See In re Gillette Children’s Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

“Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011) (quotation omitted). “A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit.” *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). A party establishes standing by suffering an injury-in-fact or relying on standing conferred by the legislature under a statutory scheme. *Id.*

Hayden and Ostrow assert that they have taxpayer standing to challenge the use agreement and the MOU. In Minnesota, taxpayers have a limited right to bring claims in response to government actions, but the right is broader than taxpayer standing in federal courts. *Id.* “Taxpayers are legitimately concerned with the performance by public officers of their public duties.” *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977). A taxpayer’s ability to challenge government activity, however, does not permit standing merely because “a citizen does not agree with the policy or discretion of those charged with the responsibility of executing the law.” *Id.*

“[T]axpayer suits in the public interest are generally dismissed unless the taxpayers can show some damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public.” *Olson*, 742 N.W.2d at 684. Even without damage or injury, however, a taxpayer may still have standing if the action challenges “unlawful disbursements of public money . . . [or] illegal action on the part of public officials.” *Id.* (alteration in original) (quoting *McKee*, 261 N.W.2d at 571).

a. Use Agreement

The parties to the use agreement are Ryan Companies and the MSFA. The use agreement reserves for the MSFA and the Vikings the use of the Commons for “up to forty (40) days per calendar year.” These rights run with the land, and “are binding upon Owner and any other person or entity holding any right, title or interest in or to the Urban Park.” They may be “enforced by MSFA and the Vikings.”

Nothing in the use agreement requires the city to spend any public funds or requires a public official to act illegally. The city only acknowledged that “when it acquires title to the Property it shall acquire title to the Property subject to the terms of [this use agreement].” The district court properly concluded Hayden and Ostrow lack standing to challenge the use agreement.

b. MOU

The MOU is between the park board and the city. Hayden and Ostrow argue the district court erred in dismissing this claim for lack of standing because the MOU requires both expenditure of funds and an illegal action on behalf of a public official.

We need not address this argument because our holding that the city council is prohibited from operating the Commons is dispositive of the issue. There is no further relief that we can grant.

D E C I S I O N

The plain language of the charter prohibits the city council from operating and managing a park because the charter reserves this action to the park board. The district

court therefore properly permanently enjoined the city council from operating and managing the Commons.

Affirmed.