

**IN THE COURT OF APPEALS OF IOWA**

No. 6-223 / 05-0508  
Filed August 23, 2006

**MERLYN A. REES,**  
Plaintiff-Appellant,

**vs.**

**CITY OF SHENANDOAH,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Page County, G. C. Abel, Judge.

Merlyn Rees appeals from a district court summary judgment ruling in favor of the City of Shenandoah, which concluded the City had acted validly in approving a resolution that authorized the issuance of \$110,000 in general obligation capital loan notes. **AFFIRMED.**

Mark McCormick of Belin Lamson McCormick Zumbach Flynn, P.C., and Tyler Murray Smith and Frank Murray Smith of the Frank Murray Smith Law Office, Des Moines, for appellant.

Ivan T. Webber of Ahlers & Cooney, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Merlyn Rees appeals from a district court summary judgment ruling in favor of the City of Shenandoah, in which the court concluded the City acted validly in approving a resolution that authorized the issuance of \$110,000 in general obligation capital loan notes. We affirm.

**I. Background Facts and Proceedings.**

The City of Shenandoah is involved in the planning and future development of the West Tarkio Creek Reservoir (West Tarkio Project). The multimillion-dollar project consists of a damn and reservoir area to be used both as a water source for a water treatment facility and as a recreational area. On June 10, 2003, a notice was published stating the Shenandoah City Council would hold a public hearing on June 24, at which it proposed to authorize issuance of general obligation capital loan notes in the amount of \$110,000 “for an essential corporate purpose of the City, in order to pay costs of the acquisition, construction, reconstruction, improvement, repair, and equipping of waterways, water mains, and extensions and real and personal property useful for providing potable water to the residents of the City.”

At the June 24 meeting Merlyn Rees, a city resident, objected to issuance of the notes. After listening and responding to Rees’s objections, the council unanimously passed a resolution authorizing \$110,000 in general obligation capital loan notes for the same purpose stated in the notice: “paying the costs of . . . providing potable water . . . .” However, statements by the mayor indicated the notes were being issued for payment of legal and engineering fees related to

the West Tarkio Project in general, and not simply the potable water portion of the project.

Rees filed a petition in district court appealing the City's actions under Iowa Code section 384.25(2) (2003), petitioning for a writ of certiorari, and requesting injunctive relief. In the petition, as amended, Rees alleged the City exceeded its authority in approving issuance of the notes by resolution, because it failed to comply with the requirements of chapter 384. Reese asserted the bonds were issued for two separate and distinct projects—a potable water project, which was an essential corporate purpose, and a recreational facilities project, which was a general corporate purpose—and accordingly the City was required to submit the matter to a special city election. Alternately, Rees asserted that, to the extent the West Tarkio Project was really one project with multiple purposes, and the City was allowed to elect to between classifications and procedures and approve the notes by resolution, the City failed to make an election.

The City filed a motion to dismiss. The district court granted the motion, concluding Rees's petition had failed to state a claim upon which relief could be granted. Our supreme court reversed the district court's decision and remanded for further proceedings. See *Rees v. City of Shenandoah*, 682 N.W.2d 77, 78 (Iowa 2004). The court also summarized the law governing Rees's claims:

The construction of a water treatment plant and water distribution system for potable water is an essential corporate purpose. Iowa Code § 384.24(3)(d). If a general obligation bond is being issued for an essential corporate purpose, a special city election need not be held prior to the bond being issued by the City. Iowa Code § 384.25(2).

The construction of recreational facilities or recreational facilities systems is a city enterprise. Iowa Code § 384.24(2)(c). A city enterprise is a general corporate purpose. Iowa Code § 384.24(4)(a). If a general obligation bond is being issued for a general corporate purpose, a special city election must be held prior to the bond being issued by the City. Iowa Code § 384.26(2).

The legislature recognized the definitions of city enterprises, essential corporate purposes, and general corporate purposes are not mutually exclusive and shall be construed liberally. Iowa Code § 384.28. If a project or activity may be reasonably construed to be included in more than one of these three classifications, the city may elect at any time between the classifications and the procedures for issuance of a bond respectively applicable to each classification. *Id.* In other words, if the reservoir/lake project can be classified as having both an essential corporate purpose and a general corporate purpose, the city can elect that the bond be classified as being issued for an essential corporate purpose and proceed to issue the bond without a special city election. On the other hand, if the matters financed by the bond actually consist of two distinct projects, the bond that is used to finance the project having a general corporate purpose requires a special city election before issuance. Iowa Code § 384.26(2).

*Rees*, 682 N.W.2d at 78-79.

Following remand, the matter came before the district court upon cross-motions for summary judgment. The court concluded that Rees had not provided clear evidence of irregular action by the City, and that the City's actions were "valid as to the essential corporate purposes set forth in the resolutions." It accordingly denied Rees's summary judgment request and entered summary judgment in the City's favor.

In support of its ruling, the district court determined the West Tarkio Project was one project with multiple purposes, the City had elected to classify the project as one for the essential corporate purpose of providing potable water, and accordingly, the City was allowed to approve the notes by resolution. The court also rejected Rees's contention that the June 10 notice was defective,

despite the fact that it mirrored the actual language of the resolution, because the City's "true purpose" in issuing the notes was not to provide a source of potable water but to pay for legal and engineering fees associated with all aspects of the West Tarkio Project. The court noted there was no evidence, beyond the mayor's statements, that indicated the City had acted or was going to act in contravention of the resolution's limited language. Although the court recognized the mayor's statements "may be relevant," it concluded such statements "have no legal effect on the City and . . . alone are not sufficiently clear evidence of the intentions of the city council." Rees appeals.

## **II. Scope and Standards of Review.**

Summary judgment rulings are reviewed for the correction of errors at law. Iowa R. App. P. 6.4; *General Car & Truck Leasing Sys., Inc. v. Lane & Waterman*, 557 N.W.2d 274, 276 (Iowa 1996). Where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Iowa R. Civ. P. 1.981(3); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). All facts are viewed in the light most favorable to the party opposing the motion for summary judgment. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 917 (Iowa 1997). Although summary judgment is improper where reasonable minds could differ on resolution of the matter before the court, *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996), no fact issue exists if the dispute is over legal consequences flowing from undisputed facts. *City of West Branch*, 546 N.W.2d at 600.

### III. Discussion.

On appeal, Rees renews his contentions that the City was required to submit the matter to a special election or, alternatively, that the City failed to make the required election to classify the project as serving an essential corporate purpose. Rees also renews his assertion that the June 10 notice did not accurately state the true purpose of the notes. Although Rees concedes legal and engineering fees are legitimate “costs” of a project, see Iowa Code § 384.24(5), he contends the notice failed to indicate such costs would be incurred in relation to the recreational facilities project as well as the potable water project.

The City responds that we need not reach any of these claims. It contends the district court correctly and dispositively determined that, because the resolution only approved notes for the payment of costs related to the potable water portion of the West Tarkio Project, which was accurately reflected in the June 10 notice, and because there was no evidence the City would expend the funds in a manner inconsistent with the resolution language, the City acted validly in approving the resolution. Given that Rees’s claims center around an assertion that neither the notice nor the resolution accurately reflected the City’s true intent, we are not inclined to engage in such a limited analysis. However, after considering the contentions of both parties, we determine the district court’s ruling should be affirmed.

As the City correctly notes, its actions are entitled to a presumption of validity absent clear evidence to the contrary. See *Petersen v. Harrison County Bd. of Supervisors*, 580 N.W.2d 790, 793 (Iowa 1998) (citing *Dilley v. City of Des Moines*, 247 N.W.2d 187, 195 (Iowa 1976)). Thus, the question for this court is

whether the summary judgment record contains disputed issues of material fact sufficient to rebut the presumption that the City acted in conformance with the governing statutes. Having reviewed the record, we conclude it does not.

From the beginning, the City has described the West Tarkio Project as a “multi-purpose” reservoir/lake project that will serve as a source of potable water, an essential corporate purpose, and provide recreational facilities, a general corporate purpose. Although the City has sought separate funding channels for the potable water and recreational facilities aspects of the project, it acknowledged it was seeking funding for one aspect of one project with multiple purposes or parts. In addition, the preliminary engineering study for the West Tarkio Project indicates the project’s core purpose is the creation of a water source and water treatment facility; the recreational facilities aspect accounts for less than six percent of the total estimated project cost.<sup>1</sup>

Under the undisputed facts in the record, “the reservoir/lake project can be classified as having both an essential corporate purpose and a general corporate purpose,” and accordingly “the city can elect that the bond be classified as being issued for an essential corporate purpose and proceed to issue the bond without a special city election.” *Rees*, 682 N.W.2d at 79. We further conclude, as did the district court, that the City made a valid election to classify the project as having an essential corporate purpose.

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<sup>1</sup> Accordingly to the study, the total estimated project cost for the “West Tarkio Creek Reservoir” is \$46,786,000. The overall project is broken down into six sub-projects: reservoir, intake, raw water main, treatment plant, finished water main, and recreational facilities. The projected cost of the reservoir project is just over \$26 million, the projected cost of the water treatment and distribution projects is just under \$18 million, and the projected cost of the recreational facilities project is \$2.7 million.

Section 384.28 specifically provides: “If a project or activity may be reasonably construed to be included in more than one classification, the council may elect at any time between the classifications and the procedures respectively applicable to each classification.” However, it does not further define the nature of the council’s election, which Rees asserts must be made by formal action.

Section 384.28 provides that the City “may elect” between classifications. The word “may” confers a power. Iowa Code § 362.2(12). Pursuant to section 364.3(1), “[a] city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.” However, the council need only substantially comply with the requirement to exercise a power by formal action. *Id.* § 364.6; *Riley v. City of Hartley*, 565 N.W.2d 344, 347 (Iowa 1997). The council’s adoption of the June 24 resolution memorialized its election to classify the West Tarkio Project as having an essential corporate purpose. Although it might have been preferable for the City to make a separate election, adoption of the resolution itself substantially complied with the election requirement.

We also conclude the June 10 notice, which accurately stated the project’s essential corporate purpose, substantially complied with the requirement that it include “a statement of the . . . purposes of the bonds.” Iowa Code § 384.25(2); *Fults v. City of Coralville*, 666 N.W.2d 548, 556 (Iowa 2003) (noting only substantial compliance is required). Assuming for the sake of argument that the true purpose of the bond was to pay for engineering and legal costs associated with the West Tarkio Project in general, we cannot conclude the notice was defective because it did not specifically include that fact.

The legislature has provided a procedure whereby a city council may elect to classify a project as an essential corporate purpose, even though the project may also serve a general corporate purpose. The city may then avail itself of the less restrictive procedures for issuing general obligations bonds found in section 384.25. Section 384.25 governs bonds issued solely for essential corporate purposes. Thus, the requirement that the notice include the “purposes of the bonds” must be read as referring back to those essential corporate purposes. Nothing in section 384.28 evinces a legislative intent to alter this requirement in the event the city council takes advantage of the statutory option to treat a project as if it was for an essential corporate purpose only, bypassing the citizen approval that would otherwise be required for the issuance of the general obligation bonds. Under the circumstances, we conclude the City has substantially complied with section 384.25’s notice requirement.

Although not necessary for a resolution of this appeal, we also address the City’s assertion that, regardless of all the foregoing, the council’s actions must be found valid because there is no evidence that, once the notes are finally issued, the council will use the funds to do anything other than pay the costs associated with providing potable water, the purpose stated in the notice and resolution. As previously noted, the City’s actions are entitled to a presumption of validity absent clear evidence to the contrary. *Petersen*, 580 N.W.2d at 793.

Rees asserts such evidence can be found in statements made by the mayor. Taking those statements in the light most favorable to Rees, they indicate the purpose of the notes is to pay for costs associated with the entire West Tarkio Project. By definition, this includes the recreational facilities. Rees

notes the statements, which include an affidavit the mayor submitted in support of the City's request to expedite the first appeal, have never been contradicted by the City or council members. The City asserts such evidence is irrelevant because it can act only through formal action of the city council. See Iowa Code §§ 364.2(1), 364.3(1). It suggests that, accordingly, the only evidence this court may consider is formal council action, which, here, demonstrates only an intent to issue notes to pay for the costs of providing potable water.

Although we reject the notion that a court may never look beyond formal council action to ascertain the city's true motivation or intent, we recognize that the ability to do so is circumscribed. See *Dilley v. City of Des Moines*, 247 N.W.2d 187, 192 (Iowa 1976) (“[T]he court does not ordinarily examine the motives of those exercising legislative power in a manner which is not manifestly arbitrary, capricious or unreasonable.”); *but see Gates v. City Council of Bloomfield*, 243 Iowa 1, 10-11, 50 N.W.2d 578, 583 (1951) (noting foregoing rule is limited to “purely legislative acts”). However, we need not decide whether it is appropriate to consider the mayor's statements in the context of this particular case, because we agree those statements are insufficient to generate a disputed issue of material fact regarding the validity and regularity of the council's actions.

The only question in an appeal under section 384.25 is whether the city council exceeded its authority.<sup>2</sup> Stated another way, in such an appeal the district court must determine only whether the council substantially complied with chapter 384 when it passed the resolution approving issuance of the bonds. We

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<sup>2</sup> A similar standard is applicable in a petition for certiorari under Iowa Rule of Civil Procedure 1.1401, which is limited to judicial and quasi-judicial acts of the city. See also *Curtis v. Board of Sup'rs of Clinton County*, 270 N.W.2d 447, 449 (Iowa 1978).

have already concluded that it did. Moreover, even if we had determined that the recreational facilities project was separate and distinct from the potable water project, the mayor's personal beliefs as to the notes' purposes do not provide clear evidence of an intent by the council to impermissibly circumvent the special election requirement.

The minutes of the council meeting indicate the City follows the mayor-council-administrator form of government provided for in section 372.4. Under that form of municipal government the mayor is not a member of the city council and may not vote as a member of the council, Iowa Code § 372.4, and there is no evidence the council had authorized the mayor to speak on its behalf. We accordingly conclude the district court did not err in determining the mayor's statements were insufficient to rebut the presumption of the validity of the council's actions.

#### **IV. Conclusion.**

The undisputed facts in the summary judgment record demonstrate the City substantially complied with relevant statutory provisions in providing notice of and passing a resolution authorizing the issuance of \$110,000 in general obligation capital loan notes. We accordingly affirm the district court's denial of Rees's summary judgment motion and its entry of summary judgment in favor of the City.

**AFFIRMED.**