

**RE: Qualifying Criteria for “Changing the School Commute,” 2020 Regional Solicitation Application #14041**

*The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.*

- ***Minnesota State Constitution, Article 8, Section 1***

Dear TAC Funding and Programming Committee,

I am writing in response to a letter Move Minnesota received from Elaine Koutsoukos, TAB Coordinator, on June 3, 2020. According to the letter, Council staff determined that Move Minnesota’s Regional Solicitation application—which targets an audience of students in schools across key geographies in the region—does not meet the qualifying criterion “that all projects... be open to the general public and may not be limited to specific groups, such as only students.”

This memo articulates why students and their schools are the general public—any finding to the contrary would be in conflict with the Minnesota State Constitution. This memo further shows how common sense dictates that school communities must be members of the general public. Finally, this memo describes how a strict (and unconstitutional) interpretation of the phrase “general public” would invalidate the Metropolitan Council’s entire Regional Solicitation process and would necessitate shuttering the program.

**I. Students in School are the “General Public”**

A system of public education is established in the Minnesota State Constitution.<sup>1</sup> The Constitution acknowledges that these schools may be funded “by taxation.”<sup>2</sup> Taxation, in turn, may only be collected for “public purposes.”<sup>3</sup>

“Public purposes” are defined by the Minnesota Supreme Court. In *Visina v. Freeman*, the Court declared a public purpose “an activity as will serve as a benefit to the community as a body.”<sup>4</sup> The court further noted that a public purpose is not served if the benefit to the whole community is merely incidental—instead, the “primary object of an expenditure” must be to serve the public purpose.<sup>5</sup>

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<sup>1</sup> Minnesota State Constitution, Art. XIII, Sec. 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at Article X, Section 1.

<sup>4</sup> *Visina v. Freeman*, 252 Minn. 177, 184 (1958) (underline added) (interpreting the Minnesota State Constitution’s edict that taxes shall only be spent on public purposes).

<sup>5</sup> *Id.* (citing *Burns v. Essling*, 156 Minn. 171, 174 (1923)).

While the court did not use the precise phrase “general public” in its definition of “public purpose,” its use of the phrase “community as a body” clearly conveys the concept presumably intended by the undefined phrase “general public” in Metropolitan Council materials: i.e. the whole of the populous.<sup>6</sup>

Move Minnesota’s TDM Regional Solicitation submission (“Changing the School Commute: Shifting Youth to Transit Use”) describes the target-served communities as “schools, educators, and students.”<sup>7</sup> The application further identifies tax-funded “public high schools” as the primary, although not exclusive, target of proposed work.<sup>8</sup>

“Public high schools” and their communities fit squarely within any possible definition of “public schools” that may be funded “by taxation” under the Minnesota State Constitution.<sup>9</sup> Since any institutions funded by taxation must, as a “primary object,” serve “the community as a body,” the Metropolitan Council’s TAC Programming and Funding Committee must agree that a Regional Solicitation project that serves schools and their communities clearly serves the general public.

## II. As a Matter of Common Sense, School Communities are the “General Public”

### a. Students are the “General Public” at a Snapshot in Time

School attendance is compulsory in the state of Minnesota for “[e]very child between seven and 17 years of age ... unless the child has graduated.”<sup>10</sup> This law mirrors laws in states across the nation.<sup>11</sup> Thus schools are filled with, quite literally, all of us, albeit at a snapshot in our lives. As proof, consider whether everyone you know, and know of, has spent time as part of a school community. Now consider whether everyone you know, and know of, has learned to drive, or had a monthly parking contract at the ABC Ramps in Minneapolis, or rented an apartment along the Green Line, or lived in the eastern Twin Cities suburbs, or worked at an employer where working remote was possible (remember our current unemployment numbers, caused largely by furloughs and layoffs of those who cannot work remote!).

All of these non-school scenarios—for which there is far from unanimous participation—are examples from funded Regional Solicitation projects in prior years (for a fuller comparative analysis of Regional Solicitation

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<sup>6</sup> While the Metropolitan Council does not provide a definition of “general public” in its application materials (see e.g. “Qualifying Requirements” (January 22, 2020), available at <https://metro council.org/Transportation/Planning-2/Transportation-Funding/Regional-Solicitation-NEW/Applying-for-Regional-Solicitation-funds.aspx> under the link “qualifying criteria”), Merriam-Webster’s online dictionary defines “the general public” as “all the people of an area, country, etc.” <https://www.merriam-webster.com/dictionary/the%20general%20public#:~:text=Definition%20of%20the%20general%20public,open%20to%20the%20general%20public>, clearly synonymous with “community as a body.”

<sup>7</sup> Regional Solicitation Application 14041 (PDF), p. 3, 2020.

<sup>8</sup> *Id.*

<sup>9</sup> Minnesota State Constitution, Art. XIII, Sec. 1.

<sup>10</sup> Minn. Stat. 120A.22 Subd. 5 sec. (a) (“Compulsory Education”).

<sup>11</sup> “Compulsory Education Laws: Background,” Findlaw, June 20, 2016, <https://education.findlaw.com/education-options/compulsory-education-laws-background.html#:~:text=Compulsory%20education%20laws%20require%20children,must%20be%20before%20dropping%20out> (“[V]irtually all states have mandates for when children must begin school and how old they must be before dropping out.”).

applications, see Part III of this memo). If these cross sections of the community are considered the “general public,” schools clearly must be as well: schools are, in a country with mandated education like the United States, as complete a cross section of the general public—by every measure except for age—as any other segment of the population. Our students are all of us.

#### **b. Schools Include More Than Students, and Schools Do More Than Educate**

Merriam-Webster defines “school” as “an institution for the teaching of children.”<sup>12</sup> Even under this simplified definition, the concept of school includes students, instructors, and administrators. A somewhat more expanded definition of the school community would also include Parent Teacher Organizations, thus embracing the families of all students enrolled in school at a particular time (to give a sense of scale, assuming an average of three people per student family, this would bring Minneapolis Public Schools’ total student and student family community to 107,022 people).<sup>13</sup> Thus, while schools may not, in a simplified definition, reach *every single member* of the public, their reach is extraordinary.

And of course, we know that school communities do more than teach children. Schools are filled with after-school assistants so that parents can work a full day; social workers to help manage challenges from home or community life; cafeteria workers who keep children fed who might otherwise not have access to a meal; and community education programs for adults.

In short, society asks our schools to solve all sorts of issues—from food scarcity to zip code discrimination—present in our “general public” communities, far from the traditional role of merely “teaching of children.” And to accomplish this monumental task, school communities include people from myriad professions, backgrounds, and of diverse ages. For society—and the Metropolitan Council—to charge schools with solving many of the “general public’s” most pressing challenges while denying that schools are a part of that general public would be unreasonable and contradictory.

Finally, without schools, the very foundation of the “general public,” of our society, and of this country would not exist.<sup>14</sup> As Chief Justice Earl Warren eloquently wrote:

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in

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<sup>12</sup> Merriam-Webster, Definition of *school* 1 (a). <https://www.merriam-webster.com/dictionary/school>

<sup>13</sup> Minneapolis Public Schools, Quick Facts [https://mpls.k12.mn.us/uploads/mps\\_budget\\_-\\_at\\_a\\_glance.pdf](https://mpls.k12.mn.us/uploads/mps_budget_-_at_a_glance.pdf) (“Number of Students: 35,674”).

<sup>14</sup> See e.g. Professor Dana Mitra, *The Social and Economic Benefits of Public Education*, p. 4 (“The national importance of education is based on the significant positive influence it has on individual lives and on the welfare of communities.... [E]ducation also has broader social and economic benefits for individuals, families, and society at large. These benefits are received even by people whose relationship to the public school system does not extend beyond “taxpayer.”).

helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>15</sup>

Schools and their communities are the “general public,” support “the general public,” and provide long-term stability for the very concept and essence of the “general public” in democratic society.

### III. An Unconstitutionally Strict Interpretation of “General Public” Would Invalidate the Entire Regional Solicitation Program.

If the Council staff’s understanding of “the general public” as relates to Regional Solicitation Application #14041 is upheld by the TAC Programming and Funding Committee, it will create a slope so slippery that every project funded through the Regional Solicitation program would slip from the Metropolitan Council’s hill of logic, and would necessitate the program be dismantled and shuttered.<sup>16</sup>

Previously-selected projects that include limitations on who can access the programming include:

#### 10804 - Closed Network Carshare in Minneapolis and Saint Paul

- Limited to people with drivers’ licenses (by definition age 16 or older)
- Limited to areas inside the 494/694 beltway
- Limited to groups of neighbors with financial capacity to lease a vehicle (functionally, adults with a certain income level)
- Functionally limited to English-speakers (all presented marketing materials are in English)

#### 10913 - Transforming Renters' Transportation Choices

- Limited to people who rent housing or owners of said housing. In almost all situations, someone must be at least 18 to sign a lease or contract
- Limited to people living within a half mile of the METRO LRT Green Line

#### 11030 Shared Mobility Integration for the Metro Transit Mobile App

- Limited to bike share, ride hailing, car share, and scooter users, all of which require users to be at least 18
- Limited to smart phone owners and users
- Limited to transit service users in the 7-county metro area

#### 11022 - Parking FlexPass at ABC Ramps

- Limited to people with driver’s licenses (by definition 16 or older)
- Limited to people or organizations with ABC ramp parking contracts. Functionally this limits engagement to people who own a car and have a job in downtown Minneapolis: “most current ABC Ramps users are white, high-income, and young adults aged 26-35.”<sup>17</sup>

#### 05310 - Learn to Ride a Bicycle Program Expansion

- Limited to low- and moderate-income communities
- Limited to Frogtown and Summit-University neighborhoods in Saint Paul

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<sup>15</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

<sup>16</sup> Letter from Elaine Koutsoukos to Elissa Schufman, June 3, 2020.

<sup>17</sup> Regional Solicitation Application 11022, “Parking FlexPass at ABC Ramps,” July 2018.

- Limited to people who use a traditional bike (excludes people with certain kinds of visual and physical disabilities)

**05312 - Colleges as Hubs for TDM Innovation**

- Limited to students currently enrolled and staff at specific private colleges and universities in the Twin Cities

**05015 - Nice Ride Focus Area Densification and Infill Initiative**

- Limited to age 18 and above (required age of Nice Ride users)
- Limited to station locations (Minneapolis and Saint Paul)
- Limited to people who can use a traditional bike (excludes people with certain kinds of visual and physical disabilities)

Every Regional Solicitation application and project is limited to some group or groups by nature of being a focused project, as the list above illustrates. Further, a great number of Regional Solicitation projects inherently *exclude young people under 18*, such as any project limited to car share, employer sites without introductory level jobs, requiring people to be of legal age to sign a contract, and so forth. Application #14041 seeks in part to remedy this injustice by providing this complete and important segment of the general public with access to Regional Solicitation programming.

If the Metropolitan Council determines that a Regional Solicitation application that proposes working with students is not open to the general public, the Metropolitan Council must then defend how all of the projects in the list above *are* open to the general public, and further how the targeted populations of these projects are *more* representative of the general public than schools, a constitutionally-identified public purpose.

**IV. Conclusion**

We were surprised to learn that the Metropolitan Council may not, in practice, consider our public schools in service to “the general public”—as would, I imagine, the school districts, property tax payers, and anyone who has attended one of Minnesota’s educational institutions. We doubt that the Metropolitan Council wishes to affirm the message that young people are not part of the general public.

We assume that the Metropolitan Council does not wish to dispute the constitutionality of education spending in the State of Minnesota, for to do so would create an incredible political firestorm, disenfranchise generations of Minnesotans, and require redrafting the State Constitution.

For the reasons enumerated above, we look forward to having application #14041 considered as meeting the qualifying criteria and rated against the other innovative projects submitted in the 2020 Regional Solicitation’s TDM category.

With regards,



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Executive Director, Move Minnesota

