



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Office of the City Attorney

300 Sixth Street

Rapid City, South Dakota 57701-2724

Telephone: 605-394-4140

FAX: 605-394-6633

E-mail: attorney@rcgov.org

www.rcgov.org/attorney/attorneyhomepage.htm

TO: Rapid City Common Council

FROM: Jason E. Green, City Attorney

JEJ
10-26-10

DATE: October 26, 2010

RE: Purchasing Procedures

A question has arisen regarding the procedure for authorizing purchases. The question is whether the City ordinance requires the Mayor to personally approve purchase? It is my opinion that the well established practice (more than forty years) of the administrative assistant approving purchase orders is a permissible exercise of the Mayor's authority as CEO of the City. Further, I believe it is consistent with the ordinance provision requiring the Finance Office to establish procedures to implement the requirements of the ordinance.

There are several provisions of the municipal code that are relevant to this question:

RCMC § 2.12.010 Designated chief executive officer.

The Mayor shall be the chief executive officer of the city.

RCMC § 3.04.030 Purchasing procedures.

A. Whenever any city department head or officer or other person desires to make any purchase of materials, supplies, equipment, printing or services on behalf of the city, he or she shall issue a purchase order therefor. It shall be the duty of the department head to preaudit the purchase order prior to incurring the obligation and the preaudit shall be directed toward the determination of funds available and appropriations unexpended or uncommitted in the fund or funds involved and toward the necessity for the purchase.

B. Any department head designated by the mayor may approve and sign a purchase order if the amount shall be \$500 or less, where-upon the purchase shall be fully authorized. In the event the amount involved shall be more than \$500 and not exceeding the bid limit established by SDCL Chapter 5-18, the Mayor, department head and Purchasing Agent must approve and sign the purchase order prior to incurring of the obligation. Reasonable attempts shall be made by all department heads to obtain informal quotations from all local suppliers for any item in excess of \$1,000 but less than the bid limit established by SDCL Chapter 5-18, and for all repairs over \$1,000.

C. In all respects, city purchasing procedures must comply with SDCL Chapter 5-18.

RCMC § 3.04.070 System for carrying out intent of chapter and preaudits.

The Finance Officer shall establish a system for carrying out the intent of this chapter and the preaudits as required in accordance with sound accounting practices.

In addition to these provisions of the municipal code there are several statutes that are relevant to this question:

SDCL § 9-8-1. Mayor--Term of office. The chief executive officer of a municipality under the aldermanic form shall be a mayor. The mayor shall hold office for a term of not less than two nor more than five years as determined by ordinance. A person may hold office for more than one term.

SDCL § 9-8-3. Powers and duties of mayor--Veto power. The mayor shall preside at all meetings of the council but shall have no vote except in case of a tie. He shall perform such other duties as may be prescribed by the laws and ordinances, and take care that such laws and ordinances are faithfully executed. He shall annually and from time to time give the council information relative to the affairs of the first or second class municipality, and shall recommend for their consideration such measures as he may deem expedient. He shall have the power to sign or veto any ordinance or resolution passed by the common council, and the power to veto any part or item of an ordinance or resolution appropriating money.

SDCL § 9-8-1 and RCMC § 2.12.010, both clearly establish that the Mayor is the chief executive officer of the City. The title "chief executive officer" carries with it the authority to oversee the administration of the municipality. SDCL § 9-8-3 imposes the duty on the Mayor to "take care that such laws and ordinances are faithfully executed." However, this statute does not require that the Mayor personally execute any law or ordinance. Such a reading would create the

unreasonable expectation that the Mayor would personally carry out every provision of the municipal code. Obviously, this is not possible. Therefore, the only logical reading of these statutes is that the Mayor must oversee the administration of these laws of the municipality by delegating responsibility for direct oversight to others. It is a well established legal principle that the authority to administer includes the necessary authority to delegate responsibility for duties to other employees of the City.

In the case of purchase orders, it appears that for more than forty years, the Mayor's administrative assistant has handled purchase orders. This well established practice is reflected in the process established by the Finance Office has adopted for implementing the provisions of the purchasing ordinance. In the case of purchase order approval, the person doing the approval is a member of the Mayor's staff. Thus the purchase orders are approved by the Mayor through his staff. Although the Mayor has the authority to delegate the responsibility to approve purchase orders to a member of his staff, the responsibility for insuring compliance with the laws and ordinances remains with the Mayor. How the Mayor carries out that responsibility is a decision that is up to each individual Mayor.

It has been suggested that the Council President should sign off on purchase orders if the Mayor is "unavailable". The statute empowering the Council President to act as Mayor is limited to instances where the Mayor is absent from the municipality or temporarily disabled. As such, the Council President only has authority in limited circumstances.

Finally, and most importantly, the ordinance that governs purchases only applies to "purchases of materials, supplies, equipment, printing or services on behalf of the city" that are in excess of \$500.00, but less than the bid limit. It does not apply to any other type of expenditure of funds.

3.04.030 Purchasing procedures.

A. Whenever any city department head or officer or other person desires to make any purchase of materials, supplies, equipment, printing or services on behalf of the city, he or she shall issue a purchase order therefor. It shall be the duty of the department head to preaudit the purchase order prior to incurring the obligation and the preaudit shall be directed toward the determination of funds available and appropriations unexpended or uncommitted in the fund or funds involved and toward the necessity for the purchase.

B. Any department head designated by the mayor may approve and sign a purchase order if the amount shall be \$500 or less, where-upon the purchase shall be fully authorized. In the event the amount involved shall be more than \$500 and not exceeding the bid limit established by SDCL Chapter 5-18, the Mayor, department head and Purchasing Agent must approve and sign the purchase order prior to incurring of the obligation. Reasonable attempts shall be made by all department heads to obtain informal quotations from all local suppliers for any item in excess of \$1,000 but less than the bid limit established by SDCL Chapter 5-18, and for all repairs over \$1,000.

C. In all respects, city purchasing procedures must comply with SDCL Chapter 5-18.

(Ord. 3663, 2001: Ord. 3000, 1993: prior code § 2-138)