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## U of Minnesota files lawsuit over light-rail project; LRT projects are anything but immune to court battles

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When the University of Minnesota filed a lawsuit over the Central Corridor light-rail project earlier this week, it wasn't the first time a dispute over a local rail project had landed in the courtroom.

The Hiawatha Light Rail line in Minneapolis was the target of a handful of lawsuits, including two filed by Xcel Energy and one by then-state Rep. Phil Krinkie, the current president of the Taxpayers League of Minnesota.

In 2001, Xcel Energy sued the Met Council, the Minnesota Department of Transportation and others in a dispute related to utility relocation for the Hiawatha line. The Minnesota Department of Transportation countersued.

Later that year, after a U.S. District Court judge ordered Xcel to move the lines, a MnDOT press release stated that the ruling "averts a possible one-year delay and millions of dollars in additional costs for the project. "

In a separate case against the Hiawatha project, Xcel Energy filed a suit aimed at getting a "signed guarantee" that it would have future access to its underground substation at Fifth Street and Nicollet Mall. That case made it all the way to the state Supreme Court, which ruled against Xcel.

Krinkie's suit concerned a law he had championed in the Minnesota House. In essence, the law required public transportation projects over a specific dollar amount to pass a cost-benefit test.

Krinkie said the Hiawatha project flunked the test. But then-Gov. Jesse Ventura - a strong light rail supporter - pushed ahead with the project anyway. Krinkie sued, claiming the governor and the state's transportation department ignored the law.

A judge ultimately threw out the case.

In an interview this week, Krinkie speculated that the court didn't want to get too deeply involved in a dispute between a governor and a legislator. "That was a little too hot to handle for them. So they said, 'We determined in this situation that the legislator doesn't have standing to sue the governor,'" he said.

Based on his experiences, Krinkie believes the court might find a way to avoid the dispute between the Met Council and the University of Minnesota.

"What I learned in that long and tedious lawsuit is that when judges don't want to get in between feuding parties, they just throw it out under one of their many procedural-type rules," Krinkie said. "I would say ... the court will do anything it can to sidestep the issue. "

'Adverse effects'

The university's complaint seeks protection from "adverse effects" of the proposed \$941 million Central Corridor project, which is scheduled to be under construction starting next year with an anticipated opening in 2014.

University officials fear that vibration and electromagnetic interference from the trains will affect 80 university laboratories near the proposed light rail route. The suit alleges that the project fails to adequately address those impacts; the Met Council denies the allegations.

C.J. Schoenwetter, a partner with the Minneapolis law firm Bowman and Brooke, said the legal process is working as it was intended to work.

"There is some disagreement, and it is OK to have disagreements," he said. "It spurs communication. And now, that communication is going to be in a more formalized environment. "

Like MnDOT in the 2001 Xcel case, the Met Council is concerned that litigation will delay its project and drive up the cost. Met Council chair Peter Bell said the lawsuit could add at least \$30 million to the project cost if the legal wrangling delays construction by a year.

But there may be ways the court could address fears about project delays and rising costs, according to Schoenwetter.

"They might ask that the case be put on what some lawyers call a 'rocket docket,'" or an expedited timetable, he said. "Courts oftentimes will honor that, particularly when such large sums of money are involved, as long as justice can still be done in a short time frame. "

Other cases

LRT-related lawsuits in other cities have met with limited success.

In 2000, for example, a group called Citizens for Mobility sued the Sound Transit Board over a \$1.9 billion rail project in Seattle. The group claimed that the transit authority failed to address issues related to safety, congestion, air quality, LRT alternatives, and costs.

Three years later, another group filed a separate lawsuit against Sound Transit on grounds that the project discriminated against minority neighborhoods because the plans called for above-ground tracks in those areas instead of underground tunnels.

The group, called Save Our Valley, said the project would hurt businesses and pose a safety threat, according to the Puget Sound Business Journal.

Both lawsuits were dismissed and the project went forward.

Last year, a light rail opponent filed a lawsuit to cancel a ballot initiative for a proposed LRT project in Kansas City, Mo. The plaintiff claimed that city officials didn't follow the proper protocol in approving a plan to let the voters pass judgment on the project.

The ballot initiative went forward, but voters rejected the project.

Last month, an Oregon resident threatened to sue the TriMet rail authority. The resident claimed that TriMet improperly ignored the public's wishes by "prematurely" ruling out one of the route alternatives, the Oregon City News reported.

Oregon resident Randal O'Toole, a Cato Institute senior fellow and light rail skeptic, said he hasn't seen all that many LRT-related lawsuits. On the other hand, lawsuits are to be expected in any major project that involves a lot of money and competing interests, he noted.

The Central Corridor situation is relatively unusual in at least one respect: The dispute involves two public institutions.

"It's pretty Machiavellian," Krinkie said. "In this case, you have one public entity litigating against another public entity.

"Who loses? Oh, yeah: the taxpayers. "

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