

TO: Board of Directors, Roseville Area Community Fund

FROM: Tammy L. Pust, President

DATE: March 6, 2016

RE: Distribution of Funds

At the Special Meeting of the Board of Directors held on February 15, 2016, board members learned that, in the past, the Foundation has not given grants in a quarter when: (1) the City misses the quarter's end and distributes funds to the Foundation late; and/or (2) the endowment investments suffer sufficient losses in the quarter such that the net loss is greater than the amount of new funds received from the City. Both of those situations occurred recently, which is the reason that the Foundation gave no grants in December, 2015.

While the Board fully understands that the Foundation's past practice has been guided by a commitment to meeting our fiduciary duty of protecting the nonprofit's assets, it appears to me that the specific practice of skipping quarterly grant distributions is not consistent with our governing documents. Specifically, it appears inconsistent with the contract between the Foundation and the City, as explained below.

The Foundation receives and distributes part of the City of Roseville's charitable gambling proceeds, and it does so pursuant to contract. The original contract was signed in 1991. We now operate under an Amended Agreement which was signed in October 1994. While we have agreed to the terms of a Second Amended Agreement, which makes some changes related to the makeup of the DAB and the investment parameters, that new contract has not yet been signed and so we are still governed by the Amended Agreement. All versions of the Agreement are the same with regard to the relevant issue.

The Amended Agreement provides as follows:

One half of the proceeds from lawful gambling received from the City shall be held and maintained by NSCF as a permanent endowment. Subject to paragraphs 3, 4 and 5¹, NSCF shall make available one half of the proceeds from lawful gambling received from the City and the income from the endowment for allocation. [Emphasis added.]

¹ Paragraphs 3, 4 and 5 are not directed to the issue of how much or how often the Foundation must issue grants, so those provisions are not important for this analysis.

A strict reading of the paragraph provides the following clear directions:

- **The Foundation has to put half of whatever it gets from the City into the permanent endowment;**
- **The Foundation “shall” allocate in grants half of what it receives from the City – PLUS all the income from the endowment; and**
- **All grants have to be made within the fiscal year or within 120 days of the close of the fiscal year.**

The Amended Agreement does not make any exception for situations wherein the endowment suffers losses. It also does not tie the requirement that the Foundation “shall” distribute grants to the timing within which it receives the funds from the City, except that it references making distributions on a fiscal year basis.

As a result, in order to be in compliance with its contractual obligations, the Foundation should distribute half of everything it gets from the City – plus all income from the endowment – within each fiscal year. While we can choose to give grants quarterly, we don’t have to follow that schedule. We do have to grant it out within the fiscal year plus 120 days. [See Paragraph 5.]

I’ve checked the Amended Bylaws, the Grant Guidelines and all other historical documents I’ve been provided, and don’t find any other authority that allows us to continue with our past practices.