

From: "Kane, Brian" <brian.kane@ag.idaho.gov>
To: 'Carol Brockmann' <cbrockmann@co.valley.id.us>
Cc: Christopher Boyd <cboyd@co.adams.id.us>
Date: Thu, 3 Jan 2019 17:31:29 +0000
Subject: RE: Midas Agreement question

Hi Carol—

Sorry for the delayed response. In reviewing the agreement, it seems as if it is legally defensible/ permissible—but it raises some questions with regard to appearances and perhaps biases favoring certain outcomes. Here are a few issues to contemplate/ discuss with your clients as they consider this agreement.

1. The Foundation is to receive roughly 3 million shares of stock in Midas Gold. The Foundation board is made up of representatives of the cities & counties, and the cities & counties are the direct beneficiaries of the Foundation. A question arises whether this is a permissible situation to be in for a county or city where it has a vested financial stake in the profitability of a company.
2. The entire financial structure of the foundation is tied to the ultimate success of the project because each contribution by Midas is tied to crossing certain thresholds. This places the cities and counties in a possible conflict situation since they are the beneficiaries of the foundation and thus have financial incentive to see the project be successful. Whether this is illegal or not, it has a possible appearance of impropriety.
3. In the dispute resolution clause there is a provision allowing for binding arbitration. It is questionable whether a city or county can agree to binding arbitration in matters concerning the public affairs of its citizens.
4. By entering into the agreement where each city and county has a delegate to the Advisory Council, it raises the question of whether each entity is diluting its sovereignty. I.e. an individual governmental entity is supposed to represent its citizens and not the citizens of another entity. Here by participating in the Advisory Council – the representatives form a collective of all. Depending upon what this Advisory Council does, that may be a problem. If it is just information sharing and providing a forum, then likely no. But if it formulates policies collectively for the separate entities it may be an improper dilution of the sovereignty of each entity.

I hope that you find this overview helpful.

Brian

From: Carol Brockmann [<mailto:cbrockmann@co.valley.id.us>]
Sent: Thursday, January 03, 2019 9:05 AM
To: Kane, Brian <brian.kane@ag.idaho.gov>
Cc: Christopher Boyd <cboyd@co.adams.id.us>
Subject: Midas Agreement question

Good Morning and Happy New Year! I'm just reaching out to see if you have had a chance to look at the Midas Community Agreement that I had sent you on behalf of myself and Christopher Boyd, Adams County Prosecuting Attorney. Bests....Carol Brockmann