**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-0646**

Metropolitan Council,
Respondent,

vs.

Ziegler Inc., et al.,
Respondents Below,

St. Stephens Evangelical Lutheran Church,
Appellant.

**Filed January 13, 2020**
**Affirmed**
**Florey, Judge**

Hennepin County District Court
File No. 27-CV-16-13591

Ann K. Bloodhart, General Counsel, Peter A. Hanf, Associate General Counsel, Metropolitan Council, St. Paul, Minnesota (for respondent)

Thomas J. Radio, Felhaber Larson, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Florey, Judge; and Klaphake, Judge.*

**S Y L L A B U S**

The Metropolitan Council—insofar as it performs its public-wastewater-management services—is a "public service corporation" for purposes of Minn. Stat. § 117.189(a) (2018).

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## O P I N I O N

**FLOREY**, Judge

A condemnation proceeding between the parties resulted in an award for appellant that was over 40% greater than respondent's final written offer. Appellant moved for an award of fees and costs pursuant to the mandatory-fee provision of Minn. Stat. § 117.031(a) (2018). Respondent argued, and the district court agreed, that respondent is a public-service corporation under Minn. Stat. §§ 117.189(a) and 117.025, subd. 10, and is therefore exempted from the mandatory-fee provision of section 117.031(a). In the factual context of this case, we agree. We therefore affirm.

## FACTS

In 2016, respondent Metropolitan Council (the Council) filed a petition to acquire temporary construction and access easements over real property owned by appellant Saint Stephen Evangelical Lutheran Church (St. Stephen).[1] The Council sought the easements to perform maintenance on the underground sewer system in furtherance of its Bloomington Sewer Improvement Project. The district court granted the Council's petition, and the Council commenced its work on the St. Stephen property in May 2017.

The Council's final written offer to St. Stephen for compensation was $31,000.00. St. Stephen rejected this offer, and the matter was submitted to a commissioners' hearing

[1] Throughout the record in this case, the appellant is referred to as both "St. Stephen" and "St. Stephens." The header of this opinion uses "St. Stephens" because "[t]he title of the action shall not be changed in consequence of the appeal." Minn. R. Civ. App. P. 143.01. However, because the appellant seems to refer to itself most consistently in the singular, we use "St. Stephen" throughout the body of this opinion.

in June 2018. The commissioners awarded St. Stephen $106,000.00 plus pre-judgment interest and a $5,000 reimbursement for appraisal fees. The parties accepted the decision understanding that it did not preclude future claims for fees and costs.

St. Stephen filed a notice of appeal, seeking an award of $67,880.43 for attorney fees, expert fees, and other costs arising out of the litigation. St. Stephen argued that it is entitled to the award because Minn. Stat. § 117.031(a) provides for a mandatory award of fees and costs where "the final judgment or award for damages . . . is more than 40 percent greater than the last written offer of compensation made by the condemning authority." The Council did not challenge the validity of the statute, nor did it argue that the commissioners' award to St. Stephen was not more than 40 percent of the Council's final written offer. It did claim, however, that the exception for "public service corporations" contained in Minn. Stat. § 117.189(a) should apply. The district court agreed with the Council and denied St. Stephen's requested award. St. Stephen appealed.

**ISSUE**

Is the Council a "public service corporation" under Minn. Stat. § 117.189(a)?

**ANALYSIS**

The issue here is one of statutory interpretation—an issue we review de novo. *State v. Tennin*, 674 N.W.2d 403, 406 (Minn. 2004). The primary object of any statutory interpretation or construction is to ascertain, so that we may effectuate, the legislature's intent. Minn. Stat. § 645.16 (2018); *General Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 795 (Minn. 2019). When the language of the statute in question is clear and unambiguous, we must give effect to its plain meaning. *Hutchinson Tech., Inc. v. Comm'r*

*of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005). Only when the statutory language is ambiguous may we draw on canons of construction and other interpretive tools. *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013). A statute is ambiguous when its language is susceptible to more than one reasonable interpretation. *Hutchinson Tech.*, 698 N.W.2d at 8.

Several statutory sections are pertinent to the issue before us. Section 117.031(a) provides, in relevant part, that where "the final judgment or award for damages . . . is more than 40 percent greater than the last written offer of compensation made by the condemning authority . . . the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs." Section 117.189(a) contains an exception to the mandatory-fee provision of section 117.031(a), stating that the provision "do[es] not apply to the use of eminent domain authority by public service corporations" unless that use is for one of three listed purposes; none of which are applicable in this case. Finally, section 117.025, subd. 10, sets forth the definition of "public service corporation." The district court found the relevant sections to be unambiguous and agreed with the Council that the Council falls within the definition of "public service corporation" and is therefore exempted from a mandatory award of fees.

We turn our attention first, as we must, to the issue of ambiguity or clarity in the statutory language. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (stating that the issue of ambiguity is preliminary to further analysis). First, the mandatory-fee provision of section 117.031(a)—requiring an award of fees and costs where the final judgment or award is more than 40% of the final written offer—is free of any ambiguity,

and the parties do not contend otherwise. Section 117.189(a)—exempting public-service corporations from the mandatory-fee section—is, standing alone, likewise unambiguous. The term "public service corporations" is defined in Minn. Stat. § 117.025, subd. 10, so any allegations of ambiguity must be levied against that definition. That is, the term "public service corporations" can only be ambiguous if the definition in section 117.025, subdivision 10, is ambiguous.

Minn. Stat. § 117.025, subd. 10, provides that a "public service corporation" is

> a utility, as defined by section 216E.01, subdivision 10; gas, electric, telephone, or cable communications company; cooperative association; natural gas pipeline company; crude oil or petroleum products pipeline company; municipal utility; municipality when operating its municipally owned utilities; joint venture created pursuant to section 452.25 or 452.26; or municipal power or gas agency. Public service corporation also means a municipality or public corporation when operating an airport under chapter 360 or 473, a common carrier, a watershed district, or a drainage authority.

The Council argued, and the district court agreed, that this definition is clear and unambiguous and that it encompasses the Council as a "municipal utility." The terms "municipal" and "utility" are not further defined, so we give them their plain and ordinary meaning in accordance with the rules of grammar and common usage. Minn. Stat. § 645.08(1) (2018); *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010). We may turn to dictionaries to ascertain a term's plain and ordinary meaning. *In re Ali*, 913 N.W.2d 107, 111 (Minn. App. 2019).

Black's Law Dictionary identifies "municipal" as an adjective meaning "[o]f, relating to, or involving a city, town, or local governmental unit." *Black's Law Dictionary*

1175 (10th ed. 2014). The same source defines "utility," in relevant part, as "a business enterprise that performs an essential public service and that is subject to governmental regulation." *Black's Law Dictionary* 1779-80 (10th ed. 2014). These terms are frequently employed in common parlance and their combined meaning is clear: A municipal utility is an entity that provides an essential public service in relation to a political subunit of the state. This language is not susceptible to a reasonable, meaningfully different interpretation. *Hutchinson Tech., Inc.*, 698 N.W.2d at 8. This determination reveals the true issue in this case: not "what does 'public-service corporation' mean?" but "is the Council a public-service corporation?"

St. Stephen makes a number of arguments as to why the Council does not fall within the definition of "public-service corporation," but we cannot reach most of them because they presuppose ambiguity in the statutory language. *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002) ("[T]he court must give a plain reading to any statute it construes, and when the language of the statute is clear, the court must not engage in any further construction."). Even in its primary argument asserting that the statute is unambiguous, St. Stephen refers to a canon of construction to argue that the legislature did not explicitly name the Council in the definition of "public-service corporation" and that it would have done so had it intended to exempt the Council from the mandatory fee provision. In addition to our inability to engage such construction of clear and unambiguous language, this argument is unconvincing. *Id.* Subdivision 10 of section 117.025 does not identify any particular entity; so by St. Stephen's logic, no entity would fall within it. St. Stephen's argument continues, however, that the legislature's failure to

identify the Council is particularly telling of its intent in light of the fact that the legislature has referred to the Council by name in other statutes. To reverse this case on this logic would be to "engage in . . . further construction" of an unambiguous statute and disregard the letter of the law in pursuit of its ostensible spirit. Minn. Stat. § 645.16 (2018) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."); *Gomon*, 645 N.W.2d at 416.

The Council is created, structured, regulated, and granted its authority by statute. *E.g.*, Minn. Stat. §§ 473.123-.249 (2018). We therefore turn to those sections for our analysis of the extent to which the Council can be considered a municipal utility.

Section 473.123 established and set the foundation for the Council. It provides: "A Metropolitan Council with jurisdiction in the metropolitan area is established as a public corporation and political subdivision of the state." *Id.* § 473.123. Section 473.121, subdivision 2, describes the Council's area of jurisdiction as the "Metropolitan area," which includes "only the counties of Anoka; Carver; Dakota excluding the cities of Northfield and Cannon Falls; Hennepin excluding the cities of Hanover and Rockford; Ramsey; Scott excluding the city of New Prague; and Washington." Finally, section 473.129 enumerates some of the Council's powers, which include "(1) participat[ing] as a party in any proceedings . . . if the proceedings involve the change in a boundary of a governmental unit in the metropolitan area, and (2) conduct[ing] studies of the feasibility of annexing, enlarging, or consolidating units in the metropolitan area." *Id.*, subd. 5. These examples of the Council's nature and powers confirm that the Council is indeed "of,

relating to, or involving a city, town, or local governmental unit;" and that it is therefore "municipal." *Black's Law Dictionary* 1175 (10th ed. 2014) (defining municipal).

Whether the Council is a "utility" is a more involved question. Where the "municipal" part of "municipal utility" could be described as being concerned with what the Council *is*, the "utility" question is concerned with what the Council *does*. The Council has a wide variety of responsibilities within its jurisdiction and is granted broad authority to carry them out. For example, it handles certain matters concerning transit (section 473.385), finance (section 473.223), policing (section 473.407), housing and redevelopment (section 473.195), public recreation planning (section 473.147), population and demographic estimates (section 473.24), research (section 473.242), and taxation (section 473.249), among many others. While not all of the Council's responsibilities concern utilities, it also maintains broad responsibility for wastewater-management systems within its jurisdiction. Section 473.511 grants to the Council "ownership of all existing interceptors and treatment works which will be needed to implement the council's comprehensive plan for the collection, treatment, and disposal of sewage in the metropolitan area," and requires that it "acquire, construct, equip, operate and maintain all additional interceptors and treatment works which will be needed for such purpose." Wastewater infrastructure and management are undoubtedly "essential public services." *Black's Law Dictionary* 1779-80 (10th ed. 2014) (defining utility). Therefore, to the extent that the Council acts in accordance with its wastewater-management authority for the purpose of carrying out its duties, it does so as a "utility" per the plain meaning of that term.

## D E C I S I O N

For the foregoing reasons, we hold that, at least insofar as the Council performs its wastewater-management services, it is a municipal utility for purposes of Minn. Stat. § 117.025, subd. 10, and therefore a public-service corporation under section Minn. Stat. § 117.189(a). We note, however, that whether the Council is a public-service corporation when it performs its other functions remains an open question. In this case, then, because the Council was acting exclusively pursuant to its wastewater-management function, it was exempt from the mandatory-fee provision of section 117.031(a), and we affirm the district court's denial of fees and costs.

**Affirmed.**