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### **Advisory Opinion 08-007**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2006). It is based on the facts and information available to the Commissioner as described below. All public data the Commissioner relied upon to issue this opinion are available for public inspection and copying at the office of the Information Policy Analysis Division (IPAD), unless the data have been disposed of in compliance with the state Records Management Act.

#### **Facts and Procedural History:**

On March 17, 2008, IPAD received a letter, dated March 14, 2008, from Lorrie Louder on behalf of the Rock Tenn Community Advisory Panel (RCAP). In her letter, Ms. Louder asked the Commissioner to issue an advisory opinion whether RCAP was subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D. Ms. Louder submitted the \$200.00 fee required by section 13.072. In a letter to Ms. Louder dated March 20, 2008, IPAD requested additional information and clarification. Clarification was provided by Ms. Louder in a letter dated April 14, 2008, and received by IPAD on April 17, 2008.

A summary of the facts as presented by Ms. Louder is as follows.

In 2007, the Saint Paul Port Authority (SPPA) was provided with a one-time grant for a study related to a steam and electrical energy facility for Rock Tenn, a paper recycling facility in Saint Paul. As part of the grant, SPPA is required to convene a citizen's advisory committee to advise on the scope of the study. This citizen's advisory committee is composed of members recommended by four different district councils in Saint Paul and must meet regularly.

According to Ms. Louder, this committee is known as RCAP and has developed a consensus process using a facilitator so there is no chair of RCAP.

#### **Issue:**

Based on Ms. Louder's opinion request, the Commissioner agreed to address the following issue:

Is the Rock Tenn Community Advisory Panel subject to the requirements of the Open Meeting Law, Minnesota Statutes, Chapter 13D?

**Discussion:**

To assist in the analysis of whether RCAP is subject to the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D, some background is helpful.

There are several purposes for the OML. The Minnesota Supreme Court stated in *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002) that:

The Open Meeting Law serves several purposes:

(1) “to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning [public bodies’] decisions or to detect improper influences;” (2) “to assure the public’s right to be informed;” and (3) “to afford the public an opportunity to present its views to the [public body].” *St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 4 (Minn. 1983)(citations omitted). These purposes are deeply rooted in the fundamental proposition that a well-informed populace is essential to the vitality of our democratic form of government. (footnote omitted)

Because the Open Meeting Law was enacted for the public benefit, we construe it in favor of public access. *State by Archabal v. County of Hennepin*, 505 N.W.2d 294, 297 (Minn. 1993); *see St. Cloud Newspapers*, 332 N.W.2d at 6 (stating that the Open Meeting Law “will be liberally construed in order to protect the public’s right to full access to the decisionmaking process of public bodies”).

*Prior Lake American* at 735. With this background and the Court’s instruction to construe the law in favor of public access, the next step is to review the issue presented by RCAP.

Minnesota Statutes, section 13D.01 lists the government organizations that are subject to the OML. These government organizations are referred to as “public bodies.” Subdivision 1 of this section states, in pertinent part:

All meetings, including executive sessions, must be open to the public: . . .

(c) of any  
(1) committee,  
. . .  
of a public body;

According to 2007 Session Laws, Chapter 57, Article 2, Section 3, RCAP is a committee operating under the auspices of the SPPA. The study must do the following:

- (1) assess the economic and technical feasibility of various fuel types to power the plant;
- (2) provide a full description and analysis of each fuel type and their respective economic and noneconomic impacts;

- (3) provide a full description and analysis of each fuel type and their respective environmental emissions, including carbon dioxide, and the cost of controlling those emissions that affect human health;
- (4) describe public subsidies related to the production and use of each fuel type;
- (5) describe potential energy efficiency improvement that can be made to the paper recycling operations and subsidies available for each improvement; and
- (6) evaluate additional uses for the steam and electricity produced at the facility and the cost of infrastructure needed to implement the additional uses.

In addition, the Legislature also gave RCAP the authority to issue recommendations on these study topics that are separate from those presented by SPPA.

All of these functions are actions taken on behalf of citizens who will be impacted by the decisions that are made about providing energy to the Rock Tenn recycling operation. As stated by the Minnesota Supreme Court in the *Prior Lake American* case, these are the types of discussions that should occur in public and any decision should be made in public.

The next question then is whether the RCAP is a “public body” and so subject to the OML. The SPPA is a public corporation created in 1929. According to Minnesota Statutes, section 465.719, subdivision 9, public corporations created before May 31, 1997, cannot be exempted from the OML. As a committee of a public body, RCAP is subject to the OML.

**Opinion:**

Based on the facts and information provided, my opinion on the issue that the Rock Tenn Citizens Advisory Panel raised is as follows:

The Rock Tenn Community Advisory Panel is subject to the requirements of the Open Meeting Law, Minnesota Statutes, Chapter 13D.

Signed:

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Dana B. Badgerow  
Commissioner

Dated:

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May 1, 2008