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### **Advisory Opinion 08-015**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). 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 May 16, 2008, IPAD received a letter, dated May 15, 2008, from John Kysylyczyn. In his letter, Mr. Kysylyczyn asked the Commissioner to issue an advisory opinion whether the members of the Roseville City Council (Council) had violated the Open Meeting Law, Minnesota Statutes, Chapter 13D, at a meeting held on February 11, 2008. In a letter to Mr. Kysylyczyn dated May 19, 2008, IPAD requested additional information. The additional information was received by IPAD on May 27, 2008. Mr. Kysylyczyn submitted the \$200.00 fee required by section 13.072.

On May 29, 2008, IPAD wrote to Mr. Craig Klausing, Chairman of the Council. In its letter, IPAD informed Mr. Klausing of Mr. Kysylyczyn's request and gave the members of the Council an opportunity to explain their position. The Council presented its position in a letter from its attorney, Ann R. Goering, dated June 20, 2008.

A summary of the facts as presented is as follows.

The Council held a regular meeting on February 11, 2008. Agenda item 10 was a public hearing to impose a penalty for violation of laws and ordinances related to the sale of alcoholic beverages. The City of Roseville posts the documents provided to Council members before a meeting on its website. Mr. Kysylyczyn had downloaded the documents for the February 11, 2008, meeting and compared those documents to the ones available in the meeting room. The materials were identical. One of the items in the packet was a recommendation to revoke the license to sell alcoholic beverages due to the violation of the laws and ordinances by the license holder.

During the course of the discussion of Agenda item 10, one Council member commented that the recommended penalty was a 30-day suspension of the license and a \$1,000 fine. After reviewing a recording of the meeting at home twice, Mr. Kysylyczyn sent an email to the City Manager asking if there were additional documents provided to Council members but not provided to the public.

The City Manager responded by providing a copy of an email message he had sent to Council members the morning of the February 11<sup>th</sup> meeting. The email provided additional information from city staff about Agenda item 10, including a suggested penalty of a 30-day suspension of the license and a \$1,000 fine. The email was not printed or provided in the packet of materials available to the public in the meeting room during the February 11, 2008, meeting.

**Issue:**

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

Did the members of the Roseville City Council comply with the requirements of Minnesota Statutes, section 13D.01, subdivision 6 at a meeting held on February 11, 2008?

**Discussion:**

Before turning to the issue raised by Mr. Kysylyczyn, it is necessary to establish that the Council is subject to the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. According to Minnesota Statutes, section 13D.01, subdivision 1(b)(4), the governing body of a city is subject to the requirements of the OML. Therefore, the Council is subject to Chapter 13D.

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 Mr. Kysylyczyn.

The statutory language at issue here is found in Minnesota Statutes, section 13D.01, subdivision 6. That subdivision states:

(a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

(1) distributed at the meeting to all members of the governing body;

(2) distributed before the meeting to all members; or

(3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

(b) This subdivision does not apply to materials classified by law as other than public as defined in chapter 13, or to materials relating to the agenda items of a closed meeting held in accordance with the procedures in section 13D.03 or other law permitting the closing of meetings.

Ms. Goering, the attorney for the Council, argues that because the statute only speaks of “printed materials,” and because the email message from the City Manager was not printed, it did not need to be provided in the public packet in the meeting room. Additionally, she argues that neither a City employee nor the Council itself directed that the email be distributed and so the members of the Council did not violate subdivision 6.

The language in subdivision 6 does speak of “printed materials” and, technically, an email that is not printed does not fit the commonly understood meaning of that phrase. The Legislature should revise the language to recognize the use of electronic and other types of communication.

The Commissioner is not persuaded by Ms. Goering’s argument for two reasons. It would be an absurd result to apply the language in subdivision 6 when the email is printed and not apply it when the email is not printed. *See* Minnesota Statutes, section 645.17. Furthermore, taking the argument to its next logical step, public bodies could avoid providing any meeting materials to members of the public by merely sending all communications via email. Given the Minnesota Supreme Court’s direction in *Prior Lake American* to interpret the requirements of the OML in favor of public access and the need for clear requirements to assist with compliance, the Commissioner cannot accept the limited reading of subdivision 6 suggested by the Council.

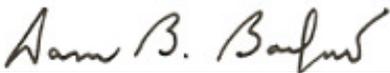
The second argument presented is that neither a City employee nor a member of the Council directed that the email be distributed. This argument fails because the email was sent by the City Manager to the members of the Council. Therefore, a City employee chose to distribute the email and that portion of the subdivision 6 has been satisfied.

The Commissioner concludes that the members of the Council should have made the text of the email sent by the City Manager on the morning of February 11, 2008, available to the public as part of the materials provided in the meeting room per the requirements of section 13D.01, subdivision 6.

### **Opinion:**

Based on the facts and information provided, my opinion on the issue that Mr. Kyslyczyn raised is as follows:

The members of the Roseville City Council did not comply with the requirements of Minnesota Statutes, section 13D.01, subdivision 6 at a meeting held on February 11, 2008 when they failed to provide a copy of an email they received.

Signed:   
Dana B. Badgerow  
Commissioner

Dated: July 9, 2008