



---

### **Advisory Opinion 08-034**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below

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

On October 14, 2008, the Information Policy Analysis Division (IPAD) received a letter dated October 13, 2008 from Alberto Quintela, Jr., Staff Attorney, Minnesota Department of Commerce. In his letter, Mr. Quintela, on behalf of the Ultra High-Speed Broadband Task Force, asked the Commissioner to issue an advisory opinion on several Open Meeting Law issues. Mr. Quintela submitted the \$200 fee on October 21, 2008.

A summary of the facts as Mr. Quintela provided them is as follows. He wrote in his opinion request:

The Minnesota Legislature created the Ultra High Speed Broadband Task Force in Chapter 212, Laws of Minnesota for 2008.

The [Task Force] requests an opinion...as to whether the Open Meeting Law applies...

In the event that the Open Meeting Law is deemed to apply, the Task Force also has questions related to how [it] can meet some of the apparent requirements....

The Legislature established a task force to gather data to put forth a comprehensive statewide ultra high-speed broadband goal. The Task Force consist of a total of 23 members, with seventeen members representing higher education, K-12, libraries, health care, counties, cities, citizens, labor, the commissioner of the Department of Commerce, the commissioner of the Department of Employment and Economic Development and a representative of the Office of Enterprise Technology and six members representing telephone companies, cable providers and wireless providers.

The Task Force must deliver a report by November 1, 2009, to the Governor and the Legislature containing recommendations for the development of a comprehensive statewide plan designed to achieve a state ultra high-speed broadband goal that the Task Force considers appropriate.

The report is to include recommendations for: broadband needs by 2015; policies and necessary actions; public/private cooperation; strategies; financing methods; financial incentives; security; vulnerability; redundancy; costs; economic development opportunities; and, benefits to educational, healthcare and government institutions and also community-based organizations.

### **Issues:**

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

1. Does the Open Meeting Law apply to the Ultra High-Speed Broadband Task Force created by Chapter 212, Laws of Minnesota for 2008?
2. If the Open Meeting Law applies is the Task Force required to meet in a public building or does the Task Force have the option of conducting its meetings in a private location that is made accessible to the public?
3. Since the Task Force doesn't have a primary office like many other public bodies (city councils, school boards, state agencies), how can the Task Force meet the requirements of Minnesota Statutes, section 13D.04, regarding Notice of Meetings and section 13D.01 regarding votes to be kept in a journal? Can a website be used to meet the meeting notice and journal requirements?
4. The 23 member Task Force has nine members from Greater Minnesota for whom travel to meetings may, at times, be more onerous (winter weather conditions, scheduling conflicts due to extended travel times). If a quorum of members is present at the meeting place, may videoconferencing be used to allow members who are not present to (1) listen the meeting; (2) provide comments; and/or (3) vote on motions/recommendations being considered at the meeting?
5. May the Task Force create working groups of less than a quorum of the Task Force to meet outside of the public meetings to discuss distinct issue areas and to bring recommendations and draft language to the full Task Force at a public meeting for consideration and discussion?

### **Discussion:**

*Issue 1: Does the Open Meeting Law apply to the Ultra High-Speed Broadband Task Force created by Chapter 212, Laws of Minnesota for 2008?*

Chapter 212, subdivision 1(a), states:

The governor shall convene an Ultra High-Speed Broadband Task Force to make recommendations to the governor and the legislature regarding the creation of a state ultra high-speed broadband goal and a plan to implement that goal.

Clause (b) of subdivision 1 lists the types of members who must comprise the Task Force.

Clause (c) of subdivision 1 provides that the Governor shall appoint the Task Force members and designate one of the members to serve as chair.

Clause (d) of subdivision 1 provides that the Department of Commerce shall provide logistical and administrative support to the Task Force.

Clause (e) of subdivision 1 states:

By November 1, 2009, the task force shall submit a report to the governor and the chairs and ranking minority members of the senate and house committees with primary jurisdiction over telecommunications policy containing recommendations, including possible legislation, for the development of a comprehensive statewide plan designed to achieve a state ultra high-speed broadband goal that the task force considers appropriate.

Clause (e) goes on to list eight items that must be included in the report.

Minnesota Statutes, section 13D.01, subdivision 1(a), discusses the types of state-related entities that are subject to the Open Meeting Law: “all meetings of a state agency, board, commission, or department must be open to the public” when public business will be transacted in the meetings.

Here, the Legislature established the Task Force and gave the Governor the authority to appoint its membership. Although section 13D.01, subdivision 1, does not provide explicitly that meetings of state *task forces* must be open to the public, the Commissioner considers a task force to be akin to a board or commission. Given the scope of topics the Ultra High-Speed Broadband Task Force will be addressing, and the fact that it is to create a report containing recommendations “for the development of a comprehensive statewide plan designed to achieve a state ultra high-speed broadband goal,” the Task Force will be transacting public business. For these reasons, the Commissioner concludes the Task Force is subject to the provisions of Chapter 13D.

*Issue 2: If the Open Meeting Law applies is the Task Force required to meet in a public building or does the Task Force have the option of conducting its meetings in a private location that is made accessible to the public?*

Chapter 13D is silent on the issue of the location of public meetings. Clearly, though, meetings must be held in a location to which members of the public can easily gain access; if a body were to do otherwise, it would violate the spirit of the Open Meeting Law. The Commissioner is well aware that in many buildings, whether publicly or privately owned, persons entering are required to go through some type of security and, likely, must sign in. The Commissioner does not view this as a violation of Chapter 13D.

The Task Force does, however, need to meet in the state of Minnesota. In Advisory Opinion 06-012, the Commissioner opined that bodies subject to Chapter 13D must hold their meetings within the territorial boundaries of the body. The Commissioner’s opinion is based on a 1967 Minnesota Supreme Court case. (*Quast v. Knutson*, 150 N.W.2d 199, 200 (Minn. 1967).)

**Issue 3:** *Since the Task Force doesn't have a primary office like many other public bodies (city councils, school boards, state agencies), how can the Task Force meet the requirements of Minnesota Statutes, section 13D.04, regarding Notice of Meetings and section 13D.01 regarding votes to be kept in a journal? Can a website be used to meet the meeting notice and journal requirements?*

Section 13D.04, subdivision 1, states, "A schedule of the regular meetings of a public body shall be kept on file at its primary offices."

Mr. Quintela notes that the Task Force does not have a primary office. However, the Minnesota Department of Commerce, which is tasked with providing "logistical and administrative support" for the Task Force, does have a primary office. The Commissioner suggests keeping the Task Force's regular meeting schedule at the Department of Commerce. If the Task Force wishes to post its regular meeting schedule on its website, it may do so but not in lieu of maintaining a copy of the schedule at the primary office of the Department of Commerce for anyone who wishes to inspect or obtain a copy.

Section 13D.01, subdivision 4, states, "The votes of the members...must be recorded in a journal kept for that purpose." Again, if the Task Force wishes to post the members' votes on its website, it may do so, but this is not sufficient. The Task Force/Department of Commerce also must maintain a journal of the votes for anyone who wishes to inspect or obtain a copy.

**Issue 4:** *The 23 member Task Force has nine members from Greater Minnesota for whom travel to meetings may, at times, be more onerous (winter weather conditions, scheduling conflicts dues to extended travel times). If a quorum of members is present at the meeting place, may videoconferencing be used to allow members who are not present to (1) listen the meeting; (2) provide comments; and/or (3) vote on motions/recommendations being considered at the meeting?*

Section 13D.02 discusses meetings conducted by interactive television. Subdivision 1 of section 13D.02, states, in part:

A meeting may be conducted by interactive television so long as:

- (1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;
- (2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;
- (3) at least one member of the body is physically present at the regular meeting location; and
- (4) each location at which a member of the body is present is open and accessible to the public.

Thus, if the Task Force meets the requirements listed in section 13D.02, it may conduct meetings using interactive television (video conferencing).

*Issue 5: May the Task Force create working groups of less than a quorum of the Task Force to meet outside of the public meetings to discuss distinct issue areas and to bring recommendations and draft language to the full Task Force at a public meeting for consideration and discussion?*

As the Commissioner discussed in Issue 1, the Task Force is subject to the requirements of Chapter 13D. There is nothing in Chapter 13D that prohibits the Task Force from creating or requires the Task Force to create work groups. Mr. Quintela's question seems to be whether a work group of the Task Force is subject to Chapter 13D if the membership of work group does not include a quorum of Task Force members. The Commissioner addressed a similar issue in Advisory Opinion 07-025:

A 1993 Minnesota Court of Appeals case addressed an issue similar to the one before the Commissioner. In *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn.App. 1993), the Court found that a series of mediation sessions, in which less than a quorum of the Lake Elmo City Council members participated, were not a committee, subcommittee, board, department, or commission of the City of Lake Elmo for purposes of the Open Meeting Law....

In the present situation, the Free Speech Working Group is not capable of exercising decision-making powers of the governing body...In addition, because only two Council Members are part of the Work Group's membership, no quorum of the City Council exists. Based on the language in section 13D.01 and the Court of Appeals decision in *Sovereign*, the Commissioner does not believe that the Free Speech Working Group is subject to the requirements of Chapter 13D.

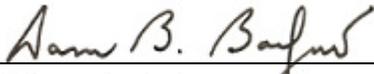
Here, Mr. Quintela states that work groups would discuss distinct issue areas and bring recommendations and draft language to the full Task Force at public meetings for consideration and discussion. Similar to the facts in 07-025, any work group would not be capable of exercising decision-making powers of the Task Force. In addition, a work group's membership would not include a quorum of Task Force members. For these reasons, the Commissioner concludes a work group, such as Mr. Quintela describes, would not be subject to the requirements of Chapter 13D.

**Opinion:**

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

1. The Ultra High-Speed Broadband Task Force created by Chapter 212, Laws of Minnesota for 2008 is subject to the Minnesota Statutes, Chapter 13D.
2. Minnesota Statutes, Chapter 13D is silent on where bodies can or cannot hold meetings.
3. Pursuant to Minnesota Statutes, section 13D.01, subdivision 4, the Task Force must maintain a journal of the record of votes taken by its members. Pursuant to Minnesota Statutes, section 13D.04, subdivision 1, the Task Force must maintain a copy of the schedule of its regular meetings.

4. Minnesota Statutes, section 13D.02, sets forth the conditions under which the Task Force can conduct meetings by interactive television or video conferencing.
5. A work group, such as Mr. Quintela describes, of the Task Force is not subject to the requirements of Minnesota Statutes, Chapter 13D.

Signed:   
Dana B. Badgerow  
Commissioner

Dated: December 3, 2008