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### Advisory Opinion 10-013

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2009). It is based on the facts and information available to the Commissioner as described below.

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

On March 12, 2010, the Information Policy Analysis Division (IPAD) received a letter from Loren Zutz. In his letter, Mr. Zutz asked the Commissioner to issue an advisory opinion regarding the Middle Snake Tamarac Rivers Watershed District Board (MSTRWDB) and the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. Mr. Zutz submitted the \$200.00 fee required by Minnesota Statutes, section 13.072.

IPAD, on behalf of the Commissioner, wrote to Douglas Sorenson, Chairman of the Board, in a letter, dated March 16, 2010, to notify Mr. Sorenson of her intent to issue the opinion and to give the members of the Board an opportunity to explain their position. On April 5, 2010, IPAD received a response, dated same, from Jeffrey W. Hane, an attorney representing the Board. A summary of the facts follows.

In his opinion request, Mr. Zutz, a former Board member, wrote that on November 30, 2009, the Board held a meeting that was noticed as a special meeting. According to Mr. Zutz, the notice was posted and published. The copy of the notice Mr. Zutz provided reads, “[a] Special Meeting of the [Board] will be held on Monday, November 30, 2009 at the District Office at 3:00 p.m. The purpose of the meeting is to (but not limited to) the [sic] review of Permit Applications.”

Mr. Zutz wrote: “[t]he Approved Minutes of the November 30 2009 special meeting . . . indicate that three permit applications were reviewed and approved. Additionally two other significant non-permit items were discussed and decided upon with no notice to the public . . . .”

In his comments to the Commissioner, Mr. Hane wrote:

The facts as set forth in Mr. Zutz’s request are not quite correct. The Middle Snake Tamarac Rivers Watershed District typically adopts a schedule of routine meetings which fall on the first Monday and third Monday of every month, with the exception of holidays . . . . Attached is a true and correct copy of the 2009 Meeting Notice which indicates same. . . .

Mr. Zutz wishes to characterize [the November 30, 2009] meeting as a ‘special meeting’ as that term is used in Minn. Stat. § 13D.04, Subd. 2. That characterization is not correct. Mr. Zutz appears to have seized upon the words that appeared in the notice and determined that the meeting must have been a special meeting. However, just because the notice uses the language right out of 13D.04, Subd. 1 does not make the meeting a

special meeting. Instead, it was merely one of the routine Monday meetings, but held at a different time and place.

The copy of the 2009 schedule of regular meetings of the Board, which Mr. Hane provided, shows that the Board scheduled regular meetings twice monthly for April-October, and once per month from November-March. The schedule indicates that the Board had regular meetings scheduled for November 16, 2009, and December 21, 2009.

**Issue:**

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

Did members of the Middle Snake Tamarac Rivers Watershed District Board (MSTRWDB) comply with Minnesota Statutes, Chapter 13D, regarding the notice of a special meeting held November 30, 2009?

**Discussion:**

There is no dispute between the parties that the Board is subject to the Open Meeting Law and must comply as provided in Minnesota Statutes, section 13D.01, subdivision 1(c)(3). (See Advisory Opinion 07-018.)

Pursuant to the OML, public bodies hold three types of meetings: regular meetings, special meetings, and emergency meetings. Every public body is required to provide members of the public with notice of its meetings, regardless of the type of meeting. (Minnesota Statutes, section 13D.04.)

For regular meetings, the only notice requirement is that the public body keeps a schedule of its regular meetings on file at its primary offices. If the public body decides to hold a regular meeting at a different time or place than is indicated on the schedule, it must give the same notice as is required for a special meeting. (Section 13D.04, subdivision 1.)

A special meeting is any meeting, other than an emergency meeting, that is not a regularly scheduled meeting. For a special meeting, the public body shall post written notice of the date, time, place, and purpose of the meeting. (Section 13D.04, subdivision 2.)

Mr. Hane stated that the November 30, 2009, meeting was not a special meeting, but instead "merely one of the routine Monday meetings, but held at a different date and time." He wrote:

The third Monday meeting in November took place on November 16, 2009. The normal next ordinary meeting date for the District, had there been sufficient general business to come before the Board, would have been the first Monday in December which was December 7. However, the Board had scheduled the annual meeting of the Advisory Committee for the District to take place on Monday, November 30. . . . [so] the Board elected to move the meeting that would normally fall on the first Monday of December and instead hold it in conjunction with the annual Advisory Committee meeting.

The Commissioner respectfully disagrees that the November 30, 2009 meeting was a regular meeting. As noted above, according to the schedule of regular meetings Mr. Hane provided, the Board did not have a regular meeting scheduled for December 7, so it could not have decided to hold that meeting at a different date/time. Furthermore, the notice of the November 30 meeting

specifically stated that it was a special meeting, and members of the public had no way of knowing otherwise.

The Commissioner opined in Advisory Opinion 04-004:

[T]he Commissioner is of the opinion that the Board's actions are limited to those topics included in the notice of special meeting. This conclusion is further supported by the purpose and spirit of the OML, which is to allow the public the opportunity to participate in the government that represents it. The public cannot receive effective notice unless the Board is limited to acting on only those items for which notice was provided when the special meeting was scheduled.

As noted above, special meetings are meetings that are neither regular nor emergency meetings. Accordingly, pursuant to section 13D.04, subdivision 2, the topics the Board could discuss or decide at that meeting were limited to the statement of purpose included in the notice.

That notice stated that the purpose of the meeting was to "review permit applications," but also contained a qualifier, that it was "not limited to" that purpose. According to the minutes of the November 30 meeting, the Board acted on permit applications, and also "authorized the removal of the Texas crossing [on Judicial Ditch #25-1] and to replace the crossing with a 48" culvert" and approved the purchase of certain property.

The Commissioner addressed this issue in Advisory Opinion 07-014:

The township's attorney argues that the statutory requirements were met. However, in order for the Board to be able to give notice to those who have requested notice about special meetings for specific purposes, more detail is needed than was provided before the September 13th meeting. See section 13D.04, subdivision 2(b). Mr. Gilchrist outlined five different legal issues that the Board discussed at the September 13th meeting. Without a more specific notice, there is no way for the members of the public to know what will be discussed and whether they should attend a special meeting. The public also had no way of knowing that these were the five legal issues that would be discussed.

Mr. Gilchrist also argues that the concepts of "new business" and "old business" that apply in a regular meeting should apply to a special meeting. However, the public knows that any business can be discussed at a regular meeting of the Board. The September 13th meeting was a special meeting and different rules apply. Specifically, the Board is limited to the topics listed in the notice of special meeting. The phrase "other legal issues" does not give notice that the Board would, and did, discuss a traffic issue, enforcement of a zoning provision, the duties of the planning commission, review of permits issued under the zoning code and cutting weeds.

Mr. Hane stated that Judicial Ditch 25-1 is a ditch under the control of the District, and the District "is not required to grant itself permits for its own activities, and has never in the past, issued permits to itself for its own activities on its own ditches."

Regarding the Board's action to authorize the purchase of property, Mr. Hane wrote that the topic had been before the Board at other meetings, and the final approval of the transaction "was not a surprise to the public."

However, at the November 30, 2009, meeting, the Board was limited to acting to "review permit applications" as stated on the notice of the special meeting.

