



Advisory Opinion 10-017

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 May 6, 2010, the Information Policy Analysis Division (IPAD) received a letter, dated May 3, 2010, from Jeanene Kern. In her letter, Ms. Kern asked the Commissioner to issue an advisory opinion regarding her right to gain access to certain data from School District 47, Sauk Rapids-Rice.

IPAD, on behalf of the Commissioner, wrote to Greg Vandal, District Superintendent, in response to Ms. Kern's request. The purposes of this letter, dated May 24, 2010, were to inform him of Ms. Kern's request and to ask him to provide information or support for the District's position. On June 9, 2010, IPAD received a response, dated same, from Michael Waldspurger, an attorney representing the District.

A summary of the facts as Ms. Kern provided them is as follows. In a January 10, 2010, email, Ms. Kern wrote to the District Board Chair, Robyn Holthaus:

It is my understanding that outside consulting activities conducted by the superintendent must be approved by the board. I am also aware that the superintendent has engaged in outside consulting activities that have been approved by you, the chairman of the board, rather than through full board approval. Because of the lack of transparency of this alternative approval process, I am unable to identify outside consulting activities through the official records of the board.

Therefore, I am requesting a complete listing of outside consulting activities in which the superintendent has engaged over the past 10 years including but not limited to those activities that you or a past chairperson has approved personally, or through full board approval or that have not been approved by you or the board, or any other outside activities involving fees, honoraria or other benefits of value such as travel reimbursements.

Ms. Holthaus responded on January 16, 2010:

... While Board chairs, have per our agreement with Superintendent Vandal, provided verbal permission to him when he has occasionally done such work, no written record exists of those authorizations. As such, I am unable to provide what you request.

To her opinion request, Ms. Kern attached a copy the Superintendent's contract. Of relevance here, is section IX (1.), *Outside Activities*, which states:

While the Superintendent shall devote full time and due diligence to the affairs and activities of the School District, the Superintendent may serve as a consultant to other School Districts or educational agencies, lecture, engage in writing and speaking activities, and engage in other activities if such activities do not impede the Superintendent's ability to perform the duties of the superintendency. *The Superintendent shall not engage in other employment, consultant service, or other activity for which a salary, fee, or honorarium is paid, without prior approval of the School Board.* [Emphasis added.]

Issue:

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

Did School District 47, Sauk Rapids-Rice, comply with Minnesota Statutes, Chapter 13, in responding to a January 10, 2010, request for a listing of outside consulting activities in which the superintendent has engaged over the past ten years?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, a government entity must respond to requests for government data. In responding to a request, the entity must provide the data, advise that the data are classified such that the requestor is denied access, or inform the requestor that the data do not exist.

In addition, Minnesota Statutes, section 15.17, requires government entities to create and maintain records that document their official activities. Pursuant to Minnesota Statutes, section 138.17, a government entity must keep official records for the time period prescribed in the entity's records retention schedule.

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

... In response ... the District truthfully informed Ms. Kern that it did not maintain any government data that fell within the scope of her request. ...

... Ms. Kern asserts that the District was obligated to create and preserve a record of Superintendent Vandal's "official business" of the District because his employment contract with the District stated that he could not engage in ["... employment, consultant service ... without prior approval of the School Board."].

Mr. Waldspurger, discussing section 15.17, wrote, "The statute does not require school officials to create or preserve records relating to their private, personal, or other outside activities."

Mr. Waldspurger also stated:

... Through their conduct, the parties to the contract – Superintendent Vandal and the District's School Board – interpreted Section IX of the contract to mean that Superintendent Vandal was required to obtain approval from the Board Chair rather than the Board as a whole. ...

The Board never took any action to approve or deny a request from Superintendent Vandal to engage in ["... employment, consultant service ..."]. Because the Board never took any

