



Advisory Opinion 10-020

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2010). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On July 26, 2010, the Information Policy Analysis Division (IPAD) received correspondence from Evan Siljander. In his email, Mr. Siljander asked the Commissioner to issue an advisory opinion related to whether the Montrose City Council provided appropriate notice for several different meetings. Mr. Siljander submitted the \$200 fee required by Minnesota Statutes, section 13.072.

IPAD, on behalf of the Commissioner, wrote to Andrew Kauffman, President of the City Council, in response to Mr. Siljander's request. The purpose of this letter, dated August 6, 2010, was to inform him of Mr. Siljander's request and to ask him to provide information or support for the City Council's position. On August 18, 2010, IPAD received a response, dated August 16, 2010, from Barbara Thwing-Swanson, Administrator/Clerk/Treasurer for the City of Montrose.

A summary of the facts as Mr. Siljander provided them is as follows. His primary concern is that, with regard to the notices the City Council provided for several meetings, the City Council did not describe the purpose of the meetings.

Mr. Siljander attached several documents to his opinion request. One was a document listing meetings for the month of February 2010, one was a document listing meetings for the month of March 2010, and one was a document listing meetings for the month of April 2010.

Mr. Siljander asserted that the "Council Workshop" meeting held on February 1, the "Council Workshop" held on March 3, and the "Council Worksession" held on April 12, 2010, were not noticed properly if, as the City stated, they were "continued" meetings. (In a June 1, 2010, email, the City wrote to Mr. Siljander, "We do not believe any violation occurred because the workshops qualify under Minn. Stat. 13D.04, Subd. 4 as meetings that were continued from the regular City Council meeting.")

Mr. Siljander also asserted that the City did not provide proper notice for a special meeting held June 28, 2010. Mr. Siljander attached a copy of a document entitled, "Special Meeting Notice." It states, "The Montrose City Council will hold a workshop on Monday, June 28, 2010 at 6:00

pm at City Hall. Purpose: Financial Review [on next line] Training [on next line] Any Other Business that May Arise.”

Issues:

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

1. Did the Montrose City Council comply with Minnesota Statutes, Chapter 13D, in providing notice for the following three meetings: (1) Council Workshop held on February 1, 2010; (2) Council Workshop held on March 3, 2010; and (3) Council Worksession held on April 12, 2010?
2. Did the Montrose City Council comply with Minnesota Statutes, Chapter 13D, in providing notice for the special meeting (City Council Workshop) held on June 28, 2010?

Discussion:

Issue 1: Did the Montrose City Council comply with Minnesota Statutes, Chapter 13D, in providing notice for the following three meetings: (1) Council Workshop held on February 1, 2010; (2) Council Workshop held on March 3, 2010; and (3) Council Worksession held on April 12, 2010?

There is no dispute that meetings of the Montrose City Council, and workshops and work sessions of the City Council are subject to Minnesota Statutes, Chapter 13D, the Open Meeting Law.

In her comments to the Commissioner, Ms. Thwing-Swanson wrote:

... Meetings are posted at city hall and three other locations within the city as well as on the city’s web site. A workshop is posted with the date, time and location; there is no action taken. ... In 2008 ... the city switched to posting all city meetings (including regular city council meetings) at the beginning of each month. ...

In 2010 Mr. Siljander decided the manner in which we post meetings was unacceptable because the City was not posting the “purpose” of the council workshops. We did not believe that necessary because the workshops do not have one inclusive purpose, the purpose of the workshops is to address issues that come up at city council meetings and require additional discussion, research or review. Workshops cover a variety of information and are always open to the public ... The agenda for the workshop is available in advance of the workshop itself to anyone who requests it as well as anyone in attendance. ...

... However, due to [Mr. Siljander’s] repeated complaints we again changed the way we post meetings. In July 2010 we reverted to posting each meeting separately. We attempt to list all of the topics that might come up at the workshops, but that isn’t always possible because we post workshops or special meetings at least a week prior to the meeting giving residents an opportunity to attend. ...

Chapter 13D provides specific requirements for giving notice of meetings. The notice required depends upon the type of meeting. The purpose of giving notice of meetings is to give members of the public an opportunity, ahead of time, to decide whether they wish to attend a meeting.

Regular meetings are, as the name suggests, regular meetings of a public body or meetings of committees the public body determines will meet regularly. A public body must keep a *schedule* of its regular meetings on file “at its primary offices.” Meetings that are not regular or emergency meetings are *special* meetings and require that a public body provide a more detailed notice that includes posting the purpose of the meeting. (See Minnesota Statutes, section 13D.04, subdivisions 1, and 2, Advisory Opinions 04-057 and 10-013.)

Typically, a public body sets its schedule of regular meetings on an annual basis. If the public body creates a new committee that will meet regularly, the committee’s first meeting would be a special meeting at which the group would determine its regular meeting schedule.

Although Ms. Thwing-Swanson describes the City’s process for *posting* meetings, pursuant to Chapter 13D, posting is not a substitute for the City maintaining a schedule of its regular meetings. The monthly meeting postings for the three meetings in question (both Mr. Siljander and Ms. Thwing-Swanson submitted copies) do not list a purpose for the meetings. To demonstrate that the meetings were regular meetings and did not require postings that included purpose, Ms. Thwing-Swanson could have provided a schedule of the City Council’s regular meetings; however, she did not do so. Thus, the Commissioner is left to conclude that the meetings were special meetings and that the City Council did not provide the notice required by section 13D.04, subdivision 2.

Because the City, in a June 2010 email to Mr. Siljander, raised the issue of whether the meetings were continued meetings, the Commissioner will comment. Pursuant to Minnesota Statutes, section 13D.04, subdivision 4, if a meeting and remaining agenda items (or discussion about a specific item) are to be continued at another meeting, the public body must establish the time and place, and record that information in the minutes. IPAD reviewed the minutes from the City Council meeting that preceded each of the meetings in question; there was no discussion about continuing the meetings or agenda items. If a public body does not record that information, as the City Council did not in this case, the new meeting is a special meeting and the public body must provide the appropriate notice as set forth in Minnesota Statutes, section 13D.04, subdivision 2.

Issue 2: Did the Montrose City Council comply with Minnesota Statutes, Chapter 13D, in providing notice for the special meeting (City Council Workshop) held on June 28, 2010?

Minnesota Statutes, section 13D.04, subdivision 2, describes the notice a public body must provide when it holds a special meeting. One of the requirements is that the notice must include the purpose of the meeting. (Minnesota Statutes, section 13D.04, subdivision 2(a).) As discussed above in the “Facts” section, the stated purpose for the June 28, 2010, meeting was, “Purpose: Financial Review [on next line] Training [on next line] Any Other Business that May Arise.”

The Commissioner addressed a similar issue in Advisory Opinion 07-014 in which a public body held a special meeting and the notice contained the statement, "Other Legal issues may be discussed." The Commissioner wrote:

The Commissioner has previously opined that for the notice to be effective and meet the direction of the Supreme Court in [*Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002)], the notice must provide detail about the purpose of the meeting. See Advisory Opinions 04-004 and 04-057.

... 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.

Construing the requirements in section 13D.04, subdivision 2 in favor of public access, the notice for the September 13th special meeting was not sufficient and the Board was not in compliance with section 13D.04, subdivision 2.

Thus, for the reasons the Commissioner discussed in 07-014, the notice the Montrose City Council provided for the June 28, 2010, special meeting was not sufficient. If the City Council was planning to discuss other business at the meeting, it needed to specifically identify the topic(s).

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue that Mr. Siljander raised is as follows:

1. The Montrose City Council did not comply with Minnesota Statutes, Chapter 13D, in providing notice for the following three meetings: (1) Council Workshop held on February 1, 2010; (2) Council Workshop held on March 3, 2010; and (3) Council Worksession held on April 12, 2010. These meetings apparently were special meetings and, as such, the notice for each should have included the meeting purpose.
2. The Montrose City Council did not comply with Minnesota Statutes, Chapter 13D, in providing notice for the special meeting (City Council Workshop) held on June 28, 2010.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

September 23, 2010