



Advisory Opinion 11-010

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 May 9, 2011, the Information Policy Analysis Division (IPAD) received a letter dated same, from Kent Laugen. In his letter, Mr. Laugen asked the Commissioner to issue an advisory opinion regarding his right to gain access to certain data from the City of Red Wing.

IPAD, on behalf of the Commissioner, wrote to Kay Kuhlmann, Council Administrator, in response to Mr. Laugen's request. The purposes of this letter, dated May 16, 2011, were to inform her of Mr. Laugen's request and to ask her to provide information or support for the City's position. In a May 17, 2011, email, Ms. Kuhlmann, advised IPAD that Kathy Johnson, City Clerk, is the "Responsible Party." On June 1, 2011, IPAD received a response, dated same, from Eric Quiring, an attorney representing the City.

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

The City of Red Wing is contemplating the sale of its municipal golf course, Mississippi National Golf Links (MNGL). MNGL is leased by the City to Wendell Pittenger as Lessee. The contemplated sale involves revenue bonds held by Associated Bank for which the Lessee, Wendell Pittenger, is obligated. To date, no formal decision by the City has been made to sell the property.

In 1998, a decision was made to expand MNGL which involved the use of revenue bonds. The bonds were sold to Associated Bank. The lease between the City and Pittenger was amended to require that Pittenger, as part of his rent, would be obligated to pay the monthly bond payments as they came due.

... The bonds owed to Associated Bank have come due, and the Red Wing City Council has twice negotiated an extension of the due date. It is my understanding that under the terms of the lease, the Lessee is obligated to pay the bonds.

Several months ago an appraisal of MNGL was ordered by Associated Bank, as the client, for financing purposes, and was completed by James Norby ... on October 11, 2010. The City and Lessee agreed to share in the cost of the MNGL [appraisal].

Mr. Laugen discussed that the City publicly released the appraisal after making redactions pursuant to Minnesota Statutes, section 13.44, subdivision 3(a). Mr. Laugen disagrees with the City's redactions.

Issue:

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

Did the City of Red Wing comply with Minnesota Statutes, Chapter 13, in its redaction of certain data in the appraisal of Minnesota National Golf Links?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Minnesota Statutes, section 13.44, subdivision 3(a), classifies "estimated or appraised values of individual parcels of real property that are made by personnel of a government entity or by independent appraisers acting for a government entity for the purpose of selling or acquiring land through purchase or condemnation" as confidential (data on individuals) or protected nonpublic (data not on individuals).

Subdivision 3(c) of Minnesota Statutes, section 13.44, provides that the data protected above become public upon the occurrence of any of the following:

- (1) the data are submitted to a court-appointed condemnation commissioner;
- (2) the data are presented in court in condemnation proceedings; or
- (3) the negotiating parties enter into an agreement for the purchase and sale of the property.

In his opinion request, Mr. Laugen argues for two reasons that Minnesota Statutes, section 13.44, does not apply. First is because the appraisal was not prepared by the City or on behalf of the City, but rather for the benefit of Associated Bank. He notes that the September 14, 2010, engagement letter to the appraiser from Associated Bank states, "The intended user/client is Associated Bank ...". Secondly, Mr. Laugen asserts that the appraisal was not conducted for the purpose of selling or acquiring land, but for the purpose of evaluating financing options.

Mr. Laugen added that, for purposes of argument, if the appraisal was prepared on behalf of the City, "all of the redacted data would be public, except for the final amount."

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

Despite the fact that the City and Lessee jointly sought (and paid for) the appraisal, Mr. Laugen asserts that the appraisal was not prepared on the City's behalf. Mr. Laugen asserts that the appraisal was ordered by Associated Bank solely for financing purposes related to outstanding revenue bonds. While it may be true that Associated Bank utilized the appraisal report for its own financing purposes, that does not alter the fact that the City contracted for the appraisal of the property for the purpose of determining the property's value for sale. As

part of its budget for the past couple of years, the City has been considering cost-cutting and revenue-producing measures, including the potential sale of [the golf course]. The appraisal of the property was undertaken in furtherance of that purpose. Associated Bank's use of the appraisal report for its own purposes does not prevent the City from commissioning the appraisal for purposes of selling the property. Because the appraisal was made for the City for the purpose of selling land, the appraised values are protected nonpublic data.

Mr. Laugen also appears to assert that all of the data in the appraisal report should be public because it has been exchanged among the City, the Lessee, and Associated Bank. There is no such exception in [Minnesota Statutes, section 13.44, subdivision 3]. ...

Notwithstanding the City's release of the total appraisal value of the property in order to allow the public to more fully participate in the consideration of the City's potential sale of [the golf course], the remaining redacted data in the appraisal report is classified as nonpublic pursuant to Minnesota Statutes Section 13.44, subd. 3(a). The redacted data consists solely of appraised values and the calculations used to arrive at the appraised values.

Mr. Laugen states that the appraisal was obtained for Associated Bank for the purpose of evaluating financing options. Mr. Quiring states that the City and Lessee jointly obtained the appraisal to assist in determining an appropriate value for purposes of selling the golf course. This is a factual dispute the Commissioner cannot resolve.

If the appraisal was obtained so that Associated Bank could evaluate financing options, the data in the appraisal are not classified pursuant to Minnesota Statutes, section 13.44, subdivision 1, and therefore, are public pursuant to the general presumption in Chapter 13. (Section 13.03, subdivision 1.)

If, however, the City obtained the appraisal for the purpose of selling the golf course, Minnesota Statutes, section 13.44, subdivision 3, does apply and the City must publicly release all data in the appraisal except for the "estimated or appraised *values*" of the property. (Advisory Opinions 04-005 and 10-010.) (The City can withhold the values because apparently none of the events in Section 13.44, subdivision 3(c), have occurred.) The Commissioner has not seen an unredacted copy of the appraisal and therefore, cannot determine whether the City redacted appropriately.

Opinion:

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

The Commissioner cannot determine whether the City of Red Wing complied with Minnesota Statutes, Chapter 13, in its redaction of certain data in the appraisal of Minnesota National Golf Links.

Signed:



 Spencer Cronk
 Commissioner

Dated:

_____ June 27, 2011