



Advisory Opinion 13-012

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2013). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On June 6, 2013, the Information Policy Analysis Division (IPAD) received an advisory opinion request from John McKinley. In his letter, Mr. McKinley asked the Commissioner to issue an advisory opinion regarding Mound City Council members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML). IPAD requested additional information/clarification, which Mr. McKinley provided on June 26, 2013.

On June 27, 2013, IPAD wrote to Mayor Mark Hanus, Chair of the Mound City Council. In its letter, IPAD informed Mayor Hanus of Mr. McKinley's request and gave the Council an opportunity to explain its position. On July 19, 2013, IPAD received a response, dated same, from Sarah Sonsalla, attorney for the City.

A summary of the facts as provided by Mr. McKinley follows:

On June 26, 2012, the Mound City Council held a regularly scheduled City Council meeting... Item number 9 on the agenda was listed as Executive Session for labor negotiations...

There were three labor unions the City of Mound were in negotiations with for the 2011/2012 union contracts... There had been no settlement with any of the unions for the 2011-2012 contracts at the end of 2011, so both the Police Supervisor Union and the Patrol Union went through (sic) mediation.

...

The mediation did not prove fruitful so the Police Supervisors Union filed for binding arbitration in the beginning of 2012... This arbitration award was what was being presented to the City Council at this executive session on June 26, 2012.

The third union the city negotiates with is the Public Works Department. This unit did not come to any settlement with the city until both the Police Supervisors and the Police Patrol units (sic) contracts were settled.

At 8:05 pm on June 26, 2012... the City Council went into closed meeting. The closed meeting was recorded... and was made available to the public after all labor negotiations for contract years 2011-2012 were concluded on, or about 11-20-2012.

The City Council did not vote to go into the closed meeting... Mayor Hanus simply stated the City Council would be going into “executive session” to discuss labor negotiations.

Mr. McKinley requested and reviewed the audiotape of the closed meeting and offered the following comments:

For just over the first 10 minutes of the meeting, [the Council] did discuss the arbitration award and the implications on the other two labor unions and the City of Mound.

At about the 10 minute and 15 second mark on the tape, [the Finance Director] announces they are going on to “page two”. [She] states she believes, “it is related because it will have labor implications...”. For the next approximately 42 minutes [the Council] discuss [various issues – Mr. McKinley provided approximately a page and a half of topics].

Mr. McKinley provided the Commissioner with the recording and a transcript of that meeting. The City also provided a transcript, including portions Mr. McKinley did not transcribe. The Commissioner was not provided with the document to which the Finance Director referred (“going on to page two”) and therefore, has not had an opportunity to review it.

Issues:

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

1. Did the Mound City Council comply with Minnesota Statutes, section 13D.01, subdivision 3, when it a closed meeting on June 26, 2012 by stating, “the Council is going to go into an Executive Session regarding labor negotiations”?
2. Did the Mound City Council comply with Minnesota Statutes, section 13D.03, when it held a closed meeting to consider strategies for labor negotiations?

Discussion:

Issue 1. Did the Mound City Council comply with Minnesota Statutes, section 13D.01, subdivision 3, when it a closed meeting on June 26, 2012 by stating, “the Council is going to go into an Executive Session regarding labor negotiations”?

Minnesota Statutes, section 13D.01, subdivision 3, states, “[b]efore closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.”

The Commissioner has addressed the requirements of closing a meeting in previous opinions. (See Advisory Opinions 06-012, 06-020, and 07-018). In Advisory Opinion 06-020, the Commissioner discussed at length the three requirements contained in subdivision 3: 1) a statement on the record; 2) the specific grounds allowing the meeting to be closed (the statutory

authority); and 3) a description of the subject to be discussed (the description must go beyond simply identifying the subject).

Mayor Hanus closed the Mound City Council meeting by issuing the following statement in open session:

The Council is going to go into an Executive Session regarding labor negotiations and so that's where we're going to be. We will be coming out after that's completed. I don't know how long that's going to be, but we will be back to close out the meeting when that has completed. So with that we will proceed to Executive Session.

While the City had the authority to close the meeting for labor negotiation strategies or developments, it did not meet its obligations under section 13D.01. Mayor Hanus' statement satisfied the first requirement of subdivision 3, but, it did not satisfy the second and third requirements. The statement should have also identified the authority to close the meeting (i.e., Minnesota Statutes, section 13D.03) and specifically described the subject (e.g., labor negotiations/strategy involving the City's negotiations with the Police Supervisors' union).

Issue 2. Did the Mound City Council comply with Minnesota Statutes, section 13D.03, when it held a closed meeting to consider strategies for labor negotiations?

Minnesota Statutes, section 13D.03, subdivision 1, provides:

- (a) Section 13D.01, subdivisions 1, 2, 4, 5, and section 13D.02 do not apply to a meeting held pursuant to the procedure in this section.
- (b) The governing body of a public employer may by a majority vote in a public meeting decide to hold a closed meeting to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals, conducted pursuant to sections 179A.01 to 179A.25.
- (c) The time of commencement and place of the closed meeting shall be announced at the public meeting.
- (d) A written roll of members and all other persons present at the closed meeting shall be made available to the public after the closed meeting.

In his opinion request, Mr. McKinley stated that the Council did not vote before going into the closed meeting. Ms. Sonsalla responded:

While the Council may not have a formal vote on the record, the Council closed the meeting by consent of the Council as a whole... While the members did not hold a vote, the Council clearly agreed not by a majority, but unanimously, to close the meeting for the specific purpose set forth in Minnesota Statutes Section 13D.03.

The plain language of section 13D.03, subdivision 1, requires a vote by a majority of the members in a public meeting and an announcement of the time and location of the closed meeting. Here, again, the Council had the authority to go into closed session, but did not fulfill one of the requirements to exercise that authority. The Commissioner notes that, while section 13D.03, subdivision 1(a), does not require votes taken *at* a meeting closed for discussion of labor negotiation strategies to be recorded in a journal of votes, the vote taken to close the meeting is

required to be recorded in a journal. (See Minnesota Statutes, section 13D.01, subdivision 4.) Because the Council did not vote, it could not be recorded in the journal of votes as required.

Another issue raised by Mr. McKinley, is whether the closed meeting went beyond the scope of what is allowable under section 13D.03, subdivision 1(b): “a closed meeting to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals, conducted pursuant to sections 179A.01 to 179A.25.” Both Mr. McKinley and the City agree that the first 10 minutes of the recording involved discussion of the arbitration award for the police supervisors union, which falls squarely within the statutory provision. The remaining approximately 42 minutes is in dispute.

Ms. Sonsalla summarized the discussion:

In the context of the arbitration award’s impact and future negotiations, [the Finance Director] also discussed other budget alternatives for police services, including keeping and adding needed in-house officers; contracting for services with a neighboring community; or combining services with a neighboring community. Specifically, [she] informed the Council that her purpose was to discuss managing expenses related to the police department, including the cost of negotiation results with the in-house department, while continuing to address the City’s deficit...

As [she] presented the information, the Council engaged with [her] and each other, posing several questions about the impact of the existing and future police labor costs on the budget. In the context of the information regarding the arbitration award, police labor costs and the impact of labor negotiations, the Council also engaged with [her] on the possible alternatives to the in-house police department. [Citations omitted.]

Minnesota Statutes, Chapter 13D, limits the discussions in a meeting closed to consider strategy for labor negotiations or developments conducted *pursuant to Minnesota Statutes, section 179A.01-179A.25*. The phrase “labor negotiations” must be read in conjunction with Minnesota Statutes, Chapter 179A, which governs collective bargaining for public employees. Meetings cannot be closed for general personnel or budgetary discussions. The transcript of the closed meeting suggests that the Council was aware of the boundaries established by the Open Meeting Law and made a good faith effort to act within them. However, while the make-up of its police force certainly has an impact on the City’s budget and the discussion about contracting with another municipality for police services may fall under that umbrella of collective bargaining negotiations or developments, issues of city hall personnel, transferring staff to a new building and renting out the current city hall building are outside the scope of a meeting closed under section 13D.03.

The Commissioner understands that permissible labor negotiation discussions might reasonably raise other issues for public bodies, particularly with regard to budgetary matters. However, public bodies must be mindful of the limitations that Chapter 13D imposes with regard to subjects discussed in closed meetings, and restrict themselves to those topics. Fulfilling the obligations discussed in Issue 1 can aid public bodies in meeting that requirement.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues Mr. McKinley raised is as follows:

1. The Mound City Council did not comply with Minnesota Statutes, section 13D.01, subdivision 3, when it a closed meeting on June 26, 2012 because it did not identify the authority for closing the meeting and did not describe the subject of the meeting.
2. The Mound City Council did not comply with Minnesota Statutes, section 13D.03, subdivision 1(b), when it failed to take a public vote to go into closed session for consideration of labor negotiations. The Council did not comply with section 13D.03, when it discussed various topics related to city hall personnel, transferring staff to a new building and renting out the current city hall building.



Spencer Cronk
Commissioner

August 9, 2013