



Advisory Opinion 14-007

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 April 30, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Pauline Schottmuller, dated April 27, 2014. In her letter, Ms. Schottmuller asked the Commissioner to issue an advisory opinion regarding the Newport City Council (the Council) members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

On May 2, 2014, IPAD wrote to Mayor Tim Geraghty, Chair of the City Council. In its letter, IPAD informed Mayor Geraghty of Ms. Schottmuller's request and gave the members of the Council an opportunity to explain their position. On May 19, 2014, IPAD received a response, dated same, from Frederic Knaak, attorney for the Council.

A summary of the facts as provided by Ms. Schottmuller follows:

A closed meeting was held March 6, 2014 to conduct a performance evaluation of [the], city administrator. The Minnesota Open meeting law requires a summary of the conclusions of the evaluation at the next open city council meeting. That meeting, a regularly scheduled council meeting, occurred March 20th. No summary was presented. The South Washington County Bulletin published an article about the violation in the March 26th edition. On April 3rd, Mayor Geraghty references the newspaper article and the evaluation at the council meeting. I don't believe that his brief remarks constitute a summary of the conclusions of the evaluation.

Ms. Schottmuller provided the Commissioner with copies of the meeting minutes of the three City Council meetings. The March 6, 2014, minutes provide: "The City Council closed the meeting to the public to discuss [the City Administrator's] performance evaluation at 8:05 p.m. The City Council opened the meeting to the public at 8:37 p.m." The April 3, 2014, minutes report the following comment from Mayor Geraghty:

The other item I wanted to talk about which was put in the newspaper was [the City Administrator's] performance evaluation that was done at the March 6 workshop during a closed session. I wasn't at the actual workshop but I'll summarize what I think happened. We talked about [the City Administrator's] performance, her strengths and weaknesses. Overall, I think it was satisfactory. It wasn't mentioned at the last meeting because of an oversight.

Issue:

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

Did the Newport City Council comply with Minnesota Statutes, section 13D.05, subdivision 3(a), regarding its summary of the city administrator's performance evaluation it conducted at a closed meeting on March 6, 2014?

Discussion:

Pursuant to Minnesota Statutes, section 13D.05, subdivision 3 (a), "[a] public body may close a meeting to evaluate the performance of an individual who is subject to its authority. . . . At its next open meeting, the public body shall summarize its conclusions regarding the evaluation."

The Commissioner has addressed this issue in several previous opinions. (See Advisory Opinions 99-018, 02-021, and 02-035.) In those opinions, the Commissioner concluded that the following statements were insufficient to fulfill the public bodies' statutory obligations: "[the Board] discussed the superintendent's strengths and weaknesses"; "As a result of that review, strengths were noted and areas of improvement were defined. The board developed goals regarding communication and leadership"; and "areas of growth were identified and [the Superintendent's] evaluation is an ongoing process."

Here, according to the video of the April 6, 2014 meeting, submitted by the Council, Mayor Geraghty said:

The other item that I wanted to talk about that was put into the newspaper was our evaluation for [the City Administrator] that was conducted at our March 6, workshop, it wasn't at the Council meeting it was at the workshop. It was done in a closed session. And I wasn't at the actual workshop because I was out of town. But I'll summarize what I think what happened and you guys can affirm it. Basically we talked about [the City Administrator's] performance, her strengths, weaknesses, where she needs improvement. Overall, I think it was satisfactory. And it wasn't mentioned at the last meeting just because of an oversight. I guess nobody thought of it at the table here. With that, if anyone wants to clarify or add anything.

Two Council members responded, "nope, that's about right" and "that's pretty close."

Mr. Knaak wrote on behalf of the City:

It is the City's position that no violation of the Open Meeting Law occurred...

...

The statute does not define its use of the term "summarize", or what "conclusions" must be reported. In this particular process, no formal "conclusions" of any kind were reached or were considered to be part of the review process undertaken by the City during a routine review where no specific performance issues were raised prior to the review. The statute would not appear to require the City create "conclusions" to summarize if none were part of the process the City was undertaking.

The Commissioner respectfully disagrees. Firstly, Mr. Knaak is correct in that the Legislature did not define the word, “conclusions.” Pursuant to Minnesota Statutes, section 645.08, words are construed “according to their common and approved usage.” Merriam Webster's Collegiate Dictionary, Tenth Edition, Merriam-Webster, Incorporated, 1996, defines “conclusion” as: “a reasoned judgment.” According to Mayor Geraghty’s statement at the April 6, 2014, meeting, which was validated by other Council members, the Council discussed the City Administrator’s strengths, weaknesses, and areas for improvement. In doing so, the Council necessarily must have made judgments that the City Administrator had, in fact, demonstrated strengths, weaknesses, and areas for improvement. If, however, the Council did not come to a conclusion on any of those items, that itself is a conclusion which the Council was required to summarize pursuant to section 13D.05, subdivision 3(a).

Secondly, Mayor Geraghty clearly acknowledged that the Council’s summary was not timely.

Finally, the Commissioner reminds public bodies that regardless of terminology, “workshops” which a quorum of members attends are also “meetings” for purposes of Chapter 13D. Whether public bodies consider “workshops” to be separate meetings can have an effect on the timing of the required summary. (See Advisory Opinion 12-008.)

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue Ms. Schottmuller raised is as follows:

The Newport City Council did not comply with Minnesota Statutes, section 13D.05, subdivision 3(a), when it failed to provide a summary of conclusions of the city administrator’s performance evaluation conducted at a closed meeting on March 6, 2014, at its next open meeting.


Spencer Cronk
Commissioner

June 18, 2014