



Advisory Opinion 14-010

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 23, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Chuck Nagle, dated June 19, 2014. In his letter, Mr. Nagle asked the Commissioner to issue an advisory opinion regarding the Baldwin Township Board members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

On June 24, 2014, IPAD wrote to Jay Swanson, Chair of the public body. In its letter, IPAD informed Mr. Swanson of Mr. Nagle's request and gave the members of the Board an opportunity to explain their position. On July 16, 2014, 2013, IPAD received a response, dated same, from Robert Ruppe, attorney for the Board.

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

On March 7, 2011, the Baldwin Township Board approved Ordinance 200, establishing a planning commission. The ordinance provides that the Baldwin Town Board will appoint planning commission members...

On May 22, 2014 the Baldwin Planning Commission met in special session. The meeting was properly noticed. There was a printed materials packet available for public inspection at the front table. It contained only the prior meeting draft meeting minutes for approval. The consulting planner[-]prepared draft of the Baldwin comprehensive plan was distributed to all planning commission members and discussed in detail. No copy was made available for public inspection in any form.

On May 23, 2014 the Baldwin Town Board met in special session. The meeting was properly noticed. During the Citizens Open Forum agenda item I stated the facts above and asked if a copy of the comprehensive draft plan be made available for me to view [sic]. The response from Chairman Swanson was that it was only a draft and the consulting planning [sic] would need to be contacted to determine her wishes.

Mr. Ruppe clarified the dates in Mr. Nagle's opinion request. The Planning Commission reviewed the comprehensive plan at a meeting on May 21, 2014, and the Town Board held a subsequent regular meeting on May 22, 2014, which is also reflected by the meeting minutes submitted by Mr. Nagle.

Issue:

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

Did the Baldwin Planning Commission comply with Minnesota Statutes, section 13D.01, subdivision 6, at the May 21, 2014, meeting?

Discussion:

There is no dispute that the Planning Commission is subject to the Open Meeting Law. (Minnesota Statutes, section 13D.01, subdivision 1(c)(3), includes a "commission of a public body.")

Minnesota Statutes, section 13D.01, subdivision 6, provides:

Public copy of members' materials. (a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

- (1) distributed at the meeting to all members of the governing body;
- (2) distributed before the meeting to all members; or
- (3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

Mr. Nagle contends that the Planning Commission did not provide a copy of the comprehensive plan in its members' materials at its May 21, 2014, meeting. On behalf of the Town Board, Mr. Ruppe wrote:

The Planning Commission had available for public inspection all of the documents that were being discussed by the Planning Commission at the meeting. Contrary to Mr. Nagel's [sic] allegations, the documents available for public inspection included a copy of the draft Comprehensive Plan being worked on by the Planning Commission... As such the Planning Commission has complied with the provisions of Minnesota Statute, section 13D.01, subdivision 6. Further, Planning Consultant Bridget Chard read the entire draft of the Comprehensive Plan aloud at the May 22nd meeting so that all members of the public could follow along with the Planning Commission. If the materials were missing from the packet as alleged by Mr. Nagel [sic] it was most likely removed by a member of the public interested in the issue.

The Commissioner cannot resolve this factual dispute. To the extent that the Planning Commission did not include a draft of the comprehensive plan in the public copy of the members' materials, it did not comply with section 13D.01, subd. 6. If, on the other hand, the draft was included in the materials as Mr. Ruppe suggests, the Commission complied.

Managing the public copy of the members' materials is a common issue for public bodies and members of the public. The Commissioner would like to offer the following guidance. The plain language of section 13D.01, subd. 6, requires that the public body make "at least one copy"

of members' materials available to the public at the meeting. In providing only one complete copy, the body fulfills its obligation. However, as people review its contents, there is a greater chance that the packet may be altered so that others do not have access to it, as Mr. Ruppe suggests may have happened here. In fulfilling the requirement, it is the public body's responsibility to make certain that the packet is complete. Public bodies may consider the following optional strategies, in addition to providing the one copy during the meeting: posting the information on their websites, providing multiple copies, or including a cover-sheet on the public packet listing its contents.

The Commissioner is sensitive to the fact that members of the public living in certain non-metro townships encounter challenges when trying to access information from their local governments. Because those bodies are not "government entities" subject to the Data Practices Act (Minnesota Statutes, Chapter 13), the access provided for in the Open Meeting Law is vital to township citizens' participation in and oversight of their government bodies. The Commissioner strongly encourages all public bodies to develop ways to guarantee meaningful access to the information required by section 13D.01.

Opinion:

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

The Commissioner cannot determine whether the Baldwin Planning Commission complied with Minnesota Statutes, section 13D.01, subdivision 6, at the May 21, 2014, meeting because there is a factual dispute as to whether the Commission included a draft of the comprehensive plan in the public members' materials.


Spencer Cronk
Commissioner

August 5, 2014