



Advisory Opinion 15-004

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2015). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On August 12, 2015, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Lucinda Winter, Executive Director of the Minnesota Film and TV, dated same. In her letter, Ms. Winter asked the Commissioner to issue an advisory opinion as to whether the Board is subject to Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

The Commissioner also wrote to Katie Clark Sieben, the Commissioner of the Department of Employment and Economic Development. Commissioner Sieben did not provide comments to the Commissioner of Administration.

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

The Minnesota Film and TV Board is requesting an [OML] advisory opinion because we occasionally receive requests from members of the public to attend our monthly board of directors meetings and we just don't know whether our organization is subject to the Minnesota [OML]. Several of our board members have requested that we seek an opinion from the state regarding that question.

Issue:

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

Is the Minnesota Film and TV Board subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D?

Discussion:

State bodies subject to the OML are listed in Minnesota Statutes, section 13D.01, subdivision 1(a), which provides:

All meetings, including executive sessions, must be open to the public

- (a) of a state
 - (1) agency,
 - (2) board,
 - (3) commission, or
 - (4) department,
 when required or permitted by law to transact public business in a meeting;

In her opinion request, Ms. Winter wrote:

The Minnesota Film and TV Board is a private, non-profit corporation registered with the Minnesota Secretary of State. Acting as the state's film commission, its purpose is to support and facilitate the film and television industry and production in the state. For example, the board helps producers find Minnesota acting talent and crew members who work in the industry. It also helps producers identify filming locations and obtain permits to film in specific locations.

The organization was incorporated in 1979, functioning with small private contributions and a volunteer staff until the state began funding board operations in the fall of 1983. For the past several years, the Legislature has granted \$325,000 per year from the general fund for board operations. The board must match \$1 from non-state sources—either in cash or in kind—for every \$3 of state funding. That funding is included in omnibus economic development appropriation bills. Currently, the Department of Employment and Economic Development (DEED) provides oversight for state grants to the board... There is no Minnesota statute which created our office or governs its mission and activities. In addition to the program oversight provided by DEED, an 18 member volunteer board of directors meets regularly to provide fiscal oversight and strategic advice and set organizational goals.

The Commissioner has previously considered whether certain bodies are subject to the OML. In Advisory Opinion 08-018, the Commissioner opined that the Drug Formulary Committee at the Department of Human Services (DHS) is subject to the OML, pursuant to section 13D.01, subdivision 1(a). The Legislature created the Committee, established its responsibilities, set the qualifications for its members, and gave the Commissioner of DHS the authority to appoint those members. Moreover, the Commissioner (of Administration) concluded the statute required the Committee to transact public business.

By contrast, in Advisory Opinion 04-001, the Commissioner determined that the Minnesota FAIR Plan Board is not subject to the OML, despite having enabling legislation and some members appointed by the Commissioner of Commerce. The Commissioner (of Administration) based his decision on the Minnesota Supreme Court case in *Southern Minnesota Municipal Power Agency v. Boyne*, 578 N.W. 2d 362 (Minn. 1998). In that case, the Court held that Southern Minnesota Municipal Power Agency was not subject to the OML because the enabling legislation creating the Agency specifically stated that it would operate as a private corporation. Similarly, the Fair Plan Board consists of private parties and is administered for the benefit of private parties. As such is not a state public body within the meaning of section 13D.01, subd. 1(a).

Here, the Minnesota Film and TV Board is a private corporation, operated by private volunteers and staff, for the benefit of the film and TV industry. The Board was not created by the

Legislature. Its members are not appointed by any government entity or official. Per the Board's bylaws, existing members of the Board elect new members and the Board determines the number of members on an annual basis. (See Article 4 of the Restated Bylaws of Minnesota Motion Picture and Television Board, adopted 11/18/99.) Board meetings, including quorum requirements, notice provisions, and voting procedures, are also governed by the bylaws. (See Article 2 of the Bylaws.)

Therefore, like the FAIR Plan Board and the Southern Municipal Power Agency, the Minnesota Film and TV Board is not a State board within the meaning of section 13D.01, subd. 1(a)((2), and thus, not subject to the OML.

The Commissioner notes that while the Board is not subject to the OML, the Board does have some obligations under the Data Practices Act, Minnesota Statutes, Chapter 13, as a grantee of the Department of Employment and Economic Development and related to its administration of the film production jobs program. (See Minnesota Statutes, section 116U.26).

Opinion:

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

The Minnesota Film and TV Board is not subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D.



Matthew Massman
Commissioner
October 1, 2015