



Advisory Opinion 16-002

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:

John Rowell requested an advisory opinion regarding the Moorhead City Council (Council) members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

John Shockley, Moorhead City Attorney, provided comments to the Commissioner, on behalf of the Council.

Mr. Rowell provided the following summary of the facts. On March 21, 2016, the Council held a closed meeting to evaluate the City Manager's performance. The next meeting was a special meeting held on March 31, 2016. At that meeting, the Council went into closed session pursuant to attorney-client privilege, to discuss a separation agreement with the City Manager. After the closed portion of the meeting:

Mayor Williams provided the following (oral) summary of the evaluation of the city manager: "During this review, the City Council stated that it was very satisfied with the quality of the work performed by Mr. Redlinger... While the city has been very satisfied with the quality and quantity of the city manager's performance, a majority of the City Council and Mike Redlinger have mutually decided to enter into a separation agreement." The mayor's statement, which purports to summarize the Council's conclusions regarding an evaluation lasting more than two hours, required less than thirty seconds to utter. **(The mayor's statement is on the video recording of the Council meeting of 3/31/16, available on the city's website, and is accurately quoted in the news article from The Forum, attached as Item 3.)** [Original formatting.]

(The Council submitted a copy of the recording with its materials. Mr. Rowell apparently submitted an edited transcript, as is noted below.)

Issue:

Based on the opinion request, the Commissioner agreed to address the following issue:

Did the Moorhead City Council comply with Minnesota Statutes, section 13D.05, subdivision 3(a), regarding its summary of the City Manager's performance evaluation at the March 31, 2016, special meeting?

Discussion:

Pursuant to the Open Meeting Law, all meetings of a public body must be open to the public, except in limited circumstances. Minnesota Statutes, section 13D.05, subdivision 3(a) provides:

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

The Commissioner has discussed the requirement to summarize the conclusions of a performance evaluation in previous advisory opinions. (See Advisory Opinions 99-018, 02-035, and 15-002.)

In Advisory Opinion 02-021, the Commissioner provided the following guidance:

How a public body approaches the evaluation will determine exactly which data it should summarize. The public body should carefully review the specific points it established in reaching a conclusion about the performance evaluation. Clearly, the language of the Open Meeting Law indicates that the governing body ought to summarize each salient point of the evaluation so that the public is given the opportunity to get the best possible sense of the performance - good, bad, or indifferent - of the public employee.

The Commissioner addressed the sufficiency of several evaluation summaries in Advisory Opinion 14-007:

[In Advisory Opinions 99-018, 02-021, and 02-035] 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."

In its submission to the Commissioner, the Council described its approach to the City Manager's evaluation:

Historically, the City Manager's evaluation has been performed by the entire Moorhead City Council and conclusions about the City Manager's performance have been determined by a consensus of a majority of the City Council members participating in the performance review.

According to the Council, at the March 21, 2016, meeting, all eight members of the Council and the Mayor participated. Each attendee at the meeting spoke on the subjects raised in the evaluation. The majority opinion became the conclusion on a particular point.

Turning to the summary of conclusions here, in the recording of the March 31, 2016, open meeting, the Mayor read the following statement:

The City Council of the City of Moorhead met on March 21, 2016, and conducted a performance review of Michael J. Redlinger, the City Manager. During this review, the City Council stated that it has been very satisfied with the quality and the quantity of work performed by Mr. Redlinger. The City Council then discussed the administrative leadership of the City. While the City has been very satisfied with the quality and quantity of the City Manager's performance, a majority of the City Council and Michael Redlinger have mutually decided to enter into a separation agreement in order to seek a change in leadership. Pursuant to the terms of the Employment Agreement between the City and Mr. Redlinger and the City's Personnel Policies, the City and Mr. Redlinger will enter into a Separation Agreement

detailing the terms of the separation. [Italics indicate the differences between the evaluation summary as presented by Mr. Rowell and the complete statement on the recording as provided by the Council.]

Regarding the summary, the Council wrote:

The summary provided by Mayor Williams gave much greater detail on the contents of the performance evaluation, than those [at issue in previous advisory opinions], and covered the salient points of the performance evaluation. [Those opinions] are also distinguishable from the present case on the basis of the fact that the evaluation of the Moorhead City Manager was ended early because of the intent to enter into a separation agreement. First, only two prominent substantive issues were discussed during the executive session: (1) the general overall quality of Mr. Redlinger's work, and (2) how Mr. Redlinger fits within the City Council's vision regarding administrative leadership of the City.

The Council discussed two salient points, came to a consensus on each of those points, and presented those two conclusions in its summary at the next open meeting. While the edited summary presented by Mr. Rowell seems similar to the summaries at issue in previous advisory opinions, upon consideration of the entire summary and the circumstances surrounding it (evaluation process and the truncated nature of the evaluation itself), the Commissioner concludes that the Mayor's statement complies with the requirement in section 13D.05, subd. 3(a)(1), to provide a summary of the conclusions.

While the Council's summary was ultimately sufficient, the Commissioner reminds public bodies that the intent of the Open Meeting Law is, "to protect the public's right to full access to the decision-making process of public bodies." *Prior Lake American v. Mader*, 642 N.W. 2d 729, 735 (Minn. 2002). Although not required by the Open Meeting Law, in unusual situations like this one (where the body's evaluation of the employee's performance – "very satisfied" – seems incongruous with the outcome of the evaluation – a separation agreement), the Council could have provided more information to foster a broader understanding of its activities and decisions.

Opinion:

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

The Moorhead City Council complied with Minnesota Statutes, section 13D.05, subdivision 3(a), regarding its summary of the City Manager's performance evaluation at the March 31, 2016, special meeting.



Matthew Massman
Commissioner
June 22, 2016