



Advisory Opinion 16-006

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2016). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Nancy L. Cameron, General Counsel for Independent School District 625, Saint Paul (District), requested an advisory opinion about whether proposed meetings of the School Board to address interpersonal and communication issues would violate Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

The District provided the following summary of the facts. The District has experienced numerous challenges over the past year, and wants “to strengthen community engagement and commitment among [the Board], District administrators, the Saint Paul Federation of Teachers (SPFT), parent advisory councils (PACs), students, and other stakeholders.” As part of this effort, the Board accepted a proposal from the Minnesota State Office for Collaboration and Dispute Resolution (OCDR) and the Dispute Resolution Institute at Mitchell Hamline School of Law (DRI), to partner with them in a two-phase, multi-year Collaborative Public Engagement Project (CPEP).

According to the project plan, the issues to be addressed include:

- How to create an environment and mechanism so that administrators, SPFT, Board members, and parents feel valued, heard and respected
- How to improve communication and problem-solving in [the District]
- Development of a shared understanding of roles and responsibilities of administrators, [the Board], teachers, and other school staff
- Clarity around decision making including the role of administrators, SPFT, [the Board], and the community - especially parents
- How to define and implement the principle of equity
- Improved [Board] cohesiveness and ability to work together to serve the District

OCDR and DRI facilitators will conduct the sessions with the Board:

These conversations--focused on interpersonal and communication issues—can only be effective if conducted privately with the participants involved. The participants would only be the [Board] members, the facilitators, and possibly the [Board] Administrator.

At issue in this opinion request are the following conversations in the planning process:

1. Facilitated conversation among Board members
Board members will meet in (facilitated) sessions to address the following topics:
 - a. Board process and decision-making issues
 - b. Goals for meeting with administrative and SPFT leadership teams
2. Facilitated conversation among Board members, administration and SPFT leadership in sessions to:
 - a. Improve trust, relationships, communication, and collaborative problem solving capacity
 - b. Develop consensus on interim plan for information sharing and decision-making processes

Issues:

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

1. Would the School Board of Independent School District 625, Saint Paul Public Schools, violate Minnesota Statutes, Chapter 13D, if a quorum of the Board met privately with a facilitator in sessions designed to “improve trust, relationships, communications, and collaborative problem solving among Board members,” if they are not “gathering to discuss, decide, or receive information as a group relating to ‘the official business’ of the governing body”?
2. Would the School Board violate the OML if it met privately with school administrators and union leadership for similar purposes to those stated in Issue 1?

Discussion:

There is no dispute that a school board is a public body subject to the Open Meeting Law. Pursuant to Minnesota Statutes, section 123B.09, subdivision 6, a majority of the voting members of a school board constitutes a quorum.

Pursuant to the OML, all meetings of a public body must be open to the public. “Meeting” is not defined in the statute, however, the Minnesota Supreme Court addressed the question:

We therefore hold that “meetings” subject to the requirements of [Chapter 13D] are those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

Issue 1. *Would the School Board of Independent School District 625, Saint Paul Public Schools, violate Minnesota Statutes, Chapter 13D, if a quorum of the Board met privately with a facilitator in sessions designed to “improve trust, relationships, communications, and collaborative problem solving among Board members,” if they are not “gathering to discuss,*

decide, or receive information as a group relating to 'the official business' of the governing body"?

According to the District:

The proposed agenda topics are not subject to the OML because the Board members will not be gathering to discuss, decide, or receive information as a group relating to “the official business” of the governing body. See [*Moberg*]. Instead, the planned sessions are focused on improving trust, relationships, communications, and collaborative problem solving among Board members. The facilitated discussions are also intended to clarify for Board members their individual expectations of the roles and responsibilities of District administrators and what they hope to get out of planned facilitated conversations with administrators and SPFT through the collaborative project. The goal is not for Board members to exchange views on substantive decisions — such as desired superintendent qualifications or proposed policies — that may come before the Board.

....

In a similar situation, the Minnesota Attorney General addressed a question related to the OML’s application to a public body’s training and planning sessions. See Op. Atty. Gen. 63a-5 (February 5, 1975). There, a city asked the Attorney General (AG) whether city council members and the mayor may gather privately in a training program where public business may be discussed incidental to the training.

The Attorney General’s Opinion states:

It appears that the substance of the training program would consist largely of discussions devoted solely to developing skills in communication, planning, delegation of responsibilities, and decision-making, and to strengthening and clarifying an understanding of the responsibilities of council members. Thus, such a program would be directed toward developing general techniques in dealing with municipal matters rather than toward resolving specific problems.

In our opinion, a training program devoted solely to the above-described purposes does not constitute a deliberation on matters within the council’s “official” duties or powers and is not inconsistent with the open meeting law. Indeed, to the extent that the training sessions improve council members’ skills at effective communication, it seems that the training sessions will provide the public with a more complete knowledge of municipal business and the reasons why decisions are made.

The District wrote, “[l]ikewise here, the planned facilitated conversations with the Board, on the agenda topics listed above, may be conducted in private without running afoul of the OML. This AG opinion supports the conclusion that the Board may gather in private for these conversations on these agenda topics.”

The Commissioner concurs. The type of gatherings the Board contemplates are not meetings for purposes of the OML, per the Court’s holding in *Moberg*, and the Attorney General Opinion.

However, the Attorney General also said:

The facts presented in this opinion do indicate, however, that specific municipal matters may also be discussed at the described training session. Discussions of this nature

would constitute a deliberation on a matter within the official duties or powers of the council and would therefore be deemed to be a 'meeting.'

Thus, while participation in a non-public training program is not inconsistent with the language or purposes of the open meeting law, discussions of matters within the council's official duties or powers ... must be avoided.

Accordingly, the Board should avoid any issues specific to its official business during the sessions, as incidental discussions of public business would constitute a meeting subject to the OML.

Issue 2. Would the School Board violate the OML if it met privately with school administrators and union leadership for similar purposes to those stated in Issue 1?

The makeup of persons participating in this type of gathering with a quorum of the Board does not alter the analysis for Issue 1.

Opinion:

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

1. The School Board of Independent School District 625, Saint Paul Public Schools, would not violate Minnesota Statutes, Chapter 13D, the Open Meeting Law, if a quorum of the Board met privately with a facilitator in sessions designed to "improve trust, relationships, communications, and collaborative problem solving among Board members," if they are not "gathering to discuss, decide, or receive information as a group relating to 'the official business' of the governing body".
2. See Issue 1.



Matthew Massman
Commissioner
November 4, 2016