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Advisory Opinion 21-003

April 19, 2021; ISD 2142, St. Louis County Schools

April 19, 2021 | Open Meeting Law
This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2020). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Marshall Helmberger requested an advisory opinion from the Commissioner regarding the ISD 2142 – St. Louis County Schools – School Board (School Board) members' conduct under the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. The Commissioner did not receive comments from the School Board in response to Mr. Helmberger's opinion request.

Mr. Helmberger stated,

On March 24, 2020, the school district announced in its meeting notice: "Meeting closed to the public due to COVID-19 pandemic and declared state of emergency." The meeting notice included no call-in information for the public.

At the March 24, 2020 meeting, the school board approved a motion that meetings would be held virtually for the foreseeable future, specifically citing Minn. Stat. 13D.021 as the justification for this action. A portion of that motion reads: "In accordance with MN Statutes 13D.021, members of the public are not permitted to attend future meetings of the school board until further notice due to the current health pandemic."

In subsequent agendas continuing to the present, the school district's meeting notices have listed call-in information and indicated that meetings remain closed to the public due to the pandemic and declared emergency.

He further indicated that at meetings held on September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, "four members of the seven-member board were in attendance, along with the superintendent and the business manager." And that, "based on the official minutes of the school district…the St. Louis County School Board held an in-person meeting, and has been holding such meetings routinely, without allowing the public physical access to those meetings."

Mr. Helmberger argued that, "the Legislature did not intend for Minn. Stat. 13D.021 to be used in such a manner…For the district to invoke its right to hold meetings electronically and then primarily meet in-person, while limiting access to the public to electronic means only, is a gross violation of both the letter and the intent of this provision."

Issue:

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

Did the St. Louis County School Board comply with the OML requirements of Minnesota Statutes, section 13D.021 during meetings held on September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, when a quorum of the School Board attended the meetings in person while members of the public were limited to attending remotely?

Discussion:

The OML requires meetings of public bodies to be open to the public, with limited exceptions. The governing body of a school district is a public body subject to the law. (Minnesota Statutes, section 13D.01, subdivision 1(b)(1).)

While the Legislature did not define "meeting" in the OML, the Minnesota Supreme Court held the following:

'Meetings' subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body . . . 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).

The Minnesota Supreme Court has stated that the OML "will be liberally construed in order to protect the public's right to full access to the decision-making process of public bodies...This includes meetings at which information is received which may influence later decisions of such bodies." *St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 6 (Minn. 1983). And that the purposes behind the law "are deeply rooted in the fundamental proposition that a well-informed populace is essential to the vitality of our democratic form of government." (Footnote omitted.) *Prior Lake American v. Mader*, 642 N.W.2d 729, 735 (Minn. 2002).

Public bodies required to comply with the OML must still do so during a state of an emergency. Minnesota Statutes, section 13D.021, subdivision 1 permits public bodies to hold meetings via telephone or other electronic means if they meet the conditions of that section.

Section 13D.021 requires a public body to determine that an in-person meeting is "not practical or prudent because of a health pandemic or an emergency declared under chapter 12." Additional requirements for holding a meeting via telephone or other electronic means include: all participating members can hear one another; members of the public at the physical meeting location can hear all discussion "unless attendance at the regular meeting location is not feasible due to the health pandemic"; at least one member of the public body is present at the meeting location, "unless unfeasible due to the health pandemic"; and all votes are taken by roll call. (Section 13D.021, subdivision 1.)

Section 13D.021, subdivision 3 further requires that "to the extent practical," public bodies shall allow the public to monitor the meeting remotely.

Here, Mr. Helmberger provided a copy of meeting minutes from the School Board's March 24, 2020, meeting, which stated all members voted in favor of the following:

Due to the current federal and state emergency declarations and guidance about limiting person-to-person contact due to the COVID-19 (coronavirus) pandemic, all future meetings of the St. Louis County Schools ISD 2142 school board will be held at the District Office located at 1701 North 9th Avenue, Virginia, Minnesota and will be conducted in accordance with MN Statutes 13D.021 – Meetings by Telephone or Other Electronic Means until further notice.

Consistent with the federal and state guidance, the board chair has determined that an in-person meeting is not practical or prudent because of the current health pandemic.

Due to the health pandemic, it may not be feasible for at least one board member, the superintendent, or the school district's legal counsel to be physically present at the regular meeting location. It is also not feasible for the public to attend at the regular meeting location due to the health pandemic.

In accordance with MN Statutes 13D.021, members of the public are not permitted to attend future meetings of the school board until further notice due to the current health pandemic. The public may monitor meetings from a remote location via Google Hangouts at meet.google.com/uwy-mdmm-hnv.

However, Mr. Helmberger noted that despite the School Board's March 24 determination, a quorum of the School Board members attended the September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, meetings in person while members of the public were limited to monitoring the meetings remotely. Mr. Helmberger provided copies of the minutes from each of these meetings, which documented the in-person or virtual attendance of each School Board member.

He argued that the School Board "is citing the current health emergency as rationale to invoke Minn. Stat. 13D.021, under which the school district is allowed to hold meetings by telephone or other electronic means because it has determined that 'in-person meetings' are not 'practical or prudent." And that, "[b]ased on the plain meaning of this statute, an 'in-person' meeting…would be a physical meeting of a quorum of a governing body, which would normally be open to physical access by the public under the OML."

The Commissioner agrees with Mr. Helmberger. As discussed above, *Moberg* indicates that a meeting consists of a gathering of a quorum of a public body. In order for public bodies to hold a meeting via telephone or other electronic means under Section 13D.021, it must first determine that "an in-person meeting … is not practical or prudent because of a health pandemic or an emergency declared under chapter 12." In other words, Section 13D.021, subdivision 1 requires public bodies to determine that it is not practical or prudent for "a quorum or more members of the governing body" to hold an in-person gathering, "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 at 518 (Minn. 1983).

When a quorum of the members gathered in person to discuss, decide, or receive information as a group relating to official business, the School Board contradicted its prior determination that in-person meetings are not practical or prudent. As a result, the School Board did not meet the first requirement to hold meetings via telephone or other electronic means under Section 13D.021.

The Commissioner notes that there is currently not a mechanism in the OML for public body members to hold in-person meetings while limiting public attendance to electronic monitoring. Section 13D.021 permits telephone or electronic meetings of public bodies during a health pandemic or Chapter 12 emergency, meaning that a quorum of a public body that intends to gather in order to discuss, decide, or receive information related to public business under this section must do so via telephone or other electronic means.

Opinion:

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

The School Board did not comply with the OML when a quorum of the public body held in-person meetings on September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, while the public was limited to remote attendance.

Signed:

Alice Roberts-Davis
Commissioner

April 19, 2021

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Advisory Opinion 21-003

April 19, 2021; ISD 2142, St. Louis County Schools

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Facts and Procedural History:

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Mr. Helmberger stated,

On March 24, 2020, the school district announced in its meeting notice: "Meeting closed to the public due to COVID-19 pandemic and declared state of emergency." The meeting notice included no call-in information for the public.

At the March 24, 2020 meeting, the school board approved a motion that meetings would be held virtually for the foreseeable future, specifically citing Minn. Stat. 13D.021 as the justification for this action. A portion of that motion reads: "In accordance with MN Statutes 13D.021, members of the public are not permitted to attend future meetings of the school board until further notice due to the current health pandemic."

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He further indicated that at meetings held on September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, "four members of the seven-member board were in attendance, along with the superintendent and the business manager." And that, "based on the official minutes of the school district…the St. Louis County School Board held an in-

person meeting, and has been holding such meetings routinely, without allowing the public physical access to those meetings."

Mr. Helmberger argued that, "the Legislature did not intend for Minn. Stat. 13D.021 to be used in such a manner…For the district to invoke its right to hold meetings electronically and then primarily meet in-person, while limiting access to the public to electronic means only, is a gross violation of both the letter and the intent of this provision."

Issue:

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

Did the St. Louis County School Board comply with the OML requirements of Minnesota Statutes, section 13D.021 during meetings held on September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, when a quorum of the School Board attended the meetings in person while members of the public were limited to attending remotely?

Discussion:

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Public bodies required to comply with the OML must still do so during a state of an emergency. Minnesota Statutes, section 13D.021, subdivision 1 permits public bodies to hold meetings via telephone or other electronic means if they meet the conditions of that section.

Section 13D.021 requires a public body to determine that an in-person meeting is "not practical or prudent because of a health pandemic or an emergency declared under chapter 12." Additional requirements for holding a meeting via telephone or other electronic means include: all participating members can hear one another; members of the public at the physical meeting location can hear all discussion "unless attendance at the regular meeting location is not feasible due to the health pandemic"; at least one member of the public body is present at the meeting location, "unless unfeasible due to the health pandemic"; and all votes are taken by roll call. (Section 13D.021, subdivision 1.)

Section 13D.021, subdivision 3 further requires that "to the extent practical," public bodies shall allow the public to monitor the meeting remotely.

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Consistent with the federal and state guidance, the board chair has determined that an in-person meeting is not practical or prudent because of the current health pandemic.

Due to the health pandemic, it may not be feasible for at least one board member, the superintendent, or the school district's legal counsel to be physically present at the regular meeting location. It is also not feasible for the public to attend at the regular meeting location due to the health pandemic.

In accordance with MN Statutes 13D.021, members of the public are not permitted to attend future meetings of the school board until further notice due to the current health pandemic. The public may monitor meetings from a remote location via Google Hangouts at meet.google.com/uwy-mdmm-hnv.

However, Mr. Helmberger noted that despite the School Board's March 24 determination, a quorum of the School Board members attended the September 22, 2020, November 24, 2020, January 5, 2021, and January 26, 2021, meetings in person while members of the public were limited to monitoring the meetings remotely. Mr. Helmberger provided copies of the minutes from each of these meetings, which documented the in-person or virtual attendance of each School Board member.

He argued that the School Board "is citing the current health emergency as rationale to invoke Minn. Stat. 13D.021, under which the school district is allowed to hold meetings by telephone or other electronic means because it has determined that 'in-person meetings' are not 'practical or prudent." And that, "[b]ased on the plain meaning of this statute, an 'in-person' meeting…would be a physical meeting of a quorum of a governing body, which would normally be open to physical access by the public under the OML."

The Commissioner agrees with Mr. Helmberger. As discussed above, *Moberg* indicates that a meeting consists of a gathering of a quorum of a public body. In order for public bodies to hold a meeting via telephone or other electronic means under Section 13D.021, it must first determine that "an in-person meeting … is not practical or prudent because of a health pandemic or an emergency declared under chapter 12." In other words, Section 13D.021, subdivision 1 requires public bodies to determine that it is not practical or prudent for "a quorum or more members of the governing body" to hold an in-person gathering, "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 at 518 (Minn. 1983).

When a quorum of the members gathered in person to discuss, decide, or receive information as a group relating to official business, the School Board contradicted its prior determination that in-person meetings are not practical or prudent. As a result, the School Board did not meet the first requirement to hold meetings via telephone or other electronic means under Section 13D.021.

The Commissioner notes that there is currently not a mechanism in the OML for public body members to hold in-person meetings while limiting public attendance to electronic monitoring. Section 13D.021 permits telephone or electronic meetings of public bodies during a health pandemic or Chapter 12 emergency, meaning that a quorum of a public body that intends to gather in order to discuss, decide, or receive information related to public business under this section must do so via telephone or other electronic means.

Opinion:

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Signed:

Alice Roberts-Davis
Commissioner

April 19, 2021

Open Meeting Law

Telephone meeting

Public meetings (see also: Open Meetings Law)

Open meeting

Open Meeting Law

Open Meeting Law (Ch.13D / 471.075) (See also: Public Meetings)

13D.021

remote meeting

Other electronic means, meetings