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CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: Neil Jensen
From: Shelley M. Ryan
Date: March 17, 2023
Re: Agenda language

The issue is whether including a statement that a quorum of the Council may be present on meeting agendas other than for Council meetings, protects the Council from violating the Open Meeting Law, Minnesota Statutes ch. 13D if a quorum of the Council attends such meetings?

The Minnesota Open Meeting Law, Minnesota Statutes ch. 13D (the “OML”) prescribes the following, in relevant part:

Subdivision 1. In executive branch, local government. All meetings, including executive sessions, must be open to the public * * *

(b) of the governing body of a
* * *

(4) statutory or home rule charter city,
* * *

(c) of any

- (1) committee,
- (2) subcommittee,
- (3) board,
- (4) department, or
- (5) commission,

of a public body; * * *

Minn. Stat. § 13D.04, subd. 1. The open meeting law does not define the term “meeting.” The Minnesota Supreme Court, however, has ruled that meetings are “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. Indep. Sch.

Dist. No. 281, 336 N.W.2d 510, 518 (Minn. 1983). Section 3.03 of the Cannon Falls City Charter states that “[u]nless otherwise provided by this Chapter, ordinance, or other law, four Council members constitute a quorum to act upon any matter, but a smaller number may adjourn from time to time.”

Here, four or more Council members attending and discussing, deciding, or receiving information about City business during a committee, subcommittee, board, department, or commission meeting could constitute a meeting under Moberg. For example, two additional Council members present and receiving information about City business during a planning commission meeting is arguably a gathering that falls within the Court’s definition of a meeting subject to the OML. A violation of the OML occurs if the meeting was not properly noticed. An intentional violation of the OML may result in penalties against individual Council members including, a civil fine in an amount not to exceed \$300.00 per occurrence that may not be paid by the City and/or forfeiture of office after three (3) violations. A statement on the planning commission meeting agenda that a quorum of the City Council may be present at the meeting may assist in defending against an OML claim if one is asserted.