

Winona Post

Open mic could be open meeting violation (08/28/2011)

*By Sarah Elmquist*

The Winona County Board discussed last month the possibility of adding public comment sessions to each board meeting, and a legal opinion issued by County Attorney Karin Sonneman suggested that the board's past practice in accepting public comments may be in violation of the Minnesota Open Meeting Law (OML).

On Tuesday, the board held its first such public comment session since that legal opinion was issued, but continued its practice of receiving comments before the official board meeting — against its own attorney's recommendation.

Commissioners voted last month to include a public comment session during each meeting, but chose to wait until Sonneman had the chance to research a suggested rule that would limit the ability of union members from speaking during the periods. The board was also advised by Sonneman that such comment sessions should be held during the regular board meeting, not before, in order to comply with the OML.

Since the comment session began in 2007 the board had held such periods prior to the official board meeting at the advice of former County Attorney Chuck MacLean. Both Sonneman and Minnesota Newspaper Association Attorney Mark Anfinson have said the sessions should be moved into the official meeting to meet the requirements of the law.

The OML requires that the public receive official notice whenever a quorum of a government unit gathers, even if it is just receiving information and not taking a vote. A Supreme Court Case in the 1980s ruled that even if board members are just listening, the gathering must meet the requirements of the OML.

Sonneman's legal memo issued on July 21 states the following: "Any session of the County Board meeting where there is a quorum must comply with the OML. Public comment sessions should be noticed on the agenda. The placement of the public comment session should be after the board convenes the board meeting and after the Pledge of Allegiance and before the business part of the meeting commences."

The public comment session on Tuesday was not included in the agenda, nor was it part of the official meeting. A handful of people arrived at 7 p.m., missing out on the comments, including Sonneman and several members of the local news media. The board did not acknowledge the legal opinion that requested the sessions be held during the regular meeting.

This is not the first time the board has held its comment sessions this way, nor the first time it has gathered in a quorum without providing legal notice. But Minnesota Newspaper Association Attorney Mark Anfinson said that the legal opinion issued last month brings a new dimension to

the potential OML violation.

“It’s perplexing,” said Anfinson. “The law is not advisory. The law is mandatory, and that practice, under those circumstances, appears to be a violation of the OML. What makes it particularly odd is that they had the county attorney’s advice in front of them, which means, if one wanted to pursue this [in court], it could very easily be argued that it’s an intentional violation.”

When elected officials in Minnesota violate the OML, they don’t always face any penalties. Someone would have to pursue court action in order to instigate punishment of an elected official. But intentional violations of the OML is one of the only ways that an elected official can be removed from office. An elected official in Minnesota who violates the OML on three separate occasions, proven in three separate lawsuits, gets the boot.

The comments

The board accepted comments from four citizens prior to the board meeting Tuesday.

First at the microphone was Mary Cichanowski, who informed the board about some issues with the construction project on County Road 7 in Pickwick (see story page 1A).

Todd Paddock commended the board members who voted to keep the hiring authority in the hands of County Administrator Duane Hebert. “It’s too easy for politics to become involved in hiring decisions,” he said

Paddock also said that through his interaction with Hebert while serving on a county committee, he felt Hebert was very professional. He said Hebert doesn’t want to be people’s friend, rather, he wants to be a good administrator. Hebert doesn’t pick favorites, he added.

Paddock also commended Board Chair Mena Kaehler for her attempt to address her concerns with commissioner Marcia Ward during a July meeting, a discussion that was cut off by County Attorney Karin Sonneman. Paddock said he wasn’t sure if there was a better way for Kaehler to address her concerns, but he was glad she tried, and felt it was appropriate.

Alan Nagle said the county was broken, and he was moving to St. Charles. He said he was disappointed in the board as a whole, and added that commissioners ought to look up state statutes that outline their duties as elected officials. “Because I don’t think any of you five has a clue,” he explained.

Bob Peterson, who is a member of the Winona County Board of Adjustments, suggested the board consider reviewing financial updates using an “expenditure curve,” adding that it was a good tool for checking in on complex budgets through the year.

Nagle spoke a second time, stating he felt there would be a problem with upcoming construction on County Road 7, County Road 12, and a bridge closure expected on County Road 101. The

county should coordinate better to ensure that large areas do not have access cut off at the same time, he said.