



TO: Charter Commission Members  
FROM: Deb Skogen, City Clerk and Staff Liaison  
Date: April 28, 2016  
Re: Charter Commission Meeting of May 2, 2016

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This is a reminder to you that the next Charter Commission meeting will be held next Monday, May 2<sup>nd</sup> at 7:00 p.m. in Conference Room A on the Upper Level.

In order to ensure a quorum, please remember, the Charter Commission bylaws requires a member to call or e-mail me before 10:00 a.m. Monday, May 2nd as to whether or not you plan on attending the meeting. You may call me at (763)572-3523 or email me at [deb.skogen@fridleymn.gov](mailto:deb.skogen@fridleymn.gov) whether or not you will be attending the meeting.

If there will not be a quorum, **an e-mail will be sent out by Noon** notifying everyone there will not be a quorum and the meeting will be cancelled. A notice will then be placed at the door of City Hall announcing the cancellation of the meeting for those commissioners who did not call, but came to the meeting.

I have included an email from Commissioner Reynolds regarding her questions and opinions on Section 2.07. I have tried to provide some materials to answer some of her questions. There is a lot more information available from the Department of Administration on their rulings as well. I thought if you were interested, you may want to do further research to determine how elected officials are defined for the purposes of the data practices act. If you are interested and want to research the issue further, you can go to [www.ipad.state.mn.us](http://www.ipad.state.mn.us) and look under Advisory Opinions – if you do it by subject and go down to elected officials, the research is readily available.

In addition, I did contact the League of Minnesota Cities as to when the Oath of Office could be given. An email response is also included in the information I provided.

Please let me know if you need any additional information prior to the meeting.



# CITY OF FRIDLEY CHARTER COMMISSION

## AGENDA

**MONDAY, MAY 2, 2016  
7:00 P.M.**

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**LOCATION:** FRIDLEY MUNICIPAL CENTER  
CONFERENCE ROOM A – UPPER LEVEL

- 1. CALL TO ORDER:**
- 2. ROLL CALL:**
- 3. APPROVAL OF AGENDA:**  
Motion approving the May 2, 2016 agenda
- 4. APPROVAL OF MINUTES**  
Motion approving the April 4, 2016 meeting minutes
- 5. ADMINISTRATIVE MATTERS**
- 6. OLD BUSINESS**  
A. Vote on Proposed Bylaw Amendment
- 7. NEW BUSINESS**  
A. Review and Discussion of Chapter 2
- 8. FUTURE MEETING TOPICS/COMMUNICATIONS**  
  
A. Discussion of Chapter 10 (Tabled until after current franchise negotiations completed)
- 9. ADJOURNMENT**  
Motion to adjourn the meeting

**Next Regular Commission Meeting  
Date: TUESDAY, SEPTEMBER 6, 2016  
Location: Fridley Municipal Center – Conference Room A**

CITY OF FRIDLEY  
CHARTER COMMISSION MEETING  
APRIL 4, 2016

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**CALL TO ORDER:**

Chairperson Reynolds called the Charter Commission meeting to order at 7:00 p.m.

**ROLL CALL:**

Members Present: Commissioners Gary Braam, Don Findell, Marion Flickinger, Manuel Granroos, Ted Kranz, Rick Nelson, Novella Ollawore, Barb Reiland, Pam Reynolds, Cindy Soule, and Arvonna Stark

Members Absent: Commissioners David Ostwald, Lois Scholzen, and Richard Walch

Others Present: Deb Skogen, City Clerk/Staff Liaison  
Jake Foster, Management and Election Intern  
Zach Crandall  
Mayor Scott Lund  
Councilmember at Large Bob Barnette

**APPROVAL OF AGENDA**

Commissioner Braam MOVED and Commissioner Nelson seconded a motion approving the meeting agenda.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON REYNOLDS DECLARED THE MOTION CARRIED.

**APPROVAL OF MINUTES**

Chairperson Reynolds and Commissioner Reiland recommended several changes to the minutes:

Page 2, 7.A. 1<sup>st</sup> paragraph, strike the words "~~wanted to know if they~~";

Page 4, paragraph 7, strike the words "... report ~~will be~~" read...

Page 5, paragraph 1, change the word there're to there and add the word ...but then did "not" come to the meeting..

Page 6, paragraph 2, change the word election to elected and directing to directly.

Page 6, paragraph 5, add the word, ....asked "if" the ....

Page 6, paragraph 7, underline and add quotations to the word "and" should be added.

Commissioner Nelson MOVED and Commissioner Braam seconded a motion approving the Charter Commission meeting minutes of March 7, 2016 as amended by Chairperson Reynolds and Commissioner Reiland.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON REYNOLDS DECLARED THE MOTION CARRIED.

### **ADMINISTRATIVE MATTERS**

A. Introduction of New Staff Member

Ms. Skogen introduced Jake Foster. Mr. Foster is the new management and elections intern who will be working with staff and the Charter Commission through December. Introductions were made by all of the Commissioners and visiting members.

B. Introduction and Interview of Commissioner Applicant Zach Crandall

The Commission Application from Zachary Crandall was included in the packet. Mr. Crandall said he had been travelling for work for the past eleven years. He tries to stay informed about what is going on. Has been a union officer for several years and run quarterly meetings. He is interested in giving back to his community.

Commissioner Reiland asked how long Mr. Crandall had lived in the City and if he had a family. He said he moved in Halloween of 2008 when he bought a house on 6<sup>th</sup> Street. He said he did not have a family at this time. Most of his family live in Fargo and his Grandparents that live in Spring Lake Park.

The Commissioners felt the application was written well and that he had a good background.

Mr. Crandall said he had read past minutes, bylaws and the Charter. He felt it was very straight forward and made sense.

Ms. Skogen said the Charter Commission met eight times a year on the first Monday of each month and asked if that would create any issues. Mr. Crandall said there would be no issues with the job he had now. He is required to travel some, but plans his own hours so he can be available for meetings.

Commissioner Braam MOVED and Commissioner Reiland seconded a motion to accept the application from Mr. Zachary Crandall and recommend his appointment to the 10<sup>th</sup> District Chief Judge.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON REYNOLDS DECLARED THE MOTION CARRIED.

**OLD BUSINESS**

## A. Discussion of Proposed Bylaw Amendment

Ms. Skogen has provided a draft of the proposed amended bylaws for discussion purposes.

Chairperson Reynolds said that the Commission had adopted Rosenberg's Rules of Order two years ago, so it did not need to be changed.

Chairperson Reynolds said they would vote on the amended at the next meeting and that it would take a vote of 2/3's of those present to be adopted.

**NEW BUSINESS**

## A. Discussion of Chapter 2

Chairperson Reynolds said she had reviewed Chapter 6 of the League of Minnesota Cities (LMC) Handbook on Elected Officials and Council Structures. She asked if the Commissioners had any questions or concerns about Section 2.01 of the Charter.

Commissioner Reiland asked about 2.01.3 –whether commas were needed before and after the word “ordinance”. Ms. Skogen did not think that commas needed to be added.

Chairperson Reynolds asked if there were any concerns or questions about Section 2.02. She wondered about the structure or make up of the Council and what the purpose of the councilmember at large was. She thought it would serve the citizens better to have a fourth ward rather than a councilmember at large to create better representation in a smaller area.

Commissioner Soule disagreed and said if a person in a ward had a disagreement with their councilmember and they didn't feel they were being represented, they also had the opportunity to discuss an issue with the councilmember at large who also represented them.

Commissioner Kranz said he had contacted his councilmember at large a lot because he has been available, accessible, and very helpful. He thinks the structure is very good the way it is. The town is the same size as when he moved in, maybe even smaller, but he felt the structure worked and did not see the need for a change.

Commissioner Stark said after trying to navigate through the caucus system, with Fridley being the only city with wards, and that changing the structure would make things more difficult and confusing at future caucuses. She felt the councilmember at large position created additional accountability and preferred to keep the structure the same.

Chairperson Reynolds asked how the structure of the council was set up. Ms. Skogen said it was set up in the original Charter 1957 when the voters elected to have a home rule charter.

Commissioner Soule said the timing of the elections changed in 1994 from three year terms and odd year elections to four year terms and even year elections.

Commissioner Stark said voter turnout is usually lower in nonpresidential election years.

Ms. Skogen said that there would be a lower voter turnout during gubernatorial elections than presidential elections and that odd-year or special elections had a much lower voter turnout.

Mayor Lund said New Brighton has an odd year election so there has been some discussion about changing to even years, due to the cost.

Ms Skogen said it was a minimum of about \$15,000 for the city to have a special election as you would have to do the training and hire the same number of election judges for a very low turnout. For example, a school district election may have a turnout of about 5%, whereas a state or federal election may have a voter turnout between 75% to 95%.

Commissioner Nelson said the newly elected officials actually take office January 1<sup>st</sup>, but do not officially take office until the first meeting in January. He said there could be a period of time when you may not have a quorum to open a meeting unless the previous councilmembers are there to open the meeting and then leaves after the oath of office is given.

Mayor Lund said historically, the existing council person remains until the first meeting when that new council person is sworn in, so the duties and responsibilities have carried on until the newly elected councilmember takes their oath. In January the Council meets the first Monday in January as there some housekeeping items that need to be taken care of by law, and it is when the newly elected council members are sworn in. The only gap that might occur would be if there was an emergency, it might be possible to have a newly elected councilmember take their oath prior to a meeting.

Commissioner Nelson wondered who could swear in the councilmembers if there wasn't a quorum. He thought the term should be changed to have language that would say until the new councilmember is sworn in.

Commissioner Granroos said suggesting changing the word "may" to "shall" in 2.02.5. The Commissioners agreed.

There was some confusion as to when the term should expire, whether it would be December 31<sup>st</sup> of fourth year or when the new term commences at the first meeting in January.

Commissioner Nelson said a term expires December 31<sup>st</sup>, however, unless one of the three incumbents is returning, you could not open the meeting the first Monday in January if there were only two councilmembers.

Ms Skogen thought an oath could be given prior to a meeting to allow for a quorum.

Commissioner Nelson said you would have to swear them in during an official meeting and you could possibly not have a quorum if the three incumbent councilmembers were not re-elected.

Commissioner Nelson recommended replacement language to 2.03.5: “the term shall begin on the first official city council meeting in January following their election to office.”

Mayor Lund said when he took office, Mayor Jorgenson called the meeting to order, he took his oath and Mayor Jorgenson turned the gavel over to him and left.

Commissioner Findell suggested the following language: “the term shall begin at the first organizational meeting in January following their election to office.”

Ms. Skogen was asked to research the issue further to provide further clarification at the next meeting.

Commissioner Soule wondered if the councilmember that was not re-elected would return for the first meeting.

Mayor Lund thought that they did have to attend the meeting.

Ms. Skogen said the outgoing councilmembers have not been at the meetings in the past.

Commissioner Granroos asked who had the official power to call the meeting if they were unelected. Commissioner Soule said that the previous mayor did call the meeting to order, or the charter states the councilmember at large may call the meeting to order.

Chairperson Reynolds asked if there were any concerns in Section 2.03. She said the current language says the councilmembers may select a member to serve as mayor pro tem.

Commissioner Reiland, so if that happened at the first meeting would it be true for the entire year. She wondered if that should be stated. The Commissioners did not think it had to be stated.

Commissioner Findell said Ordinance 1034 changed the language from the first official business day of the month following the election in 1994.

Commissioner Braam liked the idea because, like the mayor, the councilmember at large is elected by all of the residents of the City.

Commissioner Soule thought the City Council should have the ability to determine who their mayor pro tem should be. She said in a different section if the mayor's term became vacant, that the councilmember at large would serve as the mayor pro tem.

Commissioner Stark said a temporary position, could turn permanent. You might have one person serving and then switch to the councilmember at large.

Commissioner Braam wondered how things were handled when Mayor Nee was sick. Councilmember Barnette said he could not recall who served as mayor pro tem.

Commissioner Braam MOVED and Commissioner Reiland seconded a motion to change Section 2.03.1. to read as follows: "The Mayor shall be presiding officer of the Council , except that a mayor pro tem shall be the councilmember at large ~~chosen from the remaining councilmembers to serve at the pleasure of the council,~~ who shall act as Mayor in case of the Mayor's temporary disability or absence from the City. Should neither be available, the mayor pro tem shall be chosen from the remaining councilmembers to serve at the pleasure of the council."

UPON A VOICE VOTE, ALL VOTING AYE, WITH EXCEPTION OF COMMISSIONER SOULE, CHAIRPERSON REYNOLDS DECLARED THE MOTION CARRIED.

Discussion continued after the vote. Commissioner Soule thought it was a good opportunity for each councilmember to have additional leadership within the City. She wanted the councilmembers to set their procedures.

Commissioner Flickinger disagreed because some councilmembers might not want that leadership position. He agreed with Commissioner Braam that the councilmember at large serve as they also represented all of the residents as the mayor does.

Commissioner Kranz also agreed with Commissioner Braam and that it would be one less item for the council to have to worry about at their organizational meeting.

Commissioner Soule said that was fine and that it was okay to have differing opinions.

Commissioner Reiland said if they did it at the first meeting of the year, some of the councilmembers would be newly elected.

Commissioner Nelson said that may be true for the mayor or councilmember at large as well.

Commissioner Flickinger said it was something the individual running for councilmember at large should think about prior to running for office. The discussion about Section 2.03.1 ended at this point.

The Commissioners discussed Section 2.03.6 and what would happen in an emergency with civil unrest or a natural disaster what actions would be taken.

Mayor Lund said the Police Department has an Emergency Operations Plan that discusses the chain of command and what to do. He said it was used in 2005 when the tornado hit Fridley. He said the city lost land line service, and cell phones get overwhelmed. He said the City had an antenna installed on the roof to help manage cell phones. Ms. Skogen said a new generator was also purchased and set up to keep the power and the phones working. She said after the storm, the City had one operational telephone line that was not tied to the telephone system. It was the fax line which could only take one call at a time. But staff monitored that phone until power could be restored.

Chairperson Reynolds asked if there were any questions or concerns about Sections 2.04, there were none. She asked what Section 2.05 meant. Ms. Skogen stated it meant that no councilmember could be an employee of the City while serving as a councilmember and would have to wait one year before they could become eligible to work for the City.

Chairperson Reynolds said the City treated councilmembers as employees for the purpose of benefits. Ms. Skogen said the City had to make a choice for personnel information and data practices on whether councilmembers are treated as employees or nonemployees and that it was not just for benefits. She said the Councilmembers adopted an ordinance in the 1980's that allowed them to receive the same benefits as employees.

Commissioner Granroos asked how they could be identified and whether they could identify them as officers as they do on Boards.

Ms. Skogen said there are boards that provide benefits and some do not.

Commissioner Flickinger wondered how state officers were identified and whether they were considered state employees. Commissioner Nelson said they were employees of the state as they did receive W-2s.

Chairperson Reynolds said state law prohibits mayor and councilmembers from being employed by the city. The term employed is defined as full time permanent employee as defined by a city's employment policy. This law applies to those elected or appointed to serve as mayor or city councilmembers on or after August 1, 2010. For part time positions it must be determined if the positions qualify as offices and if the elements or responsibilities are incompatible with one another – MS 410.191 or MS 412. Based on the fact that they don't meet the qualification as an employee, in Section 2.07, we treat them as employees for the purpose of benefits.

Commissioner Soule said they are not allowed to be employees as they are elected officials and cannot hold other positions in the City.

Commissioner Kranz said if the mayor wanted to moonlight and become a janitor, he could not be eligible for the positions.

Mayor Lund said that was correct as there would be a contractual conflict of interest.

Chairperson Reynolds asked if Ms. Skogen could provide Chapter 6 from the LMC handbook on vacancies. In addition, Ms. Reynolds should provide additional information to Ms. Skogen prior to the meeting regarding her questions.

### **FUTURE AGENDA ITEMS**

Old Business:

Proposed Bylaws Amendment and  
Discussion on Chapter 2

### **ADJOURNMENT:**

Commissioner Reiland MOVED and Commissioner Nelson seconded a motion to adjourn the meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON REYNOLDS DECLARED THE MOTION CARRIED AND THE MEETING WAS ADJOURNED AT 8:16 P.M.

Respectfully submitted,  
Debra A. Skogen,  
City Clerk/Staff Liaison

Commissioner Donald Findell, Secretary

**FRIDLEY HOME RULE CHARTER COMMISSION  
BY-LAWS  
Proposed 03/07/16**

- I. NAME -- the name of the organization shall be the Fridley Home Rule Charter Commission.
- II. PURPOSE -- the purpose of this organization shall be to frame and amend the Charter to meet the needs of the residents of Fridley.
- III. MEETINGS

- A. Commission meetings will be held in the Fridley Municipal Center; or a designated public location upon proper notice. *The dates will be set for the next calendar year annually at the last meeting of the year. (This section adopted 04/07/14)*
- B. The annual meeting shall be held in March of each year. The election of officers shall take place at the annual meeting.
- C. Special meetings may be called by the Chair; or, the Chair, upon receipt of a written request signed by five (5) members, shall, within ten (10) days, call a special meeting upon proper notice.
- D. A quorum to conduct business shall be determined according to the following schedule:

Number of Appointed Charter Commission Members	Quorum
15, 14, 13	7
12 or 11	6
10 or fewer	5

- E. Except as provided in these by-laws, all meetings shall be governed in accordance with *Rosenberg's Rules of Order. (This section adopted 04/07/14)*
- F. The time of the meeting shall be called by the chair. If there is not a quorum within ten minutes after the meeting time is to commence, the members shall be dismissed. However, if the chair felt there was important business to be addressed, the chair would have the discretion to ask members to stay longer, but may not exceed an additional 10 minutes past the specified time.
- IV. MEMBERSHIP -- The membership of this organization shall be 15 members.
  - A. All members shall be expected to attend all meetings. If unable to attend, the member shall inform either the Chair or the Secretary as to the reason.

- B. Any member missing four (4) consecutive meetings without an adequate excuse, or failing to perform the duties of the office shall be subject to a discharge from the Commission upon a written request to the Court, supporting by two-thirds (2/3) of the Commission members present and voting.

## V. OFFICERS

### A. Election of Officers.

1. The officers of this organization shall be a Chair, Vice Chair and a Secretary.
2. The Chair, Vice Chair and Secretary shall be elected from the membership of the Commission.
3. The Chair, Vice Chair and Secretary shall be elected at the annual meeting. No officer shall serve more than two consecutive terms in the same office.
4. All officers shall begin their terms of office upon election to that office.
5. Election to vacant offices shall be made from the floor at the next meeting following the meeting at which the vacancy is declared.
6. Officers of this organization shall be declared duly elected by a simple majority vote of those present and voting. Any contested race for an office shall be done by a written ballot. The Acting Chair will ask for a teller committee of two (2) to count the ballots.

### B. Duties of Officers and City Staff Liaison.

1. The Chair shall have the following responsibilities:
  - a. to call all regular and special meetings;;
  - b. preside at all meetings;;
  - c. set the agenda;;
  - d. implement the decisions of this Commission;; and
  - e. participate in all Commission decisions as a voting member.
2. The Vice Chair shall assist the Chair in the performance of these duties. In the event the Chair is unable to perform these duties, the Vice Chair shall discharge such duties.
3. The Secretary shall be responsible for:
  - a. keeping an accurate record of attendance;;
  - b. recording of minutes at all meetings;;
  - c. distributing minutes to members within a reasonable time;;

- d. giving notice to members who have missed three (3) consecutive meetings pursuant to Article IV, Section B, of the By-Laws;
  - e. transmitting all correspondence and related resource material concerning this Commission to the City Clerk for retention; and
  - f. presiding at meetings in the absence of the Chair and Vice Chair.
4. The City Staff Liaison shall be designated by the City Clerk and serve as a recording secretary at all meetings of the Charter Commission. The Liaison, with the direction of the Secretary, will have the following responsibilities.
- a. serve in an advisory capacity at all meetings as a non-voting member;
  - b. assist the commission by providing research information as requested by Officers;
  - c. accurately record attendance and minutes of all meetings;
  - d. distribute minutes and notices of upcoming meetings with proposed agenda in a timely manner;
  - e. prepare proposed Charter changes for submission to the City Council; and
  - f. submit records of proceedings to the City Clerk for retention.

## VI. COMMITTEES

- A. The Chair shall have the power to create committees, appoint members and designate chairs of those committees.
- B. In January of each year the Chair shall appoint a nominating committee of three (3) or more members who shall report the nomination of one (1) or more candidates for each office. A written report of such nominations shall be mailed to each member at least ten (10) days before the annual meeting.

## VII. VOTING

- A. A majority vote of members present shall be sufficient to pass motions and resolutions except as provided elsewhere.
- B. There shall be no secret votes, other than contested election(s) of officers.

## VIII. ORDER OF BUSINESS

- 1. Call to Order by the Chair.
- 2. Roll Call.
- 3. Approval of Agenda
- ~~3~~ 4. Approval of Minutes.
- ~~4~~ 5. Report of Officers-Administrative Matters.

- ~~5~~ . ~~Report of Committee.~~
- ~~6~~ . Considerations of communications.
- ~~7~~6. Old Business.
- ~~8~~7. New Business.
8. Future Meeting Topics
9. Adjournment.

IX. AMENDMENT

- A. These by-laws can be amended at any regular meeting of the Commission by a two-thirds (2/3) vote of those presents, provided that the amendment has been submitted in writing to the members at least two (2) weeks before the vote on the amendment.

FRIDLEY CITY CHARTER  
CHAPTER 2. CITY COUNCIL ORGANIZATION

Section 2.01. COUNCIL-MANAGER PLAN IMPLEMENTATION.

1. The form of government established by this Charter shall be known as the "Council-Manager Plan" pursuant to Minnesota Statutes. (Ref. Ord. 1034)
2. All discretionary powers of the City, both legislative and executive, shall vest in and be exercised by the City Council. It shall have complete control over the City administration, but shall exercise this control exclusively through the City Manager and shall not itself attempt to perform any administrative duties. (Ref. Ord. 1034)
3. The Council shall perform the duties and exercise the powers of all City boards and commissions except as otherwise provided by statute or by this Charter. It may by ordinance create commissions with advisory powers to investigate any subject of interest to the municipality. (Ref. Ord. 1034)
4. The Council shall have power to make investigations into the City's affairs, to subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. The Council may at any time provide for an examination or audit of the accounts of any office or department of the City government, or it may cause to be made any survey or research study of any problem affecting the City or its inhabitants. Each such investigation shall be authorized by resolution of the Council. (Ref. Ord. 1034)
5. Any member of the Council may request in writing any specific information relating to any department via the City Manager. The City Manager shall respond in writing within a reasonable period of time. (Ref. Ord. 592, Ord. 1034)
6. Except for the purpose of inquiry, the Council and its members shall deal with and control the administrative services solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately. (Ref. Ord. 1034)

Section 2.02. ELECTIVE OFFICERS.

1. The Council shall be composed of a Mayor and four (4) Councilmembers who shall be eligible voters as defined by Section 1.04.1 of this Charter. (Ref. Ord. 1252)
2. The Mayor shall be elected at large in each United States presidential election year to a term of four (4) years. (Ref. Ord. 1034)

3. One (1) Councilmember shall be elected at large in each United States presidential election year to a term of four (4) years. (Ref. Ord. 1034)
4. Three (3) Councilmembers shall be elected in each Minnesota gubernatorial election year from three (3) separate Wards of the City to terms of four (4) years each. (Ref. Ord. 1034)
5. The term of Mayor and of each Councilmember shall begin on the first day of January following their election to office and shall end on December 31 of the last year of the term. The incumbent ~~may~~ shall remain in office until a successor has been duly qualified and accepts the office. The first order of business at the first official Council meeting in each January that follows an election year shall be the swearing in of the newly elected members of the Council. (Ref. Ord. 1034)
6. The Council shall serve as the canvassing board for city elections. (Ref. Ord. 1252)

#### Section 2.03. THE MAYOR.

1. The Mayor shall be the presiding officer of the Council, except that a mayor pro tem shall be ~~chosen from the remaining Councilmembers to serve at the pleasure of the Council~~ the councilmember at large who shall act as Mayor in case of the Mayor's temporary disability or absence from the City. Should neither be available, the mayor pro tem shall be chosen from the remaining Councilmembers to serve at the pleasure of the Council.
2. The Mayor shall vote as a member of the Council. (Ref. Ord. 1034)
3. The Mayor shall exercise all powers and perform all duties conferred and imposed by this Charter, the ordinances of the City and the laws of the State. (Ref. Ord. 1034)
4. The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for the purposes of martial law. (Ref. Ord. 1034)
5. At the direction of the Council the Mayor shall study the operations of the City government and shall report to the Council any neglect, dereliction of duty, or waste on the part of any officer or department of the City. (Ref. Ord. 1034)
6. In time of public danger or emergency the Mayor may take command of the police, maintain order and enforce the law. Council consent shall be obtained when practicable. (Ref. Ord. 1034)

#### Section 2.04. WARD COUNCILMEMBERS.

1. The City is divided into three (3) separate election Wards designated as Ward 1, Ward 2, and Ward 3. (Ref. Ord. 1034)

2. A Ward Councilmember must be a resident of such ward. If the Ward Councilmember ceases to be a resident of the ward, then that office shall be declared vacant. However, a change in ward boundaries during the term of office shall not disqualify the Councilmember from completing the term. (Ref. Ord. 1034)
3. The boundaries of the three (3) wards shall be redetermined from time to time by ordinances duly adopted by the Council, and based on the findings of the Council that the wards so redetermined are such that the population of any ward shall not deviate by more than three percent (3%) from the average of the three (3) wards. (Ref. Ord. 1034)
4. After each decennial census of the United States, the Council shall redetermine ward boundaries. This redetermination of ward boundaries shall be accomplished within the deadlines established by Minnesota law. If no deadlines are established by law, then redistricting must be completed no less than one hundred (100) days prior to the legally determined date of the municipal primary of the year ending in the digit two (2). If further redistricting is necessary, as determined by the Council, the adoption of the new boundaries shall be prohibited during the time period from ninety (90) days before a primary election up to and including the day of the general election in the same year. Any prohibitions stated in the Minnesota state statutes pertaining to the adoption of the new boundaries shall also apply. (Ref. Ord. 1034)

#### Section 2.05. DISQUALIFICATION FOR APPOINTIVE OFFICE.

No incumbent member of the Council shall be appointed acting or permanent City Manager, nor shall any member hold any other paid municipal office or employment under the City; and no former member shall be appointed to any paid office or employment under the City until one (1) year after leaving office. (Ref. Ord. 1034)

#### Section 2.06. VACANCIES IN THE COUNCIL.

1. A vacancy in the council shall be deemed to exist in case of the failure of any elected person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, continuous absence from the City for more than three (3) months, failure to attend any council meetings for three (3) consecutive months, or conviction of a felony of any such person whether before or after their qualification; or by ceasing to be a resident of the city or the ward from which elected. In each such case, within thirty (30) days the council shall by resolution declare a vacancy to exist. (Ref. Ord. 1289)
2. If a vacancy is declared to exist, the Council shall, within 30 days, appoint by majority vote a qualified person to assume the office until the next general election. If the Council cannot agree on an appointment within the required timeframe, the Mayor shall appoint a qualified person to fill the position. The term of office to be filled at the next general election shall be for the unexpired portion of the term or for a full term depending on the timeframe when the vacancy has been declared to exist.

3. If the Mayor's position is declared vacant, the Councilmember-at-Large shall serve as Mayor until the end of the Mayor's term. The Councilmember at Large shall then be declared vacant and it shall be filled as defined in Section 2.06.2. of the City Charter. (Ref. Ord. 1289)
4. If at any time the membership of the Council is reduced to less than three (3) members, the City Manager shall order a special election to be held not less than thirty (30) days nor more than sixty-five (65) days from the time the multiple vacancies occurred. A period of eight (8) to twelve (12) consecutive working days shall be designated for the purpose of filing nomination petitions in accordance with Section 4.06. The winner(s) of the special election shall be by a plurality of votes cast for each office, regardless of the number of candidates and shall take office immediately upon certification by the board of canvass and shall fill the unexpired terms of said offices. (Ref. Ord 1989)
5. If the position of City Manager is vacant, the City Clerk shall order such an election. If the position of City Clerk is also vacant, the Chief Judge of District Court of the State of Minnesota within whose jurisdiction the corporate offices of the City of Fridley lie shall order such an election. (Ref. Ord. 1034)

#### Section 2.07. SALARIES AND EXPENSES.

The Mayor and each Councilmember shall receive reasonable remuneration or salary, the annual amount and payment of which shall be prescribed by ordinance duly adopted on or before November 1st of the year preceding payment of the same. When authorized by the Council, its members shall be remunerated for their reasonable expenses incurred in connection with the City's business. The City Manager and all subordinate officers and employees of the City shall receive such reasonable compensation as may be fixed by the Council. (Ref. Ord. 1034)

## Skogen, Deb

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**From:** O'Reilly, Quinn [qoreilly@lmc.org]  
**Sent:** Thursday, April 28, 2016 10:50 AM  
**To:** Skogen, Deb  
**Subject:** Oath of Office

Deb,

Thank you for your question. You asked: **I have a question as to when a newly elected councilmember may take the Oath of Office. Some individuals think it has to be administered during the first official meeting of the year, some think it has to be taken prior to the meeting. I have reviewed the Handbook, but it doesn't provide that type of information. Can you help me?**

The oath of office can be administered any time after the election certificate has been issued. The oath does not need to be administered at a meeting, administering the oath in the clerk's office prior to the new member's first meeting is fine. However, the oath can be administered at the meeting. Either way is perfectly acceptable.

Thank you for contacting the League of Minnesota Cities. Please let me know if there is anything else I can do.

Sincerely,

**Quinn O'Reilly** | Staff Attorney

Tel: (651) 281-1271

[qoreilly@lmc.org](mailto:qoreilly@lmc.org) | [www.lmc.org](http://www.lmc.org)

League of Minnesota Cities

145 University Ave. West | St. Paul, MN 55103

*Connecting & Innovating since 1913*

Please note, this information is not legal advice and is not a substitute for competent legal guidance. Consult your attorney concerning specific legal situations.

## Skogen, Deb

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**From:** Pam Reynolds [fnpam@hotmail.com]  
**Sent:** Monday, April 25, 2016 6:38 AM  
**To:** Skogen, Deb  
**Subject:** Chapter 2

Deb,

Section 2.06, Vacancies in the Council, Section 1--I believe part of the language is contradictory to what the LMC Handbook says.

Section 4--Our system is non partisan--we opted not to have a primary to fill a vacancy but continue to do so for a normal election. I understand this process is covered by a different Chapter of the Charter but this was my question.

Section 2.07 Salaries--Council feels they do not need to vote on this if they are not increasing salary. I believe this language says regardless of raise. I also believe, for transparency, it should include info on other compensation--medical, pension etc.

What is the City's definition of employee? State Statue prohibits an employee from being an elected official--the Statute is in Chapter 6 of League handbook. My personal belief is there should be no benefits. I see these lucrative bennies as a Conflict of Interest. If insurance is to be provided then the option of cash instead shouldn't be--either they need it or they don't. After all "need" was the reason this was added to their comp package. This section does not contain the language that says Council shall be treated as employees for the purpose of benefits, I believe that is in the City's employee handbook. If you could provide that for commissioners it would be helpful.

Council are part time "employees" receiving bennies as full time. Our on-call firefighters are not offered health insurance, are they?

Who is the Attorney for the Charter Commission?

That's all for now,  
Pam Reynolds

ORDINANCE NO. 920

AN ORDINANCE RECODIFYING THE FRIDLEY CITY CODE BY AMENDING APPENDIX F TO PROVIDE FOR THE ADJUSTMENT OF SALARIES FOR THE MAYOR AND COUNCILMEMBERS IN ACCORDANCE WITH SECTION 2.07 OF THE CHARTER OF THE CITY OF FRIDLEY

The City of Council of the City of Fridley does hereby ordain as follows

The annual salaries for the Mayor and Councilmembers during 1990 and subsequent years shall be as follows

Mayor	\$8,000 00
Councilmember-at-Large	6,550 00
Councilmember, Ward I	5,850 00
Councilmember, Ward II	5,850 00
Councilmember, Ward III	5,850 00

In addition, the Mayor and Councilmembers shall be entitled to the same benefits enjoyed by full-time authorized employees of the City of Fridley who are not covered by a labor agreement

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS 27TH DAY OF FEBRUARY, 1989

  
WILLIAM J NEE MAYOR

ATTEST

  
SHIRLEY A HAAPALA - CITY CLERK

First Reading February 13, 1989  
Second Reading February 27, 1989  
Publication March 8, 1989

ORDINANCE NO 944

AN ORDINANCE RECODIFYING THE FRIDLEY CITY CODE BY AMENDING APPENDIX F TO PROVIDE FOR THE ADJUSTMENT OF SALARIES FOR THE MAYOR AND COUNCILMEMBERS IN ACCORDANCE WITH SECTION 2 07 OF THE CHARTER OF THE CITY OF FRIDLEY

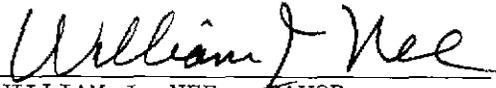
The City Council of the City of Fridley does hereby ordain as follows

The annual salaries for the Mayor and Councilmembers during 1991 and subsequent years shall be as follows

Mayor	\$ 8,400 00
Councilmember-at-Large	\$ 6,900 00
Councilmember, Ward I	\$ 6,100 00
Councilmember, Ward II	\$ 6,100 00
Councilmember, Ward III	\$ 6,100.00

In addition, the Mayor and Councilmembers shall be entitled to the same benefits enjoyed by full-time authorized employees of the City of Fridley

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS 26TH DAY OF FEBRUARY, 1990

  
WILLIAM J NEE MAYOR

ATTEST

  
SHIRLEY A HAAPALA - CITY CLERK

First Reading	February 12, 1990
Second Reading	February 26, 1990
Publication	March 7, 1990

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1200**

Jill Krout, et al.,  
Appellants,

vs.

City of Greenfield,  
Respondent.

**Filed April 16, 2012  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CV-10-13395

Todd M. Johnson, Scott A. Johnson, Johnson Law Group LLP, Minnetonka, Minnesota  
(for appellants)

Paul D. Reuvers, Amanda L. Stubson, Iverson Reuvers, Bloomington, Minnesota (for  
respondent)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and  
Toussaint, Judge.\*

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellants Jill Krout, Howard Veldhuizen, and Mark Lee were elected city  
council members for respondent City of Greenfield. As a result of contentious city

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

government proceedings, a citizen of Greenfield submitted a data request under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2010), for appellants' private cell-phone records. The city attorney asked appellants to submit their private cell-phone records so that the city could comply with the request. Krout and Veldhuizen provided their records; Lee did not. The city then disclosed the records to the citizen. Appellants subsequently sued the city, claiming that the city violated the MGDPA by disclosing their phone records. The district court ruled that appellants, as elected officials, were not employees under the MGDPA and that the data were public. As a result, the district court granted summary judgment to the city and dismissed the suit. We affirm.

## **FACTS**

The Greenfield city council consists of a mayor and four members. In 2009, Krout was the mayor of Greenfield, and Veldhuizen and Lee were council members. Under the Greenfield City Code, Krout was paid \$400 per month as mayor, and Veldhuizen and Lee were paid \$300 per month as council members. They were also eligible to participate in a retirement plan administered by the Public Employees Retirement Association (PERA). During appellants' terms in office, the city experienced considerable turmoil in its government and was involved in multiple lawsuits. At a city council meeting in October 2009, the council, without discussion, terminated the employment of the acting interim city administrator by a 3-2 vote, with Krout, Veldhuizen, and Lee voting in support of the termination. On November 4, 2009, the Board of Trustees for the League of Minnesota Cities Insurance Trust cancelled insurance coverage for the city following a meeting

where the board discussed possible open-meeting-law violations made by the city council.

On November 9, 2009, C.A., a citizen of Greenfield, submitted a data request under the MGDPA. C.A. suspected that appellants had violated the Minnesota open-meeting law by the decision to terminate the city administrator without council discussion. To investigate his suspicion, C.A. requested appellants' cell-phone records, text messages, and e-mails from November 2008 through November 17, 2009, for Krout (the day she resigned as mayor) and through December 31, 2009, for Veldhuizen and Lee.

Because the city does not provide its elected officials with cell phones or reimburse them for cell-phone charges, all of the requested records existed in appellants' personal accounts. The city attorney contacted appellants and asked them to provide their phone records so that the city could comply with the data request. Krout and Veldhuizen provided their cell-phone records, but Lee refused. The deputy city clerk, who is the data-practices compliance official for the city, redacted Krout's and Veldhuizen's cell-phone records so that only phone calls potentially concerning city business would be disclosed.<sup>1</sup> The city then provided the records to C.A.

Appellants sued the city, claiming that the city violated the MGDPA by disclosing the cell-phone records. During the first summary-judgment hearing, appellants argued that their cell-phone records were not "government data" under the MGDPA. The district

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<sup>1</sup> The city clerk made one error in failing to redact a phone number that was unrelated to city business, which was the phone number of one of Veldhuizen's business clients.

court held that appellants' personal cell-phone records were not created or maintained by appellants in their official capacities and therefore were not "government data" subject to the MGDPA. The district court left open the question of whether the records became government data under the MGDPA upon receipt or dissemination by the city.

The parties subsequently brought cross-motions that were heard in a second summary-judgment proceeding. For the purpose of those motions, the parties stipulated that appellants' private cell-phone records became government data under the MGDPA upon receipt by the city. Appellants argued that they were city employees, and, therefore, their cell-phone records constituted personnel data that are presumed to be private under Minn. Stat. § 13.43, subd. 1. Respondent moved for dismissal. The district court held that appellants, as elected officials, were not employees under the MGDPA, and, therefore, their cell-phone records were not personnel data under Minn. Stat. § 13.43. As a result, appellants' cell-phone records were subject to the statutory presumption that government data are public. Minn. Stat. § 13.01, subd. 3. The district court determined that the city did not violate the MGDPA by disseminating the cell-phone records and dismissed the suit with prejudice. This appeal follows.<sup>2</sup>

## **D E C I S I O N**

"On appeal, we review a grant of summary judgment 'to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.'" *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quoting

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<sup>2</sup> The district court noted in the second order for summary judgment that appellant Mark Lee had abandoned his claim. But because Lee's claim was never formally dismissed, he remains a party on appeal.

*K.R. v. Sanford*, 605 N.W.2d 387, 389 (Minn. 2000)). Appellants contend that the district court erred in its ruling that their cell-phone records were not “personnel data” under Minn. Stat. § 13.43 (that would be presumed to be private) because of its determination that elected officials are not city employees under the statute.

Statutory interpretation is a question of law, which we review de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). When this court interprets a statute, it must ascertain and give full effect to the intent of the legislature. Minn. Stat. § 645.16 (2010).

We begin our analysis with Minn. Stat. § 13.01, subd. 3, which addresses the scope of the MGDPA:

This chapter regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities. It establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.

The term “government data” is defined as “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.” Minn. Stat. § 13.02, subd. 7.

The MGDPA distinguishes between “data on individuals” and “data not on individuals.” *Id.*, subds. 4, 5. Data pertains to an individual if “any individual is or can be identified as the subject of that data.” *Id.*, subd. 5. Data on individuals are public if they are not designated private or confidential. Minn. Stat. § 13.03, subd. 1.

The parties agree that resolution of this issue is dependent upon the term “personnel data” in Minn. Stat. § 13.43. “Personnel data” are defined as “government

data on individuals maintained because the individual is or was an employee of . . . a government entity.” Minn. Stat. § 13.43, subd. 1. Appellants contend that because they were employees of the city, the content of their cell-phone records is personnel data and, therefore, private under Minn. Stat. § 13.43, subd. 4.

The term “employee” is not defined in the statute. But the commissioner of administration has issued a series of advisory opinions on how to classify elected officials for the purposes of section 13.43. While advisory opinions from the commissioner of administration are not binding on this court, they are entitled to deference. Minn. Stat. § 13.072, subd. 2. This court gives more careful consideration to advisory opinions when they are on point and long standing. *Billigmeier v. Cnty. of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988) (examining advisory opinions from the attorney general). The commissioner of administration has opined that “the classification of data about elected officials depends upon whether the entity considers the elected official to be an employee. If so, the data are classified pursuant to section 13.43. If not, the data are presumed public pursuant to section 13.03, subdivision 1.” Minn. Dep’t of Admin., Advisory Op. 04-064 (Oct. 15, 2004). This has been the consistent approach of the commissioner of administration since at least 1995. *See* Minn. Dep’t of Admin., Advisory Op. 95-041 (Oct. 12, 1995); *see also* Minn. Dep’t of Admin., Advisory Op. 03-011 (May 7, 2003); Minn. Dep’t of Admin., Advisory Op. 02-013 (Mar. 27, 2002); Minn. Dep’t of Admin., Advisory Op. 01-039 (Apr. 16, 2001).

The parties invite this court to rule definitively on whether elected officials generally are employees under section 13.43. We decline to do so. Instead, we conclude

that, on this record, these particular elected officials are not employees. We see no reason to diverge from the commissioner of administration's opinions, as they are directly on point and long standing. Therefore, because the city of Greenfield does not consider its elected officials to be employees under the MGDPA, they are not employees for the purposes of Minn. Stat. § 13.43.

Allowing governmental units to decide whether their elected officials are employees also comports with the fundamental purpose of the MGDPA. The statute seeks “to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing. The [MGDPA] also attempts to balance these competing rights within a context of effective government operation.” *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 307 (Minn. 1990) (quoting Gemberling & Weissman, *Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act—From “A” to “Z”*, 8 Wm. Mitchell L. Rev. 573, 575 (1982)).

The district court noted that there are also strong public-policy reasons to support making the information public in this circumstance. We agree. To prevent the public from gaining information relevant to the business and performance of elected officials by protecting it as “personnel data” would undermine the important public-policy goal of the MGDPA—openness in government. *See Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 32 (Minn. 1989). Because elected officials serve at the discretion of the public, citizens need all of the information regarding the official business of elected officials in order to make informed choices at the polls. Furthermore, the open-meeting

law requires that all meetings of a public governing body be open to the public. Minn. Stat. § 13D.01, subd. 1(b) (2010). Elected officials should not be able to evade public observation and scrutiny of their work by conducting all pertinent discussions on sensitive matters in private and then simply voting on a *fait accompli* at the public meeting.

Appellants contend that *Republican Party of Minn. v. Patrick H. O'Connor*, 712 N.W.2d 175, 176-77 (Minn. 2004), stands for the proposition that the triggering event for determining whether an individual is an employee under the MGDPA is if a government entity pays salary or benefits to the person. We disagree. That case concerned election judges. In concluding that election judges are employees under the MGDPA, the supreme court reasoned that “[e]lection judges are compensated for their services.” *Republican Party*, 712 N.W.2d at 176. While the supreme court did not elaborate on the services that election judges provide, it is clear that election judges provide their services to the governing body of the municipality that they serve. Election judges are not elected; they are appointed by the governing body of the municipality. Minn. Stat. § 204B.21, subd. 2 (2010). Because the governing body has direct control over the selection of election judges, the comparison between election judges and elected officials fails.

**Affirmed.**

**GOVERNMENT DATA:** Where members of governing body are considered employees of governmental unit, personal information submitted by applicants for appointment to fill vacancies on the body is private personnel data except for items designated as public by Minn. Stat. § 13.43, subd. 3 and 13.601, subd. 3.

852

July 14, 2006

Terry Adkins  
Rochester City Attorney  
201-4th Street SE, Room 247  
Rochester, MN 55904-3780

Dear Mr. Adkins:

Thank you for your correspondence of January 27, 2006 requesting an opinion from the Attorney General with respect to the issue discussed below.

#### **FACTS AND BACKGROUND**

You state that prior to 2005, in cities that considered council members to be “city employees,” data pertaining to persons seeking appointment to fill vacancies in council positions was classified as personnel data pursuant to Minn. Stat. § 13.43, subd. 3. This treatment was based on opinions of the Commissioner of Administration dated November 29, 1999 and May 7, 2003.

In 2005, the legislature adopted Minn. Stat. § 13.601, subd. 3 which states:

The following data on all applicants for election or appointment to a public body, including those subject to chapter 13D, are public: name, city of residence, education and training, employment history, volunteer work, awards and honors, and prior government service or experience.

On November 18, 2005, the Commissioner of Administration issued an Opinion 05-036, which concluded that Minn. Stat. § 13.601, subd. 3 merely restated in part the general presumption that all government data are public, and did not have the effect of classifying any data not mentioned in the subdivision as other than public. The Commissioner further concluded that, since no other provisions of law provided for classification of “contact information” for city council applicants or candidates, all data pertaining to applicants or candidates maintained by the city must be considered public.

Based upon the foregoing, you request the opinion of the Attorney General on the following question:

Is government data beyond that listed in Minn. Stat. § 313.601, subd. 3 contained in applications for election or appointment to a public body, whose members are considered to be city employees, classified as public?

### **LAW AND ANALYSIS**

First, pursuant to Minn. Stat. § 13.03, subd. 1, all government data is considered public unless it is otherwise classified by state statute, federal law or temporary classification. Consequently, the bulk of Minn. Stat. ch. 13, the Minnesota Government Data Practices Act (MGDPA), consists of statutes that classify data as other than public.

Second, one such section is Minn. Stat. § 13.43 which deals with personnel data, defined as:

Data on individuals collected because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity.

*Id.*, subd. 1. As to personnel data, the MGDPA's normal presumption that government data is public, is reversed. Instead, that section specifically identifies the elements of personnel data that are public and classifies the remainder as private data on individuals. *Id.*, subd. 4.

Subdivision three provides:

Subd. 3. Applicant data. Except for applicants described in subdivision 5 [under-cover law enforcement officers] the following personnel data on current and former applicants for employment by a government entity is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment. For purposes of this subdivision, "finalist" means an individual who is selected to be interviewed by the appointing authority prior to selection.

Third, the MGDPA does not expressly state whether elected officials are to be considered employees for purposes of section 13.43. Consequently, prior to 2005, opinions of the Commissioner of Administration consistently stated that data concerning elected officials would be classified under section 13.43 if the governmental unit that the official serves considers the official to be an employee. *See, e.g.*, Opinions of the Commissioner of Administration 95-041, 01-039, 02-013, 03-011 and 04-064. Specifically, Opinion 01-039 determined that, in a city where council members were considered to be employees, data concerning applicants for

appointment to a vacant council position were classified according to Minn. Stat. § 13.43, subds. 3 and 4.

Fourth, in accordance with these opinions, local officials in many cases would not disclose even the identity of persons seeking appointment to vacant elective offices, and in some instances were also reluctant to disclose information contained in election filings. Consequently, legislation was introduced in the 2005 legislative session to address the issue.

In the March 29, 2005 hearing of the House Civil and Election Committee, Sandy Maron, on behalf of the Minnesota Newspaper Association, addressed a proposed amendment to Minn. Stat. § 13.43, subd. 3 intended to clarify that the names and addresses of applicants for council positions would be treated as public.

This is a very simple bill. [HF 1129] We found that some local officials were nervous about disclosing the names of people who were filing to fill vacancies in elected office. In other words, a city councilperson resigned, they needed to fill the vacancy and then people who were applying, when the public asked for the names of people who are applying to fill these vacancies, some city officials were nervous about disclosing this saying names because it fell under personnel data and they would be in violation of the Data Practices Act. So this bill is simply narrowly directed to say that anyone who is applying to fill a vacancy in elected office is clearly public data and we have spoken about this with the League of Cities, township associations school boards. None of them have a problem with those issues of narrowing it.

Likewise, in a February 24, 2005 hearing on SF 965, the companion bill, before the Senate Judiciary Subcommittee on Data Practices, Senator Don Betzold stated:

Mr. Chair, the issue came up which was brought to my attention that when you have some government entities that are filling positions such as when a city council has a vacancy and the leading members of the city council are trying to fill the vacancy, there is no requirement in the statute that the applicants applying for the vacancy be made public. So you can have a situation where a city council is taking applicants for the vacant city council position, but members of the public might want to know who's applying for the vacancy and they know the public doesn't have to be told until such time that the appointment is actually made. And I think that is clearly an oversight in the statute. I think this is something that the public would have an interest in knowing. *So this would require that the identity of the applicants to these government entities become public.*

(Emphasis added).

When the proposed clarification was amended into the 2005 Omnibus Data Practices Bill, HF 225, however, the proposed language was much broader than that described in these statements. It would have amended Minn. Stat. § 13.601 to add a subdivision which would read:

Subd. 3. [Applicants For Election Or Appointment.] *All data* about applicants for election or appointment to a public body, including those public bodies subject to chapter 13D, are public.

(Emphasis added). *See* Journal of the Senate for April 7, 2005 at 1617, 1639; Journal of the House for April 14, 2005 at 1717, 1813. Ultimately, such all-inclusive language was considered too broad, and was therefore amended to the more limited version quoted above, which passed as section 13.601, subdivision 3. *See* Journal of the House for May 17, 2005 at 4073, 4075; Journal of the Senate for May 21, 2005 at 3025. As Senator Betzold explained on the Senate floor:

Mr. President, members we already have language in the bill that describes the situation where somebody is applying for an appointment either for say a city council vacancy or some commission appointment. Right now there is no requirement that that information even be public information, so we don't even know whose applying for this situation. But the language that we have in the bill right now was reviewed over the last few weeks and found to be overly broad. This narrows it down as to the information that will be disclosed.

Fifth, Minn. Stat. § 645.16 (2004), provides:

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the contemporaneous legislative history; and
- (7) legislative and administrative interpretations of the statute.

Furthermore, statutes should be interpreted to give effect to all their provisions so that no statutory language is superfluous. *See, e.g., American Family Ins. Co. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

The foregoing legislative and administrative history shows that the enactment of Minn. Stat. § 13.601, subd. 3 (Supp. 2005) was intended to be a measured response to the Commissioner of Administration's numerous opinions that data on applicants for appointment to elective positions would be treated as personnel data if those positions are considered

“employment,” resulting in a “private” classification for information including the identity and residency of applicants. There is no indication, however, that the legislature intended to supersede the Commissioner’s interpretation in its entirety, and render all data on such applicants public under the general presumption of section 13.03. Such an interpretation is inconsistent with the legislature’s deliberate decision to reject all-inclusive language in favor of a narrower list of data elements that must be considered public. Such an interpretation would also render the specific terms of section 13.601, subdivision 3 essentially meaningless.

In our view that subdivision is not merely a partial restatement of the general presumption that all government data are public, but a limited exception to a private classification that might be imposed under another statute such as Minn. Stat. § 13.43. Therefore, while we agree with the Commissioner’s conclusion that the listing of public data elements in section 13.601, subdivision 3 does not mean that “all other data on applicants” is private, we do not agree that “there is no provision classifying [any] contact information on city council candidates as private.” Rather, some data concerning such applicants as well as incumbents of those offices may be classified as private under section 13.43 if the incumbents are considered to be employees of governmental unit they serve.

#### **OPINION**

Based upon the foregoing it is our opinion that, where members of a governing body are considered employees of the governmental unit, data submitted by applicants for appointment to positions on the body would be classified as private personnel data pursuant to Minn. Stat. § 13.43, *except for* those items expressly made public by Minn. Stat. § 13.43, subd. 3 or 13.601, subd. 3.

Very truly yours,

KENNETH E. RASCHKE, JR.  
Assistant Attorney General

(651) 297-1141 (Voice)  
(651) 297-1235 (Fax)

# Personnel Data – Defined

- Government data on individuals maintained because an individual is or was an employee of a government entity, applicant for employment, volunteer, or independent contractor
- Reverses general public presumption
  - All personnel data are private except specified public data

# Personnel Data – Public

- **Name**; employee ID; actual gross **salary**; salary range; **terms and conditions of employment relationship**; contract fees; actual gross **pension**; the value and nature of employer paid **fringe benefits**; and the basis for and the amount of any added **remuneration**, including expense reimbursement
- Job title and bargaining unit; job description; **education and training background**; and previous work experience
- Date of first and last employment
- **Existence and status of any complaints or charges** against the employee, regardless of whether the complaint or charge resulted in a disciplinary action

# Personnel Data – Public, cont.

- **Final disposition of any disciplinary action** together with the **specific reasons** for the action and **data documenting the basis** of the action
- **Complete terms of any agreement settling any dispute** arising out of an employment relationship, including a buyout agreement; except that the agreement must include **specific reasons** for the agreement if it involves the payment of more than **\$10,000 of public money**
- Work location; a work telephone number; badge number; **work-related continuing education**; and honors and awards received
- **Payroll time sheets** or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data

# What do you think?



Government employees create and maintain various data as a part of their official tasks and duties.

Are all of the data that an employee creates or maintains personnel data?

# Not everything is personnel data...

- Must be data about individuals
- Must be the subject of the data
- Consider:
  - Meeting notes
  - Reports
  - Correspondence about an official activity
- Some 'personal' data

# 'Personal Data'

- How are emails and voicemail messages on an employee's personal matters classified?
  - Government data?
  - Policy for incidental use of government equipment?

# Data on Applicants

- Everything is private except:
  - ✓ Veteran status
  - ✓ Relevant test scores
  - ✓ Rank on eligible list
  - ✓ Job history
  - ✓ Education and training
  - ✓ Work availability
- Names are private until a finalist
  - Finalist = selected for interview by appointing authority
- Consider treatment of resumes

# Data on Employees of Sub/Contractors

- Data maintained because of contractual relationship on/after Aug 1, 2012 are private:
  - Personal phone number
  - Home address
  - Email address
- Must share with government entities to perform an authorized function
- Must share with anyone for prevailing wage purposes

# Elected Officials

- Are elected officials employees covered by the personnel data section?
  - ✓ Entity determination
  - ✓ If not employees, data are presumptively public
    - Note Minn. Stat. 13.601
  - ✓ Unpublished MN Court of Appeals
    - *Krout v. City of Greenfield*, A11-1200, April 16, 2012
    - Confirms guidance in advisory opinions that entity should decide whether elected officials are employees