

Secret vote

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couldn't be clearer: A city council meeting is not really open to the public if the council is conducting its vote in secret," Anfinson said.

In an email to the Times on Wednesday, City Administrator Matt Staehling said he, City Attorney Renee Courtney and City Clerk Seth Kauffman consulted Robert's Rules of Order before the vote on Monday.

"We agreed that the guidance recommended (that) the subject of the censure does not participate in the vote but can participate in the discussion and debate (and) the ballot should be by confidential ballot," Staehling stated.

Robert's Rules of Order is the standard for facilitating discussions and group decision-making. But the state's open meeting laws take precedence over Robert's Rules guidelines, Anfinson said.

"They can partially remedy this by disclosing how each member voted. It would certainly help and be the right thing to do at this point," he said. "The best thing to do would be to redo the vote at their next public meeting and do it orally so that everyone can see how they voted. That's the best way to do it; then it's on the record."

Staehling said Thursday the city still has the ballots and knows who voted which way, even without the names written on the ballots; later Thursday, Staehling clarified the city could only speculate who voted which way based on the conversation at the meeting.

The Times requested information on how council members individually voted. Kauffman sent the Times an image of the votes written on the back of business cards; four votes say "yes" and two votes say "no."

One of the "no" votes also has "doesn't rise to the level of censure" written on the ballot.

"We'll continue to look at that angle," Staehling said. "I'm not sure that I'm prepared to agree with Mr. Anfinson's opinion. There was certainly no intent to violate open meeting law."

Hontos said Thursday he believes the "whole event was orchestrated."

"(Council members) moved right into a motion to censure. Their minds were made up. They had a plan," Hontos said. "But it's not going to stop me from being who I am. I'm still going to ask the hard



City Council candidate Carol Lewis, center, answers a question during a candidate forum. With her are fellow candidates Jeff Goerger, from left, George Hontos and Abdi Daisane. KIMM ANDERSON/ST. CLOUD TIMES

questions. I'm still going to represent my constituents."

Staehling said Thursday the city did not know the council was going to make a motion to censure Hontos ahead of the meeting — and said the none of the staff can recall the last time the council made a motion to censure a council member.

"It was a scramble. It wasn't expected," Staehling said.

Staehling said the administration will recommend the council redo the vote at its next meeting — but said he still thinks the private ballots did not violate open meeting law because the action was not a routine procedural item or action of the council.

"I don't believe it was a violation but as a remedy, I will recommend they take it up at the next meeting," Staehling said.

Anfinson said council members are ultimately responsible for complying with the law "even if they get advice that's incorrect."

"If there were a lawsuit claiming an open meeting law violation it would be against the council members individually, not their staff people, because the law imposes on them the responsibility for compliance," Anfinson said.

Council President Jeff Goerger said he was surprised that city administration took the vote by paper ballot.

"I thought we would just vote," he said. "When the vote was going to take place, (Kauffman) said it will be done by paper ballot, which is the way it was done."

When Hontos asked Kauffman why

the city was using paper ballots, Goerger said, "(Kauffman's) answer was that it's required by Robert's Rules. So that's all I know."

Goerger said he doesn't think any of the council members would have objected to a regular vote on Monday.

"If we have to do something differently or do it over, I don't think that's a problem," Goerger said.

Goerger also emphasized "no one knew there was going to be a vote to censure (Hontos)."

"There was no discussion ahead of time," Goerger said. "There was no effort by anyone to try to circumvent the open meeting law."

Goerger said he council will redo the vote at the next meeting.

Hontos said he thinks approving the

censure was a chance for his colleagues to "take a shot at" him.

Hontos has previously written letters to the editor about council actions, including a March letter titled, "Mayor, city council did not appropriately handle fiduciary responsibility" regarding the sale of part of Heritage Park to Costco. He's also been vocal at meetings about whether city staff is being transparent and whether members of the St. Cloud HRA board should receive per diem payments

"They are just tired of me bringing things up, putting them on the spot, making them accountable and asking some hard questions," Hontos said. "It's unfortunate. It's just goofy. It's a disappointment."

"I still stand behind everything I wrote in the (letter)," Hontos added. "I stand behind my right to speak out and represent the constituents. It's unfortunate they are confused that that's somehow a violation (of the council code of conduct)."

Hontos said he's received a lot of positive feedback since he was censured.

"I'd like to thank everyone for the support I have received," he said. "I haven't heard one negative comment."

Even if the council did violate open meeting law by voting with private ballots, their action to censure Hontos still stands, according to Anfinson.

"The Supreme Court held many years ago that failure to comply with the law ... does not invalidate or void an action taken," he said. "It doesn't void the action — but it is a violation of the law."

Part of the challenge about interpreting Minnesota's open meeting law, Anfinson said, is that only about half of the law is in the statute itself; the other half is a "product of a series of court decisions over the last 30 years," he said.

"The law is very complicated so sometimes people just get it wrong."

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