

**OPEN RECORDS AND MEETINGS OPINION
2004-O-16**

DATE ISSUED: July 16, 2004

ISSUED TO: Gladstone City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion from Mr. Alan J. Reed, Managing Editor, The Dickinson Press, asking whether the Gladstone City Council (Council) violated the open meetings law by editing the minutes prior to publication.

FACTS PRESENTED

In March 2004, the Council instructed the city auditor to provide each Council member with a copy of a rough draft of the Council minutes prepared by the city auditor so that Council members could make suggested corrections to assure accuracy of the minutes prior to publishing the minutes as required by law.¹ Since that time, the auditor has provided the Council members with the minutes prior to publication. The minutes are then considered and approved at the next Council meeting.

ISSUE

Whether the Council violated the open meetings laws by allowing its members to edit draft minutes prior to publication.

ANALYSIS

An interested person may request an Attorney General's opinion to review an alleged violation of N.D.C.C. § 44-04-21 by any public entity. N.D.C.C. § 44-04-21.1. Section 44-04-21, N.D.C.C., requires governing bodies to keep minutes of all open meetings. At a minimum minutes must include:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;

¹ Within seven days of the meeting, minutes must be given to the city's official newspaper for publication. N.D.C.C. § 40-01-09.1.

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- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

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N.D.C.C. § 44-04-21.

Mr. Reed alleges the Council members may be making substantive changes to the minutes prior to publication and prior to the Council's next regular meeting. He asserts these changes should be discussed in an open meeting.

In N.D.A.G. 98-O-18, this office, when asked to determine if minutes prepared by the Regan City Council were accurate, stated:

The Attorney General's office does not review all alleged inaccuracies in meeting minutes. This office determines whether minutes meet the minimum requirements as specified in N.D.C.C. § 44-04-21(2). Among other things, the minutes must include "[a] list of topics discussed regarding public business." N.D.C.C. § 44-04-21(2)(c). Mr. Young does not contend that the minutes do not include all of the topics discussed at the April 6, 1998, meeting. State law provides that it is the duty of the city auditor to "attend all meetings of the governing body and keep a complete record of its proceedings. The official proceedings are to be signed by the auditor when they are prepared and by the executive officer upon board approval at a subsequent meeting." N.D.C.C. § 40-16-03(1). Thus, it is the responsibility of the city auditor and city council to make sure that minutes of meetings are accurate. The Attorney General's office will only review the content of meeting minutes to determine whether they meet the minimum requirements as specified in N.D.C.C. § 44-04-21(2).

Thus, N.D.C.C. § 44-04-21 is violated only if the governing body fails to meet its requirements. See also N.D.A.G. 98-O-14 (N.D.C.C. § 44-04-21 was not violated when the minutes did not reflect discussions that took place, provided the topics were included in the minutes).

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Section 44-04-21, N.D.C.C., is silent as to if or when minutes may be edited. Therefore, it is my opinion that the open meetings law is not violated when individual Council members propose edits of the minutes to the auditor.

The Council should be aware, however, that other laws govern the extent to which minutes may be edited. It is the city auditor's duty to attend all governing body meetings and to keep complete records of its proceedings. N.D.C.C. § 40-16-03. In an opinion from this office interpreting a similar statute related to the county auditor, the Attorney General stated that the county commissioners' authority to make corrections to the minutes is limited to defects or errors in the minutes. N.D.A.G. 98-F-25. The authority to edit minutes does not authorize the governing body to rewrite or to remove accurate information from the minutes. Id. A copy of the opinion is enclosed.

CONCLUSION

Based on the foregoing, it is my opinion that the Gladstone City Council did not violate N.D.C.C. § 44-04-21.

Wayne Stenehjem
Attorney General

Assisted by: Mary Kae Kelsch
Assistant Attorney General

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Enclosure