

ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 98-O-17

DATE ISSUED: July 10, 1998

ISSUED TO: Barb Siegel, Chair, Child Support Guidelines Drafting Advisory Committee

CITIZEN'S REQUEST FOR OPINION

On June 26, 1998, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Susan Beehler asking whether the open meetings law was violated when she was prevented from attending a meeting of the child support guidelines drafting advisory committee on June 22, 1998.

FACTS PRESENTED

The child support guidelines drafting advisory committee ("Committee") is composed of ten persons, two of whom are state legislators. The chair of the Committee is Barb Siegel, the policy administrator for the Child Support Enforcement Division of the North Dakota Department of Human Services ("Department"). On June 22, 1998, a Committee meeting was held in the conference room at the Child Support Enforcement Division's office. Office hours ordinarily conclude at 5 p.m. The meeting was scheduled to begin at 5:30 p.m. and continue until 9:30 p.m. The office door, ordinarily locked, was left open until 5:30 p.m. to admit meeting participants. After all attendees were present, the front office door was locked. The door remained locked throughout the meeting. Susan Beehler stated that she attempted to attend this meeting at about 7:30 p.m. and found the door locked, so she was prevented from attending the meeting. Ms. Beehler's opinion request indicates that she is a member of a group that wants to have input on the Committee's review of the child support guidelines.

Before the meeting, a memorandum dated June 17, 1998, had been provided to the members of the Committee. Attached to this memorandum were draft amendments to the existing child support guidelines. These draft amendments were discussed and commented on during the June 22, 1998, meeting.

Detailed notes were kept of the discussion and comments that were made during the June 22, 1998, meeting. Those notes have been transcribed. The meeting was not tape recorded.

ISSUES

1. Whether the child support guidelines drafting advisory committee is subject to the open meetings law.

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2. Whether the open meetings law was violated when Susan Beehler was prevented from attending the June 22, 1998, meeting of the child support guidelines drafting advisory committee.

ANALYSES

Issue One:

The North Dakota Legislature passed a welfare reform bill in 1997 which, among other things, required the Department to institute a new rulemaking proceeding relating to child support guidelines. 1997 N.D. Sess. Laws ch. 404, § 23; see also N.D.C.C. § 14-09-09.7(4). The Legislature also provided: "Before commencing any rulemaking proceeding under this section, the department [of human services] shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council." N.D.C.C. § 14-09-09.7(4).

"Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public." N.D.C.C. § 44-04-19 (emphasis added). A "meeting" includes "a formal or informal gathering . . . of . . . [a] quorum of the members of the governing body of a public entity regarding public business . . ." N.D.C.C. § 44-04-17.1(8) (emphasis added). A "governing body" means "the multimember body responsible for making a collective decision on behalf of a public entity." N.D.C.C. § 44-04-17.1(6). "Public entity" means all . . . [p]ublic or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by . . . state statute, . . . to exercise public authority or perform a governmental function . . ." N.D.C.C. § 44-04-17.1(12) (emphasis added).

N.D.C.C. § 14-09-09.7 directs the Department to convene the Committee. The Committee is actually created by the Department, but N.D.C.C. § 14-09-09.7 identifies the Committee as a specific group that must be involved in the public business of reviewing the child support guidelines. Therefore, a gathering of the members of the Committee to discuss the guidelines involves a public entity and pertains to public business.

The multimember body responsible for making a decision on behalf of the Committee is the Committee itself. By creating a "child support advisory committee" and requiring that the Committee be involved in the review of the child support guidelines before a new rulemaking is initiated, the Legislature has by clear implication recognized the Committee as an advisory group for the Department. Although the Committee serves only in an advisory capacity to the Department, the Committee makes collective decisions about what advice it will provide the Department regarding the child support guidelines.

In conclusion, it is my opinion that the Committee is the governing body of a public entity and is, therefore, subject to N.D.C.C. § 44-04-19, the open meetings law.

Issue Two:

The open meetings law is violated “when any person is denied access to a meeting under this section” N.D.C.C. § 44-04-19(1). Ms. Beehler’s request indicates that she wanted to have input on the Committee’s review of the guidelines. However, having a right to attend a meeting does not mean that one has the right to provide input at the meeting. In this case, Susan Beehler had a right to attend the Committee meeting and review a copy of the amendments being discussed, but had no right to provide input at the Committee meeting.

The door was locked at 7:30 p.m. when Susan Beehler attempted to attend the meeting of the Committee. Therefore, it is my opinion that Susan Beehler was denied access to the June 22, 1998, meeting of the Committee, resulting in a violation of N.D.C.C. § 44-04-19, the open meetings law.

CONCLUSIONS

1. It is my opinion that the child support guidelines drafting advisory committee is subject to the open meetings law.
2. It is my opinion that the open meetings law was violated when Susan Beehler was denied access to the June 22, 1998, meeting of the child support guidelines drafting advisory committee.

STEPS NEEDED TO REMEDY VIOLATION

A notice that the June 22, 1998, meeting occurred needs to be prepared and filed with the Secretary of State’s office. N.D.C.C. § 44-04-20(4). The notice must contain the date, time, and location of the meeting and the topics that were considered at the meeting. N.D.C.C. § 44-04-20(2). The notice must also specify that detailed notes indicating what transpired at the meeting and a June 17, 1998, memorandum with attached draft amendments which were discussed at the meeting are available from the Committee to any member of the public. Because access to the meeting would have been free, copies of the minutes must be given free of charge upon request. Due to the thoroughness of the notes, a new meeting is unnecessary. This notice of the occurrence of the June 22, 1998, meeting must be filed within seven days of the date this opinion is issued.

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Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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Enclosures