

**OPEN RECORDS AND MEETINGS OPINION
2016-O-23**

DATE ISSUED: December 29, 2016

ISSUED TO: North Valley Arts Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Sam Easter with the Grand Forks Herald asking whether North Valley Arts Council violated N.D.C.C. § 44-04-19 when it asked a reporter to leave a meeting.

FACTS PRESENTED

The North Valley Arts Council (NoVAC) is a public entity that “supports and promotes arts and culture for the artists, arts organizations, and citizens of Greater Grand Forks.”¹ The NoVAC Board of Directors is composed of four individuals.² At a special meeting on August 22, 2016, NoVAC passed a motion calling for a merger between NoVAC and the Public Arts Commission (PAC).³ The President of the NoVAC Board of Directors is also a member of PAC Board. It was understood by NoVAC that PAC would be holding a meeting at a future date to also vote on the merger and to “approve NoVAC board members to the PAC Board.”⁴

The PAC Board of Directors held a meeting on September 23, 2016.⁵ The President and Treasurer of NoVAC were in attendance at the meeting.⁶ “The purpose by NoVAC Board members to attend the PAC meeting was to be available to give information if needed and to be present to witness the possible motions for merging and approving of

¹ <http://www.novac.org/about-us.html>.

² Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016); see also <http://www.novac.org/about-us.html>.

³ Minutes, Special Meeting, NoVAC (Aug. 22, 2016); see also Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016).

⁴ Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016); see also Minutes, Special Meeting, NoVAC (Aug. 22, 2016).

⁵ Minutes, Bd. of Dir., NoVAC (Sept. 23, 2016).

⁶ Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016).

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NoVAC Board members to the PAC.”⁷ Although PAC noticed the September 23, 2016, meeting, the agenda did not specifically refer to NoVAC. During the “PAC Business Plan” part of the meeting, PAC discussed budget reports for merging with NoVAC.⁸ After discussion, a vote was taken and approved to merge PAC with NoVAC.⁹ Even though a quorum of the NoVAC board was present, NoVAC did not provide notice of the September 23, 2016, PAC meeting. The Grand Forks Herald was not allowed to attend the meeting and requests an opinion on whether the meeting was subject to the open meetings law.¹⁰

ISSUE

Whether it was a violation of N.D.C.C. § 44-04-19 when a reporter was asked to leave a meeting of a quorum of NoVAC’s Board of Directors who attended a September 23, 2016, meeting of the PAC to discuss a future merger of the two entities.

ANALYSIS

“Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.”¹¹ A “meeting” occurs when a quorum of the members of the governing body is present and “public business” is being considered or discussed.¹² “Quorum” means “one-half or more of the members of the governing body.”¹³ “Public business” includes all matters that relate or may foreseeably relate in any way to the performance of the public entity’s governmental functions or use of public funds.¹⁴ Open meetings law requires public notice to be given in advance of all meetings and meeting minutes be taken.¹⁵

This office has long recognized that when a quorum of members of a governing body attends a meeting of another group, and the group’s discussion pertains to the public business of the governing body, the attendance of the members of the governing body

⁷ Id.

⁸ Agenda, Bd. of Dir., PAC (Sept. 23, 2016); Minutes, Bd. of Dir., PAC (Sept. 23, 2016).

⁹ Minutes, Bd. of Dir., PAC (Sept. 23, 2016).

¹⁰ Email from Sam Easter, The Grand Forks Herald, to Att’y Gen. (Sept. 27, 2016, 5:54 PM).

¹¹ N.D.C.C. § 44-04-19. NoVAC recognizes it is a public entity subject to open meetings law. Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016).

¹² N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

¹³ N.D.C.C. § 44-04-17.1(15) (definition of “quorum”).

¹⁴ N.D.C.C. § 44-04-17.1(12) (definition of “public business”).

¹⁵ N.D.C.C. §§ 44-04-20; 44-04-21(2).

is a “meeting” subject to open meeting laws, even if the attendance of a quorum at the meeting is unplanned or unexpected.¹⁶ This conclusion applies even if the members of the governing body merely listen, do not participate in the meeting, or attend merely as a “concerned citizen.”¹⁷

The September 26, 2016, meeting was attended by a quorum of the NoVAC Board of Directors.¹⁸ Prior to this meeting, NoVAC voted to merge with PAC and attended this meeting specifically to provide any information, if needed, involving the merger.¹⁹ During the meeting, the merger was discussed at length and a motion was made to accept NoVAC as a partner and merge the organizations. The “public business” of NoVAC was therefore considered and discussed during the PAC meeting. The September 23, 2016, meeting was a “meeting” of NoVAC that required public access,²⁰ proper notice,²¹ and meeting minutes.²²

CONCLUSION

Attendance by two of the four members of the NoVAC Board of Directors at the PAC’s September 23, 2016, meeting constituted a “meeting” of NoVAC because a quorum was present and public business was discussed. It was a violation of open meeting laws to deny public access.

STEPS NEEDED TO REMEDY VIOLATION

NoVAC must create detailed meeting minutes of the discussions relating to its public business that occurred during the September 23, 2016, PAC meeting. These minutes must be provided to Sam Easter, and anyone else requesting, free of charge.

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

¹⁶ N.D.A.G. 2013-O-14; N.D.A.G. 2012-O-06; N.D.A.G. 2008-O-10; N.D.A.G. 98-O-18; N.D.A.G. 98-O-08.

¹⁷ N.D.A.G. 2013-O-14; N.D.A.G. 2012-O-06; N.D.A.G. 2008-O-10; N.D.A.G. 98-O-18; N.D.A.G. 98-O-08.

¹⁸ Letter from Bryan Hoime, President of NoVAC, to Sandra DePountis, Asst. Att’y Gen. (Oct. 3, 2016). Two of the four Board of Directors members were present at the meeting.

¹⁹ Id.; see also Minutes, Special Meeting, NoVAC (Aug. 22, 2016).

²⁰ N.D.C.C. § 44-04-19.

²¹ N.D.C.C. § 44-04-20.

²² N.D.C.C. § 44-04-21(2).

under N.D.C.C. § 44-04-21.2.²³ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁴

Wayne Stenehjem
Attorney General

sld
cc: Sam Easter (via email only)

²³ N.D.C.C. § 44-04-21.1(2).

²⁴ Id.