

**OPEN RECORDS AND MEETINGS OPINION
2017-O-02**

DATE ISSUED: May 12, 2017

ISSUED TO: Glen Ullin City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Kevin Kloosterman asking whether the Glen Ullin City Council violated N.D.C.C. §§ 44-04-19 and 44-04-20 by failing to notice a public meeting.

FACTS PRESENTED

The Glen Ullin City Council held a regular meeting on March 13, 2017.¹ During the meeting, the Council voted unanimously to rent a DuraPatcher for one month beginning May 1, 2017, with a rental purchase option for purchase on June 1, 2017.² Mr. Kloosterman alleges that, based on discussions at that meeting, the Council must have met previously, without providing notice, to discuss the purchase of the DuraPatcher.³

ISSUE

Whether the City Council held a meeting without providing public notice in violation of N.D.C.C. §§ 44-04-19 and 44-04-20.

ANALYSIS

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.⁴ A “meeting” is defined as a “formal or informal gathering of . . . [a] quorum of the members of the governing body of a public entity regarding public business.”⁵ A “quorum” means “one-half or more of the members of the governing

¹ Agenda, Glen Ullin City Council (Mar. 13, 2017); Minutes, Glen Ullin City Council (Mar. 13, 2017).

² Minutes, Glen Ullin City Council (Mar. 13, 2017).

³ Email from Kevin Kloosterman to Attorney General’s Office (April 6, 2017, 2:44 pm).

⁴ N.D.C.C. § 44-04-19.

⁵ N.D.C.C. § 44-04-17.1(9)(a) (definition of “meeting”).

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body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.”⁶ “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 and include “any matter over which the public entity has supervision, control, jurisdiction, or advisory power.”⁷ Meetings must be open to the public,⁸ preceded by sufficient public notice,⁹ and summarized in sufficient minutes.¹⁰

In preparing this opinion, I asked each Council member to individually submit a statement documenting conversations with any other Council member regarding the purchase of the DuraPatcher. According to the statements, prior to the March 13, 2017, meeting, four of the seven Council members met one morning with the DuraPatcher salesman who answered questions and provide updated “literature,” rental rates, and purchase information.¹¹ The Council members believed it was their duty to obtain information about the DuraPatcher to bring to the full Council at the next regularly scheduled meeting.

This office has long recognized that the definitions of “meeting” and “public business” cover all stages of the decision-making process, including information gathering.¹² Because a quorum of the City Council met and gathered information on a topic of public business, a “meeting” was held subject to open meeting laws. The City Council violated open meeting laws when it failed to post notice or take minutes of the meeting.

CONCLUSION

The City Council violated open meeting laws when it failed to post notice or create minutes of a meeting in which a quorum was present and received information on public business.

⁶ N.D.C.C. § 44-04-17.1(15) (definition of “quorum”).

⁷ N.D.C.C. § 44-04-17.1(12) (definition of “public business”).

⁸ N.D.C.C. § 44-04-19.

⁹ N.D.C.C. § 44-04-20.

¹⁰ N.D.C.C. § 44-04-21.

¹¹ See Statement of Terri Kloosterman (Apr. 21, 2017); Statement of Audrey Duppong (Apr. 23, 2017); Statement of Doug Martwick (Apr. 21, 2017); Statement of Dennis Emter (Apr. 23, 2017); Statement of Gary Glasser (Apr. 23, 2017); Statement of Anthony Schirado (Apr. 21, 2017); and Statement of Sid White (Apr. 21, 2017).

¹² N.D.A.G. 2015-O-06; N.D.A.G. 2014-O-23; N.D.A.G. 2014-O-19; N.D.A.G. 2012-O-02; N.D.A.G. 2011-O-04; N.D.A.G. 2008-O-13; N.D.A.G. 2004-O-15; N.D.A.G. 2004-O-08; N.D.A.G. 98-O-11; N.D.A.G. 98-O-05.

STEPS NEEDED TO REMEDY VIOLATION

The City Council members present at the morning meeting in which the salesman for the DuraPatcher provided information and answered questions must create detailed meeting minutes of all conversations that took place. These meeting minutes must be provided to Mr. Kloosterman, and anyone else requesting, free of charge. I also advise the members of the City Council to review the open meetings law by reviewing the materials available on the Office of Attorney General's website.¹³

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. § 44-04-21.2.¹⁴ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁵

Wayne Stenehjem
Attorney General

sld
cc: Kevin Kloosterman (via email only)

¹³ www.attorneygeneral.nd.gov.

¹⁴ N.D.C.C. § 44-04-21.1(2).

¹⁵ *Id.*