

**OPEN RECORDS AND MEETINGS OPINION
2021-O-02**

DATE ISSUED: April 16, 2021

ISSUED TO: City of Grand Forks

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Korrie Wenzel asking whether the City of Grand Forks violated N.D.C.C. § 44-04-19 by holding a meeting without notice.

FACTS PRESENTED

Grand Forks City Council member, Bret Weber, requested that Mayor Brandon Bochenski put together an “expert panel” in order to have a locally focused panel of experts to provide their expertise and knowledge on COVID-19 pandemic related concerns. Weber suggested members to serve on the panel to the Mayor who sent a letter asking if the suggested people were willing to serve on the panel.¹

Four meetings of the expert panel took place via Zoom. Notices of the meetings were not provided to the public. Although the other city council members were aware of the existence of the expert panel, only Weber and the Mayor knew when the panel would be meeting. The Mayor, Weber, and various city personnel attended some of the meetings.

The expert panel provided input to Mark Schill, a Grand Forks consultant; Debbie Swanson, Director of Grand Forks Health Department; Michael Dulitz, a Grand Forks Health Department employee; Todd Feland, Grand Forks City Administrator; Weber; and Mayor Bochenski. It also drafted a document entitled “The Grand Forks Mayor’s COVID-19 Expert Panel First Interim Report.” The report was discussed at the August 24, 2020, meeting of the Grand Forks Committee of the Whole.

¹ Panel members are Dr. Joel Walz, Dr. Marc Basson, Dr. David Bradley, and Dr. Rashid Ahmed, and Phil Gisi. Letter from Daniel L. Gaustad, City Att’y, Grand Forks, to Att’y Gen. Office (Oct. 6, 2020).

ISSUE

Whether the expert panel is a governing body of a public entity and therefore subject to open meetings law.

ANALYSIS

A “meeting” is defined as a “formal or informal gathering or a work session . . . of [a] quorum of the members of the governing body of a public entity regarding public business.”² A “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.³ Under this definition, when a governing body delegates authority to two or more people to perform any function on its behalf, including gathering information, reporting, or recommending or taking action, a “committee” is formed which is subject to open meetings law.⁴ When a quorum of the committee gathers to perform the function delegated, it is holding a “meeting” that must be noticed in compliance with N.D.C.C. § 44-04-20.⁵

Grand Forks maintains that the expert panel was not subject to the open meetings law because it was not a committee of the city council. The expert panel does appear to meet the definition of a “Taskforce or working group”; however, that definition only applies to groups created by the individual in charge of a state agency or institution rather than a political subdivision.⁶ Thus, in order for the expert panel to be subject to the open meetings law, it must be a committee of the city council. Although the city council was eventually aware that an expert panel existed, the city council did not create it or know when it was meeting.

² N.D.C.C. § 44-04-17.1(9)(a).

³ N.D.C.C. § 44-04-17.1(6).

⁴ N.D.A.G. 2016-O-15; N.D.A.G. 2014-O-05; N.D.A.G. 2009-O-12. A governing body does not need to make a formal motion to create a committee. Rather, if the governing body of a public entity consents, authorizes, or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed. N.D.A.G. 2016-O-15.

⁵ N.D.A.G. 2016-O-15.

⁶ *See* N.D.C.C. 44-04-17.1(17) “[A] group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution”.

OPEN RECORDS AND MEETINGS OPINION 2021-O-02

April 16, 2021

Page 3

In 1997, this office found that a Superintendent's cabinet was not a committee delegated authority by the school board, but rather, was created by the Superintendent. Thus, the Superintendent's cabinet was not required to provide notice of its meetings. This situation is somewhat similar as it was the Mayor who created the expert panel and not the Grand Forks city council. Even though Weber requested the Mayor to create the panel, nothing indicates that a quorum of the city council was involved. I must take the facts provided to me by the public entity. Based on these facts, at the time of the meetings in July and August a delegation of authority had not been made by the city council. Therefore, the expert panel was not subject to the open meetings law and notice was not required.⁷

CONCLUSION

The four meetings that took place in July and August of the expert panel were not meetings of a governing body subject to the open meetings law because no delegation by a governing body had been made.

Wayne Stenehjem
Attorney General

mkk

cc: Korrie Wenzel (via email only)

⁷ This opinion covers the meetings held prior to the expert panel's report being presented to the city council. The expert panel could become subject to the open meetings law as a committee of the city council if the city council directs the expert panel to do work on its behalf.