

**OPEN RECORDS AND MEETINGS OPINION
2022-O-03**

DATE ISSUED: April 6, 2022

ISSUED TO: City of Benedict

CITIZEN'S REQUEST FOR OPINION

Allen Tomlinson requested an opinion under N.D.C.C. § 44-04-21.1, asking whether the Benedict City Council violated N.D.C.C. § 44-04-20 by failing to properly notice a meeting.

FACTS PRESENTED

The Benedict City Council holds regularly scheduled meetings on the second Monday of every month at City Hall.¹ The City Council usually posts its meeting notices on the bulletin board in the lobby of the Benedict Post Office as well as on the front door of City Hall.² An agenda was prepared for the July 12, 2021, City Council meeting but no notice was prepared or posted.³

ISSUE

Whether the Benedict City Council properly noticed its July 12, 2021, regular meeting in compliance with N.D.C.C. § 44-04-20.

ANALYSIS

Notice must be given to the public in advance of all meetings of a public entity.⁴ The notice must include the date, time, and location of the meeting and must list the topics to be considered.⁵ Notice must be posted at the principal office of the governing body holding the meeting and, on the day the public entity meets, at the location of the meeting.⁶ The governing body's presiding officer is responsible for

¹ Letter from Teresa Barrette, Member, Benedict City Council, to Att'y Gen.'s Office. (Aug. 12, 2021).

² *Id.*

³ *Id.*

⁴ N.D.C.C. § 44-04-20(1); *see also* N.D.A.G. 2016-O-02.

⁵ N.D.C.C. § 44-04-20(2).

⁶ N.D.C.C. § 44-04-20(4).

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providing an initial public notice at the same time that the governing body's members are notified.⁷

If the respective public entity creates an agenda, it must follow the open meeting posting requirements for the agenda as well as the meeting notice requirements.⁸ The lack of an agenda on the notice does not affect the validity of the meeting.⁹ "As soon as an agenda is prepared . . . and given to members of the governing body, the agenda must be posted" at the governing body's principal office and at the meeting location on the day of the meeting.¹⁰

No meeting notice was prepared for the July 12, 2021, Benedict City Council regular meeting.¹¹ Neither was a meeting notice posted at the principal office or, on the day of the meeting, at the location of the meeting.¹² An agenda was prepared for the meeting but was not posted in the required locations.¹³ Mayor Tebby, acting auditor at the time, did not realize until after the meeting that she had not posted the meeting notice.¹⁴

The City Council failed to post the meeting notice or meeting agenda at its principal office and the location of the meeting.¹⁵ Accordingly, the City Council violated North Dakota open meetings laws for having failed to both prepare and properly post notice of a meeting.

CONCLUSION

The Benedict City Council violated N.D.C.C. § 44-04-20 when it failed to prepare and properly post notice of its July 12, 2021, regular meeting.

STEPS NEEDED TO REMEDY VIOLATION

The City Council already prepared, and printed in the newspaper, detailed minutes of its July 12, 2021, regular meeting. Additionally, the City Council must cause

⁷ N.D.C.C. § 44-04-20(5); *see also* N.D.A.G. 2021-O-03.

⁸ N.D.C.C. § 44-04-20(5).

⁹ N.D.C.C. § 44-04-20(2).

¹⁰ N.D.C.C. § 44-04-20(5).

¹¹ Letter from Teresa Barrette, Member, Benedict City Council, to Att'y Gen.'s Office. (Aug. 12, 2021).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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copies of the detailed minutes to be provided to Mr. Tomlinson, and anyone else requesting them, free of charge.

While I have reason to expect the City Council will remedy this situation, I do note that failure to take the corrective measures described in this opinion within seven days of its date 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. § 44-04-21.2.¹⁶ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁷

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Attorney General

aml
cc: Allen Tomlinson (via email only)

¹⁶ N.D.C.C. § 44-04-21.1(2).

¹⁷ *Id.*