

**OPEN RECORDS AND MEETINGS OPINION
2001-O-01**

DATE ISSUED: February 13, 2001

ISSUED TO: Michael Maus, South Heart City Attorney

CITIZEN'S REQUEST FOR OPINION

On December 19, 2000, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Richard Volesky on behalf of The Dickinson Press asking whether the South Heart City Council violated N.D.C.C. §§ 44-04-19, 44-04-19.2, 44-04-20, and 44-04-21 by holding an executive session which was not authorized by law, by failing to follow the statutory procedures for holding an executive session, by failing to comply with a request for notice of a meeting, and by keeping minutes of a meeting which lacked certain required information.

FACTS PRESENTED

The South Heart City Council (Council) held a regular meeting on December 4, 2000, during which it held an executive session with a local economic development official to discuss a private business which might be interested in locating in South Heart. The published draft minutes of the December 4 meeting do not indicate the legal authority or topic of the executive session. However, in response to an inquiry from this office, the Council indicated that it announced during the meeting that the legal authority for the executive session was N.D.C.C. § 44-04-18.4 and that the purpose of the executive session was to "discuss proprietary information regarding economic development."

The Council has provided to this office updated draft minutes which indicate the legal authority and topic of the executive session and disputes whether The Dickinson Press has asked for a copy of the notice for each meeting of the Council.

The executive session lasted approximately five minutes and was recorded pursuant to N.D.C.C. § 44-04-19.2. The recording has been reviewed by this office.

ISSUES

1. Whether the Council violated N.D.C.C. § 44-04-19.2 by failing to announce the legal authority and topic to be discussed during the executive session.
2. Whether the executive session of the Council was authorized by law and limited to the topics and legal authority announced during the open portion of the meeting.
3. Whether the Council violated N.D.C.C. § 44-04-20 by failing to provide notice of its December 4 meeting to The Dickinson Press.

OPEN RECORDS AND MEETINGS OPINION 2001-O-01

February 13, 2001

Page 2

4. Whether the minutes of the Council comply with the requirements in N.D.C.C. §§ 44-04-19.2 and 44-04-21(2).

ANALYSES

Issue One:

Whether an announcement of an executive session was made and contained certain information is a question of fact which, if disputed, will be resolved in favor of the public entity. N.D.C.C. § 44-04-21.1; N.D.A.G. 2000-O-04 at p. O-14. The Council's response to the request for this opinion states that the legal authority and topic to be considered during the executive session were announced before the meeting was closed. The revised draft minutes of the meeting include this announcement as well as the results of the Council's vote to hold the executive session. Accordingly, it is my opinion that the Council's executive session on December 4 was held in compliance with N.D.C.C. § 44-04-19.2.

Issue Two:

Based on the open records exception in N.D.C.C. § 44-04-18.4 for economic development records pertaining to the prospective identity, nature, and location of an industry or business, a discussion by the governing body of a public entity regarding its efforts to recruit a business for location or expansion in the area served by the public entity may be held in executive session. N.D.A.G. 2000-O-07. A review of the recording of the brief executive session indicates that the discussion was limited to the Council's proposed assistance in recruiting a business to the South Heart area. Therefore, it is my opinion that the Council's executive session on December 4 was authorized by law and limited to the announced topics and legal authority.

Issue Three:

Notice of a meeting must be given to any individual who requests it. N.D.C.C. § 44-04-20(5). Mr. Volesky claims that The Dickinson Press sent a form letter to the city auditor in November requesting notice of each of the Council's meetings. However, the city auditor has no recollection of this request. This disputed fact must be resolved in favor of the Council. N.D.C.C. § 44-04-21.1. It is my opinion that the Council did not violate N.D.C.C. § 44-04-20 by failing to notify The Dickinson Press of its December 4 meeting.

Issue Four:

The final issue raised in this opinion is the sufficiency of the Council's minutes of the December 4 meeting. As Mr. Volesky notes, the published draft minutes do not contain the legal authority and topic of the executive session, nor do the minutes indicate the results of several votes. In addition, the draft minutes suggest that the Council made a motion and voted during the executive session. However, the recording of the executive session indicates that the vote did not occur until after the Council reconvened in the open portion of the meeting.

This office cannot review the sufficiency of minutes until the minutes have been approved by the governing body, because a deficiency in the minutes may still be cured by the body. N.D.A.G. 98-O-25. In addition, the Council has provided revised draft minutes to this office which cure some of the deficiencies noted by Mr. Volesky. It is my opinion that the Council has not violated N.D.C.C. § 44-04-21.

CONCLUSIONS

1. The Council's executive session on December 4 complied with the procedural requirements in N.D.C.C. § 44-04-19.2.
2. The December 4 executive session was authorized by law and limited to the topics and legal authority announced during the open portion of the meeting.
3. The Council did not violate N.D.C.C. § 44-04-20 because it was not required to provide notice of the meeting to The Dickinson Press.
4. The draft minutes of the Council's meeting on December 4 do not violate N.D.C.C. § 44-04-21.

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