

**OPEN RECORDS AND MEETINGS OPINION
2001-O-08**

DATE ISSUED: August 20, 2001

ISSUED TO: Karl Hoppe, City Auditor, Grace City

CITIZEN'S REQUEST FOR OPINION

On July 10, 2001, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ronald Brakke asking whether the Grace City Council violated N.D.C.C. § 44-04-20 by holding a meeting which was not preceded by sufficient public notice.

FACTS PRESENTED

The Grace City Council (Council) held a special meeting on June 27, 2001. The meeting began at 10:30 p.m. and lasted for twenty minutes. Both the mayor and the city auditor of Grace City recently had resigned. The Council met on June 27 to identify a president and vice president and to appoint someone to the offices of mayor and auditor. The Council also discussed the purchase of a videotape recorder. The City's response to the request for this opinion indicates the notice of the meeting was posted on the community bulletin board at the location of the meeting. The City has no main office or official newspaper and no one had asked to be notified of the Council's meetings. In a telephone conversation with a staff attorney in this office, a Council member explained that the Council did not decide to meet on June 27 until early that day and the notice was posted on the bulletin board as soon as the members of the Council decided to hold the meeting.

ISSUE

Whether the June 27, 2001, meeting of the Grace City Council was preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

All meetings of the governing body of a city in North Dakota are required to be open to the public unless otherwise specifically provided by law (N.D.C.C. § 44-04-19) and preceded by written public notice in substantial compliance with the requirements in N.D.C.C. § 44-04-20. Notice of special meetings of a city council must be posted in the city's principal office if it has one, posted at the meeting location on the day of the meeting, filed in the office of the city auditor or other designee of the city, provided to the city's official newspaper if it is required by law to have one, and provided to any representatives of the media or members of the public who have requested it. N.D.C.C. § 44-04-20(4), (5), (6).

In this case, Grace City has no principal office and no one has asked for notice of the Council meetings. Also, until the Council appointed a city auditor at the June 27

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meeting, the City temporarily lacked a city auditor or other designee with whom to file the notice of the meeting. The Grace City Council has also indicated that it has no official newspaper. However, state law requires every city to have an official newspaper. N.D.C.C. § 40-01-09, copy enclosed. The Council's failure to designate an official city newspaper appears to be inadvertent. However, N.D.C.C. § 44-04-20 requires governing bodies to notify its official newspaper of special or emergency meetings if the governing body is required by law to have an official newspaper.

In this case, the Council was required under N.D.C.C. § 44-04-20 to post the notice of its June 27 meeting at the location of the meeting as soon as the meeting was scheduled, and to notify its official newspaper about the meeting. It failed to do the latter. Therefore, it is my opinion the notice provided by the Council for its June 27 meeting did not substantially comply with the requirements of N.D.C.C. § 44-04-20.

CONCLUSION

The Grace City Council did not provide sufficient public notice of its special meeting on June 27, 2001.

STEPS NEEDED TO REMEDY VIOLATION

The Council must meet at a properly noticed meeting to ratify the action taken by the Council at its June 27, 2001, special meeting. This will require the Council to meet prior to that meeting to appoint an official newspaper in accordance with N.D.C.C. § 40-01-09.

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. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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