

**OPEN RECORDS AND MEETINGS OPINION  
2003-O-13**

DATE ISSUED:      October 22, 2003

ISSUED TO:         Minto 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 Sue Tibert asking whether the Minto City Council violated N.D.C.C. §§ 44-04-20 and 44-04-21 by failing to provide proper notice and failing to prepare proper minutes of a Employee Relations Committee meeting.

**FACTS PRESENTED**

At the end of the Minto City Council's April 7, 2003, regular meeting, it was announced that the Council's Employee Relations Committee would meet with the city auditor, Tami Ulland, on May 5, 2003, at 6:30 p.m., one-half hour prior to the Council's regularly-scheduled 7:00 p.m. meeting. The minutes of the Minto City Council's April 7, 2003, meeting published in the newspaper, also stated "The Employee Relations Committee will meet with Mrs. Ulland on May 5, 2003, at 6:30 p.m."

On Monday, April 28, a member of the Employee Relations Committee approached Ms. Ulland, the city auditor, and suggested the meeting be held Wednesday, April 30 at 7:00 p.m. at the auditor's office because the one-half hour meeting scheduled for 6:30 p.m. on May 5 was not enough time. The committee member said she would contact the other committee members about the change and that Ms. Ulland should post a notice if she did not hear from her otherwise. Ms. Ulland works as the city auditor on Wednesdays and Fridays. On Wednesday, April 30, 2003, Ms. Ulland posted a notice on the auditor's door regarding the Employee Relations Committee meeting. The notice stated:

EMPLOYEE RELATIONS COMMITTEE MEETING  
AGENDA  
April 30, 2003  
7:00 PM  
AUDITOR'S OFFICE

1. Review of Tami's job duties.
  2. Jason's 6-month review.
  3. Adjournment.
- Next regular meeting: May 5, 2003.

On April 30, 2003, Sue Tibert happened to go to the auditor's office at 8:00 p.m. She walked in on the Employee Relations Committee meeting with Ms. Ulland. Ms. Tibert did not see any notice posted of the meeting. She did not receive a notice of the meeting even though she had previously requested to be notified of all meetings of the Employee Relations Committee. The city acknowledges it forgot to notify her as she had requested.

No minutes were taken of the April 30 meeting. Instead of minutes, a "working document" was provided to this office, which was relevant to the agenda items regarding Tami Ulland's job duties as auditor.

#### ISSUES

1. Whether the Minto City Council's Employee Relations Committee violated N.D.C.C. § 44-04-20 by failing to give proper notice of its April 30, 2003, meeting.
2. Whether the Minto City Council's Employee Relations Committee violated N.D.C.C. § 44-04-21(2) by not keeping minutes of its April 30, 2003, meeting.

#### ANALYSES

##### Issue One

A "governing body" of a "public entity" subject to the open meetings and records laws includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body." N.D.C.C. § 44-04-17.1(6). Under this definition, a committee delegated authority to perform a function, including fact gathering, reporting, or recommending action, as well as taking actions, on behalf of a governing body is subject to the state's open meetings laws. *cf.* N.D.A.G. 2001-O-04. Committees of a city council are therefore subject to the same meeting notice

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requirements as the city council. See N.D.A.G. 2001-O-11 (the definition of governing body also applies to the executive committee).

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1. N.D.C.C. § 44-04-20(1). The time, place, date and topics to be considered at a special or emergency meeting must be stated in the meeting notice. N.D.C.C. § 44-04-20(6). The notice must be filed with the city auditor, posted at the public entity's main office if one exists, and posted at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4); N.D.A.G. 2002-O-10. In addition, for special or emergency meetings, the public entity's official newspaper and any representatives of the news media who have requested to be notified of such special or emergency meetings, must be notified of the time, place, date, and topics to be considered at the special or emergency meeting at the same time the governing body's members are notified.

Topics that may be considered at an emergency or special meeting are limited to those included in the notice. N.D.C.C. § 44-04-20(6); N.D.A.G. 2002-O-10. The governing body's presiding officer is responsible for ensuring that public notice is given at the same time as the governing body's members are notified and that this notice is available to anyone requesting such information. N.D.C.C. § 44-04-20(5); N.D.A.G. 98-O-13.

Ms. Tibert alleges that the city gave no notice of the April 30, 2003, meeting and that it was held "in secret." In its response to this office's request for information, Minto's attorney denies that the meeting was held "in secret." Minto's attorney produced a copy of a notice and stated that it was posted on the door of the auditor's office. In any opinion issued under N.D.C.C. § 44-04-21.1 the Attorney General must base the opinion on the facts given by the public entity. N.D.C.C. § 44-04-21.1(1).

Although the notice contains the information required by N.D.C.C. § 44-04-20(2), there are several problems with how the notice was posted. The notice should have been posted at the city office as soon as the other committee members were notified of the meeting. N.D.C.C. § 44-04-20(3), (5). Presumably, the committee members were notified of the April 30 meeting prior to the day of the meeting. If the city auditor was not available on April 28 or 29 to post the notice, it was the responsibility of the Committee's chairperson to post the notice as soon as the members of the Committee were notified. In my opinion, the Committee violated N.D.C.C. § 44-04-20(5) by not notifying the public as soon as the Committee members knew of the meeting.

The notice of the Committee's special meeting was also not provided to the city's official newspaper as required under N.D.C.C. § 44-04-20(6). The attorney for the city explains that even if it had provided the notice to the newspaper, it would have been too late for it to print the change in the newspaper. Unless otherwise provided by law, resolution, or

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ordinance, or as decided by the public entity, meeting notices need not be published. N.D.C.C. § 44-04-20(1). The purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can cover the meeting if it desires. In my opinion, the Committee violated N.D.C.C. § 44-04-20(6) by not providing notice to the official newspaper.

The Committee also failed to give notice to Ms. Tibert after she requested to be notified of all the Committee's meetings. The Committee should have given her notice of the April 30 meeting date at the same time as the Committee members were notified. N.D.C.C. § 44-04-20(5), (6). Again, it is the responsibility of the Committee chairperson to make sure everyone who has requested notice receives it. Id. In my opinion, the Committee violated N.D.C.C. § 44-04-20(5), (6) by not giving Ms. Tibert notice of the April 30 meeting of the Employee Relations Committee.

### Issue Two

Minutes must be kept of all open meetings and are records subject to section 44-04-18. N.D.C.C. § 44-04-21(2). The minutes must include, at a minimum:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;
- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

Id.

As discussed in the "FACTS PRESENTED" portion of this opinion, no minutes were taken of the Employee Relations Committee meeting. In my opinion, the Committee violated N.D.C.C. § 44-04-21(2) by failing to take minutes of their April 30, 2003 meeting.

## CONCLUSIONS

1. It is my opinion that Minto City Council's Employee Relations Committee violated N.D.C.C. § 44-04-20 by failing to give proper notice of its April 30, 2003, meeting.
2. It is my opinion that Minto City Council's Employee Relations Committee violated N.D.C.C. § 44-04-21(2) by not keeping minutes of its April 30, 2003, meeting.

### STEPS NEEDED TO REMEDY VIOLATIONS

The Employee Relations Committee must create minutes of the April 30, 2003, meeting that comply with N.D.C.C. § 44-04-21(2). A copy of the minutes must be provided to the requester, Sue Tibert, free of charge.

A notice that the April 30, 2003 meeting occurred needs to be prepared and filed with the city auditor and posted at the city's main office. N.D.C.C. § 44-04-20(4). The notice must also be provided to the city's official newspaper and any person who had previously requested to receive notice. N.D.C.C. § 44-04-20(5), (6). The notice must contain the date, time, and location of the meeting and the topics that were considered at the meeting. N.D.C.C. § 44-04-20(2). The notice must also specify that minutes are available from the city auditor to any member of the public who wants a copy, free of charge.

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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