

**OPEN RECORDS AND MEETINGS OPINION  
2004-O-08**

DATE ISSUED: April 6, 2004

ISSUED TO: McIntosh County Commission

**CITIZEN'S REQUEST FOR OPINION**

On March 8, 2004, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Tony Bender, Editor and Publisher of The Ashley Tribune asking whether the McIntosh County Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding an illegal meeting without notice prior to the McIntosh County Commission meeting on Tuesday, February 10, 2004.

**FACTS PRESENTED**

On February 10, 2004, all three members of the McIntosh County Commission unexpectedly stopped by the office of the County State's Attorney a few minutes prior to the regular County Commission meeting to speak with State's Attorney Terry Elhard. The door of the office was never closed and the Commissioners remained in the entry of the office on one side of the counter while State's Attorney Elhard stood on the other side. According to State's Attorney Elhard, he and the Commissioners discussed various complaints regarding the local sheriff and the procedure involved in recalling an elected official but no official action was taken. No minutes or recording was made of the meeting. The Commission did not provide notice to the public or the media that it was meeting with the State's Attorney.

**ISSUE**

Whether the McIntosh County Commission violated the open meetings law and notice requirements when it met with the County State's Attorney prior to the February 10, 2004, regular meeting without providing notice of the meeting to the public or media.

### ANALYSIS

“Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.” N.D.C.C. § 44-04-19. The definition of “meeting” has four main elements: public entity, governing body, public business, and a gathering of a quorum of the members of the governing body. N.D.A.G. 98-O-05; See N.D.C.C. § 44-04-17.1(8)(a). This definition does not include chance or social gatherings as long as public business is not considered or discussed. N.D.C.C. § 44-04-17.1(8)(b). “Public business” includes all matters that relate to a public entity’s performance of its governmental functions or use of public funds. N.D.C.C. § 44-04-17.1(11). Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1).

During the informal gathering, the Commissioners and State’s Attorney Elhard discussed complaints received from the public regarding the McIntosh County Sheriff, whether the Commission was in a position to do anything about the complaints, and how a recall of an elected official works. The Commission did not believe the informal gathering was a meeting because no official action was discussed or taken.

As this office has stated in previous opinions, the fact that no motions were made and no actions were taken is not relevant in determining whether the gathering was a meeting subject to the open meetings law. N.D.A.G. 98-O-11; N.D.A.G. 98-O-16. Rather, any discussion or receipt of information regarding public business at a gathering of a quorum of the Commission is a meeting under N.D.C.C. § 44-04-17.1(8) that must be properly noticed. N.D.A.G. 98-O-11; N.D.A.G. 98-O-16.

### CONCLUSION

It is my opinion that the informal gathering of the Commission on February 10, 2004, related to public business and constituted a “meeting” as defined in N.D.C.C. § 44-04-17.1 and therefore the Commission violated open meetings law and notice requirements when it failed to notice the meeting in accordance with N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATIONS

At its next regular meeting, the Commission must recreate the discussion that occurred at the meeting held in the State’s Attorney’s office prior to the Commission’s regular February 10, 2004, meeting. The Commission members must describe, to the best of their ability, the discussion and opinion of each member expressed during the meeting with the State’s Attorney. The notice and agenda for the next regular meeting should clearly state that a

OPEN RECORDS AND MEETINGS OPINION 2004-O-08

April 6, 2004

Page 3

description of the meeting held in the State's Attorney's office prior to the February 10 regular meeting will be discussed.

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.

Wayne Stenehjem  
Attorney General

Assisted by: Mary Kae Kelsch  
Assistant Attorney General

vkk