

**OPEN RECORDS AND MEETINGS OPINION  
2004-O-12**

DATE ISSUED: June 16, 2004

ISSUED TO: Medora 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 Mike Tank asking whether the Medora City Council violated N.D.C.C. § 44-04-19 by meeting with a city employee bringing a wage claim against the city without giving proper notice.

**FACTS PRESENTED**

The City of Medora received a letter from a city employee alleging he was due overtime compensation. The employee apparently threatened litigation if his claim was not paid. The city council held a meeting on February 24, 2004. At this meeting, the city council held an executive session with legal counsel to discuss the threatened litigation.<sup>1</sup> At that meeting, Philip Thompson, a city council member who is a former city employee, volunteered to assess the hours being requested. This council member met with the employee on February 27, 2004. He brought another council member, John Tczap, along as a witness, and discussed the claim with the employee. Mr. Thompson did not request Mr. Tczap to accompany him until some days had passed after the council meeting. Mr. Tank, another city employee, observed the two council members meeting with the employee who brought the claim, and asked this office whether the meeting violated the state's open meetings law.

The governing body for the City of Medora consists of the mayor and four council members. One council member position is currently vacant.

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<sup>1</sup> This meeting and its executive session were not questioned by Mr. Tank.

### ISSUE

Whether a meeting involving two of the five members of the Medora City Council and a city employee on February 27, 2004, constituted a meeting of the city council requiring public notice.

### ANALYSIS

A gathering of a quorum of the members of a governing body regarding public business is a "meeting." N.D.C.C. § 44-04-17.1(8)(a); N.D.A.G. 98-O-08, 2003-O-05. A quorum is one-half or more of the governing body's members or any smaller number if sufficient for the governing body to transact business. See N.D.C.C. § 44-04-17.1(14). The governing body of a city with a council form of government is the city council, which includes the mayor and council members. N.D.C.C. § 40-08-01. Medora has a five member city council, including the mayor. Since only two of the five members were present at the meeting, no quorum was present.

Even without a quorum, the gathering of two council members with the complaining city employee could have been a meeting if the members were acting pursuant to authority delegated to them by the city council. See N.D.A.G. 2003-O-05; N.D.C.C. § 44-04-17.1(6).

In order for a delegation of authority from a governing body to come under the open meetings laws, however, the delegation must be to a "group of persons."<sup>2</sup> N.D.C.C. § 44-04-17.1(6), N.D.A.G. 2003-O-13. In this case, the city council did not assign two or more members to act or gather information on its behalf. One of the members, Mr. Thompson, volunteered to further assess the hours that were being requested and discuss the claim with the employee. Mr. Thompson later requested another member, Mr. Tczap, to attend his meeting with the employee to serve as a witness. Because this request occurred some days after the city council meeting, Mr. Tczap cannot be assumed to have been acting under authority delegated to him by the governing body. Even if Mr. Thompson's act of volunteering to meet with the complaining employee constituted delegated authority, he was still only one person, not a group of persons. Therefore the open meetings laws do not apply.

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<sup>2</sup> Before this language regarding a delegation to a "group of persons" was passed by the Legislature in 1997, 1997 N.D. Sess. Laws ch. 381, § 2, a governing body's delegation of authority to only one person resulted in the open meetings law applying to actions taken by the one person when performing the delegated authority. See N.D.A.G. Letter to Hagerty (Mar. 29, 1985), N.D.A.G. 96-F-09.

CONCLUSION

It is my opinion that the meeting between two Medora City Council members on February 27, 2004, with a city employee was not a meeting of the city council, and therefore no violation of the open meetings laws occurred.

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