

**LETTER OPINION  
2005-L-14**

April 29, 2005

The Honorable Mary Ekstrom  
State Representative  
1450 River Road South  
Fargo, ND 58103-4325

Dear Representative Ekstrom:

Thank you for your letter asking whether the city of Fargo violated the open meetings laws, N.D.C.C. § 44-04-19, by conducting one or more closed meetings with representatives of a proposed development in downtown Fargo known as the Fargo Renaissance Center. For the reasons indicated below, it is my opinion that the city of Fargo did not violate N.D.C.C. § 44-04-19 when a city official met with representatives of CityScapes and others to discuss the planned development.

**FACTS**

The city of Fargo is considering a redevelopment project, a \$40 million hockey arena and events center to be known as the "Fargo Renaissance Center," in downtown Fargo. See *Understanding the events center issue*, *The Forum*, April 17, 2005, at A6. The project will consist of a \$40 million public building which includes an arena and events center, and an adjacent \$60 million privately funded CityScapes building, which is an office, retail, and condominium complex. A constituent of yours alleged that on two occasions, including one on March 15, 2005, Fargo city officials met with a developer, representatives of CityScapes, or business owners in meetings in violation of the state's open meetings laws.<sup>1</sup>

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<sup>1</sup> This meeting is referred to in a letter to the editor of *The Forum* from Kim Patterson, which was published on Sunday, February 20, 2005.

In response to these allegations, the city attorney, on behalf of the mayor and Fargo City Commission, stated that only one commissioner, John Cosgriff, attended the March 15, 2005, meeting. The only other meeting regarding the Renaissance Center was held on March 9, 2005. That meeting was organized at the request of the owner of a store located on property that would be occupied by the Renaissance Center. The meeting was attended by the owner and her husband, representatives of CityScapes Development, and Commissioner Cosgriff. The city commission asserts that it did not delegate any authority to Commissioner Cosgriff to act for or on behalf of the Commission.

### ANALYSIS

The issue is whether the March 9 and March 15, 2005, meetings were “meetings” subject to the open meetings law. “Meeting” is defined as “a formal or informal gathering . . . of . . . [a] quorum of the members of the governing body of a public entity regarding public business . . . .” N.D.C.C. § 44-04-17.1(8)(a)(1).

A quorum of a governing body exists if a meeting includes one-half or more of the members of that body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity. N.D.C.C. § 44-04-17.1(14); N.D.A.G. 2004-O-15. Thus, a meeting of less than a quorum of a governing body may still be subject to the open meetings laws if the smaller group has been delegated authority by the governing body. See N.D.C.C. § 44-04-17.1(6); N.D.A.G. 2004-O-12; 2003-O-15. 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. 2004-O-12.

According to the city, Commissioner Cosgriff was the only commissioner who attended the meetings and he had not been delegated any authority to act on behalf of the city. Even if he had been delegated authority, the open meetings laws would still not apply because a delegation of authority from a governing body must be to more than one person. The Commission could legally delegate authority to a single commissioner to attend meetings without violating the open meetings laws.

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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.

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The meetings held March 9 and March 15, 2005, were not attended by a quorum of either the Fargo City Commission or one of its committees. Therefore, it is my opinion that the Commission did not violate N.D.C.C. § 44-04-19.

Sincerely,

Wayne Stenehjem  
Attorney General

mjm/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).