

**OPEN RECORDS AND MEETINGS OPINION
2005-O-08**

DATE ISSUED: May 13, 2005

ISSUED TO: Napoleon 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 Leona Roehrich asking whether the Napoleon City Council (Council) violated the open meetings law by failing to give proper notice of a special Council meeting held on February 1, 2005, and by failing to prepare proper minutes of that meeting.

FACTS PRESENTED

The opinion request alleges that the Council failed to comply with the requirements for notice of a special meeting as specified by N.D.C.C. § 44-04-20. On February 1, 2005, the Council held a joint special meeting with the Napoleon Economic Development Company ("NEDC"), to discuss a report from Michael Simpson of Global Capital, Financing & Marketing, Inc., regarding an economic development project.

According to the city auditor, the chairman of NEDC advised the mayor at approximately 7:30 p.m. Friday evening, January 28, 2005, that he should consider calling a special meeting of the Council to coincide with NEDC's meeting scheduled for the following Tuesday because there would be three members of the Council at NEDC's meeting. The mayor was out of town over the weekend. On Monday morning, the mayor decided to call a special meeting of the Council to coincide with NEDC's meeting on Tuesday. That morning he called the city auditor to tell her that the Council would conduct a special joint meeting with NEDC on Tuesday, February 1, at 10 a.m. Also according to the mayor, the auditor, who does not normally work for the city on Mondays, came to city hall at 5 p.m. on Monday, January 31, 2005, after completing her other employment, to prepare the agenda. The regular business hours of city hall are 9 a.m. to 12 noon and 1 to 3 p.m. on Tuesday, Wednesday, and Friday. City hall is not open on Monday. The mayor advised my office that he was working at a location outside of Napoleon on January 31, and was, therefore, unable to personally prepare and deliver the meeting notice during regular business hours.

The agenda for the meeting stated:

AGENDA FOR FEBRUARY 1, 2005

10 A.M.

1. BRADFORD PROJECT

On Monday evening, shortly after 5 p.m., before delivering the agenda to Council members, the auditor posted a copy of the agenda on the door of the Council meeting room and a second copy on the bulletin board in the entrance of city hall. The auditor then delivered a copy of the agenda to the official newspaper and finally to the city Council members. The auditor also filed a copy of the notice in her office.

ISSUES

1. Whether the Council complied with the requirements for notice of a special meeting as specified by N.D.C.C. § 44-04-20 by issuing the notice sufficiently in advance of the meeting.
2. Whether the Council complied with the requirements for notice of a special meeting by including in its notice each element of information specified in N.D.C.C. § 44-04-20.
3. Whether the minutes of the Council's special meeting included a list of topics discussed, as required by N.D.C.C. § 44-04-21.

ANALYSES

Issue One

Generally, public notice must be provided in advance of a meeting. N.D.C.C. § 44-04-20(1). The governing body's presiding officer is responsible for ensuring that public notice is given at the same time the governing body's members are notified and that this notice is available to anyone requesting it. N.D.C.C. § 44-04-20(5); N.D.A.G. 98-O-13. While this office encourages public entities to give notice as soon as possible, there is no mandatory minimum time period for giving notice prior to a meeting. N.D.A.G. 98-O-13; N.D.A.G. 99-O-10. Instead, the notice must be provided to the public and the media at the same time the governing body's members are notified. N.D.C.C. § 44-04-20(5), (6); N.D.A.G. 99-O-10. As this office has recognized, special or emergency meetings are likely to be scheduled upon short notice. N.D.A.G. 2003-O-07; N.D.A.G. 2004-O-09.

In this case, NEDC had called a meeting for February 1, 2005, to receive a report on an economic development project. The mayor knew on Friday evening that three members of the Council were planning on attending the NEDC meeting. Napoleon has a seven member council. At the time of the meeting, one position was vacant. Vacant

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positions are still counted in determining whether a quorum is present. N.D.A.G. 2004-O-12; N.D.A.G. Letter to Koppang (July 7, 1989). Thus, four members were necessary for a quorum to exist. Because on Friday only three Council members, including the mayor, planned to attend the meeting, no quorum would have been present had they attended and consequently, there was no planned meeting of a quorum of the full council at that time.

The mayor, however, anticipating that NEDC might make a request for additional city funds, decided on Monday morning to call a special meeting of the Council to coincide with the NEDC meeting. Because the notice was provided to the public and representatives of the media at the same time the members of the governing body were notified, it is my opinion that N.D.C.C. § 44-04-20 was not violated.

Issue Two

Unless otherwise provided by law, every meeting notice of a public entity's governing body "must be posted at the principal office of the governing body holding the meeting . . . and at the location of the meeting on the day of the meeting." N.D.C.C. § 44-04-20(4). The notice must also be filed with the city auditor, id., and in the case of a special meeting, the notice must be sent to the official newspaper. N.D.C.C. § 44-04-20(6).

Notice of a public meeting must "contain the date, time, and location of the meeting," N.D.C.C. § 44-04-20(2), and, in the case of a special meeting, the notice must contain the topics to be considered. N.D.C.C. § 44-04-20(6); N.D.A.G. 2002-O-11. Discussion at the meeting is limited to those topics. Id.

In this case, the notice was posted at the principal office of the governing body holding the meeting and at the location of the meeting on the day of the meeting. It was filed with the city auditor and given to the official newspaper.

The Council listed in its notice the meeting date and time. It also listed the topic to be discussed as required for special meeting notices. N.D.C.C. § 40-04-20(6). The notice, however, failed to list the location of the meeting. Prior opinions of this office have determined that the date, time, and location requirements in N.D.C.C. § 44-04-20(2) are minimum requirements that must be contained in the notice. N.D.A.G. 2005-O-04; N.D.A.G. 2004-O-19; N.D.A.G. 98-O-13. The failure to list the location of a meeting in a meeting notice is a material omission that violates N.D.C.C. § 44-04-20(6). If a member of the public requested a copy of the notice, the member would not be advised of the

location of the meeting. Therefore, it is my opinion that the Council violated N.D.C.C. § 44-04-20 by failing to include the location of its meeting in the posted meeting notice.¹

Issue Three

Minutes must be kept of all open meetings. N.D.C.C. § 44-04-21(2). Among other things, the minutes must include a list of topics discussed regarding public business. N.D.C.C. § 44-04-21(2)(c). While minutes may reflect discussions that take place, it is not necessary for the minutes to do so. N.D.A.G. 98-O-14. All that is required by N.D.C.C. § 44-04-21(2)(c) is that the minutes include a list of the topics discussed. Id.

In this case, Ms. Roehrich alleged that the minutes provided insufficient detail about the discussion of the report on the economic development project presented at the meeting. The minutes submitted to this office by the Council describe the topic discussed, as "funding for the Bradford project and what has to be done." This description sufficiently listed the topic discussed and therefore complied with N.D.C.C. § 44-04-21(2)(c).

CONCLUSIONS

1. The Council complied with the requirements for giving notice of a special meeting as required by N.D.C.C. § 44-04-20 by giving notice to the public and the media at the same time members of the Council were notified.
2. The Council did not comply with the requirements for notice of its special meeting of February 1, 2005, as specified by N.D.C.C. § 44-04-20 because the notice did not list the meeting's location.
3. The Council complied with N.D.C.C. § 44-04-21 because the minutes of the Council's special meeting included the topics discussed.

¹ In order to reduce the likelihood of error in preparing a notice of a meeting, it is recommended that public entities use the "Sample Meeting Notice" prepared by the Office of Attorney General. A "Sample Meeting Notice" form can be obtained by going to the Attorney General's web page at – <http://www.ag.state.nd.us/Index.htm>, and clicking on "Open Records & Meetings" in the list of topics on the left-hand side of that page. The URL for that page is – <http://www.ag.state.nd.us/OpenRecords/ORM.htm>. On the "Open Records & Meetings" page a "Sample for Giving Public Notice of Meetings PDF" can be obtained.

STEPS NEEDED TO REMEDY VIOLATION

A notice of the February 1 2005, special meeting that includes the meeting's location must be prepared and filed with the city auditor. N.D.C.C. § 44-04-20(2); N.D.C.C. § 44-04-20(4). The notice must also be provided to any person who had previously requested to receive notice. N.D.C.C. § 44-04-20(5), (6).

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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