

**OPEN RECORDS AND MEETINGS OPINION
2006-O-07**

DATE ISSUED: May 1, 2006

ISSUED TO: Nome 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 Randy Peterson asking whether the Nome City Council ("Council") violated N.D.C.C. § 44-04-20 by failing to give proper notice of its March and April 2006 Council meetings.

FACTS PRESENTED

The Council has prepared a schedule of its regular meetings for 2006. The schedule lists the date, time, and location of the meetings but does not include a list of topics expected to be considered at the meetings. According to Mr. Peterson, the Council has not posted the schedule or other notice of its meetings for several months.¹

On February 1, 2006, Mr. Peterson asked Nome Mayor Lance Capman and the city auditor why the Council did not post meeting notices, including agendas, in advance of the Council's regular monthly meetings. At the March 1, 2006, regular meeting, just before the meeting began, an agenda was distributed to Mr. Peterson, the Council members, and others in attendance. After the meeting, the mayor reviewed the open meetings law, consulted with an attorney, and determined that the law did not require the Council to prepare agendas for its regular meetings.

In a March 6, 2006, letter, Mr. Peterson asked to receive notices of all regular, special, or emergency city council meetings, and requested that the notice include a list of topics the Council expects to consider at the meetings. In response, the mayor provided Mr. Peterson with a copy of the schedule of the Council's 2006 regular meetings. He did not provide an agenda or list of topics for the upcoming meeting. Mayor Capman stated that "[a]gendas are only required to be posted or notification sent for special or emergency meetings."

ISSUE

Whether the Council violated N.D.C.C. § 44-04-20 by failing to properly notice its March 1 and April 5, 2006, meetings.

¹ Mr. Peterson did not ask, and this opinion does not address, whether notice was posted at the locations required by N.D.C.C. § 44-04-20.

ANALYSIS

“Unless otherwise provided by law, public notice must be given in advance” of every meeting of a governing body of a public entity.² The notice must include “the date, time, and location of the meeting and, where practicable, the topics to be considered.”³ This list of topics is also referred to as the agenda.⁴ The notice must be posted at the public entity’s main office, if any; filed, in the case of a city public entity, with the city auditor; and given to anyone requesting this information.⁵ On the day of the meeting, the notice must be posted at the location of the meeting.⁶

In addition to the requirement to provide advance notice of its meetings, N.D.C.C. § 44-04-20 recommends that governing bodies set regular schedules for their meetings.⁷ When a governing body holds regularly scheduled meetings, “the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with . . . the city auditor or designee of the city for city-level bodies,” and “must be furnished to anyone who requests the information.”⁸

March 2006 meeting.

The Council prepared an agenda for the March 1, 2006, meeting. The agenda was, however, distributed to Mr. Peterson and the Council members immediately prior to the beginning of the meeting. Generally, public notice must be given in advance of a meeting and at the same time the members of the governing body are informed of the meeting.⁹ While there is no minimum mandatory notice period in N.D.C.C. § 44-04-20, this office has concluded that notice must be posted in advance of a meeting unless providing advance notice is not reasonable.¹⁰ Advance notice provides information to interested members of the public concerning the governing body’s anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate. In N.D.A.G. 98-O-13, this office stated that where a meeting had been confirmed on Sunday, April 12, for a meeting the following day at 1:00 p.m., there was a reasonable opportunity for notice to be posted and filed Monday morning in time for any interested person to find out about and attend the meeting. Therefore, notice given

² N.D.C.C. § 44-04-20(1), (4) (emphasis added).

³ N.D.C.C. § 44-04-20(2) (emphasis added).

⁴ N.D.A.G. 2006-O-05.

⁵ N.D.C.C. § 44-04-20(4) and (5).

⁶ N.D.C.C. § 44-04-20(4).

⁷ N.D.C.C. § 44-04-20(3).

⁸ N.D.C.C. § 44-04-20(3); N.D.A.G. 2005-O-04.

⁹ N.D.C.C. § 44-04-20(1)(5); N.D.A.G. 1998-O-13.

¹⁰ N.D.A.G. 98-O-13.

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during the meeting or the following day was not sufficient – advance notice was required.

In this case, the meeting had been scheduled in January 2006 as a regular meeting of the Council. There was a reasonable opportunity for the Council to prepare and provide an agenda in advance of the meeting. Consequently, it is my opinion the Council violated N.D.C.C. § 44-04-20 by failing to provide an agenda in advance of the meeting.

April 2006 meeting.

For the April meeting, the mayor, after reviewing the open meetings law and consulting with an attorney, determined that posting the annual schedule, which contained only the time, date, and place of regular Council meetings, was sufficient because N.D.C.C. § 44-04-20(2) only requires a notice to include a list of “the topics” the governing body expects to consider at a regular meeting “where practicable.” He determined that because Nome is a small community, had a part-time auditor, and often had only routine business such as paying bills to consider, it was not practicable for the Council to prepare an agenda for its meetings. The mayor believes this interpretation is supported by the language stating that “the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken [at the meeting].”¹¹

While the mayor’s reading of the statute is not implausible, this office has interpreted the language that the notice contain “where practicable, the topics to be considered” to require the governing body to include in its notice a list of all topics the governing body expects to discuss when the notice is prepared.¹² Using the annual schedule of meetings as a meeting notice was insufficient because it did not contain the topics the governing board expected to consider at the meeting.

Accordingly, it is my opinion that the Council violated N.D.C.C. § 44-04-20 by failing to include in its notice an agenda or list of all topics it expected to consider at its April 2006 meeting.

¹¹ N.D.C.C. § 44-04-20(2).

¹² N.D.C.C. § 44-04-20(2); N.D.A.G. 2006-O-05 and N.D.A.G. 2005-O-01 (citing N.D.A.G. 2004-O-18 and N.D.A.G. 99-O-08); N.D.A.G. 98-O-21. This requirement does not prevent a governing body from discussing at a regular meeting other topics that may arise after the agenda is prepared. A governing body is free to discuss any topic at a regular meeting, as long as the notice of the meeting listed all the topics the governing body expected to discuss when the notice was prepared. N.D.A.G. 2003-O-12; N.D.A.G. 2005-O-01; N.D.A.G. 2004-O-18; N.D.A.G. 99-O-08.

CONCLUSION

For the March 2006 meeting, the Council violated N.D.C.C. § 44-04-20 by failing to provide the agenda in advance of the meeting. For the April 2006 meeting, the Council violated N.D.C.C. § 44-04-20 by failing to include in its notice an agenda listing the topics it expected to discuss at its April 2006 meeting.

STEPS NEEDED TO REMEDY VIOLATION

In the future, the Council must include in its regular meeting notices a list of topics it expects to consider at its meetings. The notice must be prepared and provided to members of the Council and anyone else requesting the notice in advance of the meetings. In addition, the Council must provide a copy of all meeting notices to Mr. Peterson for a period of one year from the date of his request to the Council.

Failure to take the corrective measures described in this opinion may result in personal liability for the person or persons responsible for the noncompliance.

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