

**OPEN RECORDS AND MEETINGS OPINION
2007-O-10**

DATE ISSUED: June 26, 2007

ISSUED TO: Kathryn 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 Charles Olsberg, asking whether the Kathryn City Council ("Council") violated N.D.C.C. § 44-04-20 by failing to provide him with notice of Council meetings. Mr. Olsberg also alleges that the Council failed to provide copies of minutes within a reasonable time.

FACTS PRESENTED

In a letter dated March 12, 2007, Mr. Olsberg requested that the mayor of Kathryn send Mr. Olsberg copies of all regular, special, or emergency Council meeting notices for 12 months. In a letter dated, April 18, 2007, Mr. Olsberg requested a copy of the minutes from the March 5, 2007, Council meeting.

The city auditor provided the minutes to the March 5, 2007, Council meeting in a letter dated May 15, 2007. With respect to his request for notice of meetings, the letter stated:

The Kathryn City Council Meets the 1st Monday of the month at 8 p.m. @ the Church Basement for now. If the basement is being used then it is at the parsonage. There is [sic] no notices sent to the members and no agenda.

There has been notice of the Council meetings in the Post Office, Cafe, and Bar all the time. It pertained to the issuing of permits by the City. A copy is enclosed. Only thing it was hand written before.

The Kathryn City Council Meeting Minutes are also printed in the Litchville Bulletin after every meeting. This comes at a cost but gives the public access to the minutes.¹

¹ May 15, 2007, letter to Charley Olsberg from Kathryn city auditor, Shirley Sivertson.

According to the auditor, she did not send a copy of the minutes because the minutes were published in the paper.

ISSUES

1. Whether the Council violated N.D.C.C. § 44-04-20 by failing to provide notice of meetings to a person who had asked to be given notice of upcoming meetings.
2. Whether the Council violated N.D.C.C. § 44-04-18 by taking approximately four weeks to provide Mr. Olsberg a copy of Council meeting minutes he requested.

ANALYSIS

Issue one

Unless otherwise provided by law, written public notice must be given in advance of all meetings of a public entity.² The notice for a regular, special, or emergency meeting must include the date, time, and location of the meeting, and all topics the governing body expects to consider.³ The notice must be filed with the city auditor for city-level meetings, posted at the public entity's main office, if one exists, and posted at the location of the meeting on the day of the meeting.⁴ For emergency or special meetings, the presiding officer of the governing body must assure that notice is given to the public entity's official newspaper, as well as any representatives of the news media who have requested notice, at the same time the notice is given to members of the governing body.⁵

In addition to the public notice that must be made in connection with each meeting of a public entity, a governing body must also give notice of its meetings to anyone requesting this information.⁶ The request for notice is effective for one year unless a different time period is specified.⁷

In this case, Mr. Olsberg specifically requested in a letter dated March 12, 2007, that he be provided "a personal copy, in a Timely Manner through the United States Mail of the

² N.D.C.C. § 44-04-20(1); N.D.A.G. 2004-O-20.

³ N.D.C.C. § 44-04-20(2).

⁴ N.D.C.C. § 44-04-20(4); N.D.A.G. 2003-O-13.

⁵ N.D.C.C. § 44-04-20(6).

⁶ N.D.C.C. § 44-04-20(5); N.D.A.G. 2004-O-09.

⁷ N.D.C.C. § 44-04-20(5).

upcoming regular, special or emergency City Council meetings”⁸ Therefore, the Council violated N.D.C.C. § 44-04-20 when it failed to mail Mr. Olsberg notice of its meetings as he requested.

Issue Two

A public entity must respond to an open records request within a reasonable time, either by providing the requested records or copies or by explaining the legal authority for not granting the request.⁹ Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted will usually be measured in a few hours or days rather than several days or weeks.¹⁰ “Depending on the circumstances, a delay may be appropriate for a number of reasons, including excising closed or confidential information, consulting with an attorney when there is a reasonable doubt whether the records are open to the public, or balancing other responsibilities of the public entity that demand immediate attention.”¹¹

According to the auditor, she did not provide the copy of the minutes to Mr. Olsberg because the minutes were already published in the paper. This is not a valid reason to withhold a copy of an open record for four weeks. Therefore, it is my opinion that the Council did not provide a copy of meeting minutes within a reasonable time.

CONCLUSIONS

1. It is my opinion that the Kathryn City Council violated N.D.C.C. § 44-04-20 by failing to mail meeting notices of upcoming Council meetings to Mr. Olsberg as he requested.
2. It is my opinion the Kathryn City Council violated N.D.C.C. § 44-04-18 when it failed to mail Mr. Olsberg a copy of meeting minutes within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

The Council must prepare minutes of the meetings that were held on April 2, April 12 and May 1, 2007, and provide copies to Mr. Olsberg, free of charge. The Council must provide notices of its meetings to Mr. Olsberg prior to its meetings for one year from the date of his request for such notice.

⁸ Letter from Charles Olsberg to David Majerus, Kathryn city mayor, dated March 12, 2007.

⁹ N.D.C.C. § 44-04-18(7) and (8); N.D.A.G. 2003-O-21.

¹⁰ N.D.A.G. 2001-O-12.

¹¹ N.D.A.G. 2003-O-21; N.D.A.G. 2002-O-06.

The unreasonable delay has been remedied to the extent possible by the Council having provided the requested copies of records to Mr. Olsberg.

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. §44-04-21.2.¹² It may also result in personal liability for the person or persons responsible for the noncompliance.¹³

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¹² N.D.C.C. § 44-04-21.1(2).

¹³ Id.