

**OPEN RECORDS AND MEETINGS OPINION
2009-O-03**

DATE ISSUED: February 23, 2009

ISSUED TO: Rugby City Council
Rugby Public Safety Committee

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Deidre Godycki asking whether the Rugby City Council violated N.D.C.C. § 44-04-20 by discussing topics not listed in the agenda for the Rugby City Council's special meeting held September 22, 2008; and, whether the Rugby Public Safety Committee properly noticed its meetings.

FACTS PRESENTED

Rugby City Council

The Rugby City Council held a special meeting on September 22, 2008. The official agenda for the meeting stated:

**AGENDA
SPECIAL CITY COUNCIL MEETING
FOR 2009 BUDGET & OTHER BUSINESS
MONDAY, SEPTEMBER 22, 2008
7:30 P.M. – COUNCIL CHAMBERS**

1. Call to order / Recite Pledge of Allegiance to the Flag / Roll Call
2. Review 2009 Preliminary Budget
 - A) Comparison of Budget by Fund & Mills (Schedule A pg. 1)
 - B) Departmental Budget Comparisons
 - C) Departmental Requests for 2009
 - D) Set Aside Funds
 - E) Infrastructure Funds

3. Other Business
4. Special Meetings and Reminders
5. Adjournment

According to the Rugby City Council everything discussed at the meeting related to the 2009 budget.

Rugby Public Safety Committee

The Rugby City Council appoints a five member Public Safety Committee that meets on the last Thursday of the month. The Public Safety Committee held a regular meeting on July 31, 2008 and four special meetings on August 7, August 21, September 20, and September 22, 2008. The July and August Public Safety Committee meetings were noticed by posting the notice at City Hall. No notice was given for the September meetings.

ISSUES

1. Whether the Rugby City Council violated N.D.C.C. § 44-04-20(6) by discussing topics that were not in the notice for the special meeting held September 22, 2008.
2. Whether the Rugby Public Safety Committee violated N.D.C.C. § 44-04-20 by failing to provide proper notice of special meetings.

ANALYSIS

Issue One

Public notice must be given in advance of all meetings of a public entity.¹ Every notice must contain the date, time, and location of the meeting and the topics to be discussed at the meeting.² The "[t]opics that may be considered at an emergency or special meeting [of a governing body] are limited to those included in the notice" of the meeting.³

¹ N.D.C.C. § 44-04-20(1).

² N.D.C.C. § 44-04-20(2).

³ N.D.C.C. § 44-04-20(6); N.D.A.G. 2003-O-20.

Here, the Rugby City Council's agenda for its September 22, 2008, special meeting included an item entitled "Other Business." According to the Rugby City Council, it is standard practice to include this item in case a matter of some urgency needs to come before the Rugby City Council prior to a regular council meeting. In this case however, the Rugby City Council states that every item discussed at the September 22 meeting related to Rugby's 2009 preliminary budget which was listed as an item on the agenda.

In 2005, this office explained that the phrase "Old Business?" lacks the specificity required for a special meeting agenda.⁴ Such a "catch-all" phrase invites unspecified matters to be discussed at special meetings.⁵ Likewise, a phrase in a special meeting notice stating "any other issues that may need council attention" also failed to specifically identify the topics to be discussed by a governing body.⁶ However, in these past opinions, not only were the notices written vaguely, but the governing bodies discussed topics that were not specifically listed on the agenda.⁷ In this case, even though the item "Other Business" was on the agenda, the Rugby City Council only discussed the 2009 preliminary budget which was specifically listed on the agenda. Therefore, although the Rugby City Council should discontinue the practice of putting "Other Business" on its agendas for special meetings, it is my opinion that, in this instance, a violation of the law did not occur.

Issue Two

"Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public."⁸ A governing body includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."⁹ It is well-established that a committee of a city council, exercising authority delegated to the committee by its council, is a governing body.¹⁰ Here, the Public Safety Committee does not dispute that it is a committee of the Rugby City

⁴ N.D.A.G. 2005-O-17.

⁵ See N.D.A.G. 2005-O-17.

⁶ N.D.A.G. 2002-O-11; see also N.D.A.G. 2003-O-20 and N.D.A.G. 2001-O-07.

⁷ See N.D.A.G. 2002-O-11 and N.D.A.G. 2005-O-17.

⁸ N.D.C.C. § 44-04-19.

⁹ N.D.C.C. § 44-04-17.1(6) (definition of a governing body).

¹⁰ See, e.g., N.D.A.G. 2004-O-22 (meeting of the personnel committee of a city council was a gathering of a governing body subject to the open meetings law); see also N.D.A.G. 2004-O-15 (meeting of school board's finance committee is subject to the open meetings law).

Council.¹¹ However, the Public Safety Committee states that it was not aware that it was required to provide the same notice as the Rugby City Council prior to its meetings.

A committee of a governing body has the same notice obligations as the governing body.¹² The notice of a regular meeting must contain the date, time and location of the meeting and, where practicable, the topics to be considered or agenda.¹³ The notice must be posted at the principal office of the governing body holding the meeting, if the governing body has such an office, and at the location of the meeting on the day of the meeting.¹⁴ The notice also must be filed with the city auditor or designee of the city, for city-level governing bodies.¹⁵

There are two additional requirements for special or emergency meetings: (1) the public entity's official newspaper, if any, must be provided notice as well as any person requesting such information; and (2) the notice must list each topic to be discussed.¹⁶ Discussion at a special or emergency meeting is limited to the topics listed in the notice.

Here, the Public Safety Committee drafted a notice and agenda for the July 31, 2008, regular meeting and the August 7 and August 21, 2008, special meetings.¹⁷ The notices were posted at City Hall but not filed with the city auditor. The purpose of filing notice with the city auditor is to have central location for people to find out about public

¹¹ Letter from Monte Schneibel, Chairman, Public Safety Committee, to Mary Kae Kelsch, Assistant Attorney General (Oct. 27, 2008).

¹² N.D.C.C. § 44-04-20(1) (unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity).

¹³ N.D.C.C. § 44-04-20(2) and (6); see N.D.A.G. 2005-O-17 (agenda item "Old Business?" lacks the specificity required in the notice for a special meeting); see also N.D.A.G. 2002-O-11 (agenda item "other issues that may need council attention" failed to specifically identify the topics to be discussed at a special meeting).

¹⁴ N.D.C.C. § 44-04-20(4).

¹⁵ Id.

¹⁶ N.D.C.C. § 44-04-20(6) (If the public entity does not have an official newspaper, then it must notify)

¹⁷ Although the requester did not question the correctness of the meeting notices and agendas, they were vague and included agenda items entitled "Other." The Public Safety Committee should take note of "Issue One" of this opinion regarding how topics for special meetings should be listed in an agenda. The Public Safety Committee should also keep in mind that the purpose of having an agenda is to provide sufficient "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." See N.D.A.G. 2008-O-23.

meetings of the city.¹⁸ The Public Safety Committee also failed to notify the city's official newspaper of the special meetings held on August 7 and August 21, 2008.¹⁹

The Public Safety Committee states that no notice was prepared for its special meetings held September 20 and 22, 2008, "due to the short notice of each meeting."²⁰ Special, or emergency, meetings are often called on very short notice.²¹ The law requires notification to the official newspaper to compensate for the possibility that the public may not otherwise learn about the meeting.²² Notifying an official newspaper does not mean that the notice must be published by the newspaper, for there is no general publication requirement under the general open meetings law.²³ Rather, notification provides the newspaper with an opportunity to follow up on the meeting or to have a reporter attend and cover the meeting.²⁴

It is my opinion that the Public Safety Committee failed to provide notice in substantial compliance with N.D.C.C. § 44-04-20 of its July 31, 2008, regular meeting, the two special meetings held in August 2008 and the two special meetings held in September 2008.

CONCLUSION

1. Since the Rugby City Council only discussed topics that were specifically identified in the September 22, 2008, special meeting notice, it did not violate the open meetings law by including the extraneous heading "Other Business" on its published agenda.
2. The Rugby Public Safety Committee violated N.D.C.C. § 44-04-20 by failing to provide proper notice of its July 2008 regular meeting, two August 2008 special meetings, and two September 2008 special meetings.

¹⁸ N.D.A.G. 2007-O-05.

¹⁹ See N.D.C.C. § 44-04-20(6) (if the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located).

²⁰ See letter from Monte Schneibel to Mary Kae Kelsch (Oct. 27, 2008).

²¹ N.D.A.G. 2007-O-05.

²² Id.

²³ N.D.A.G. 2003-O-13.

²⁴ N.D.A.G. 2007-O-05; cf. N.D.A.G. 2007-O-02 (giving notice to a newspaper after a meeting makes it aware that a meeting took place and could follow up if it so chose).

STEPS NEEDED TO REMEDY VIOLATION

The Rugby Public Safety Committee must prepare, post, and file the notice and minutes of its July 31, 2008, regular meeting with the city auditor. It must also prepare, post, and file proper notices of the four special meetings held between August 7, 2008, and September 22, 2008. Copies of all notices and minutes from the meetings must be provided to the city's official newspaper and to the requester at no cost.

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. § 44-04-21.2.²⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁶

Wayne Stenehjem
Attorney General

mjm/vkk

²⁵ N.D.C.C. § 44-04-21.1(2).

²⁶ Id.