

**OPEN RECORDS AND MEETINGS OPINION
2009-O-19**

DATE ISSUED: October 19, 2009

ISSUED TO: Minnewaukan 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 Sherman Cline and Shelle Feldner asking whether the Minnewaukan City Council violated N.D.C.C. § 44-04-20 by holding a meeting that was not publicly noticed.

FACTS PRESENTED

On July 14, 2009, the Minnewaukan City Council ("Council") held its regular monthly meeting. The members at that meeting were Rita Staloch, Mark Motis, Steve Huffman, and Connie Ambers. The mayor, Curt Yri, also attended.

At the beginning of the meeting, Council member Huffman amended the agenda by adding "employees," and told the sheriff to stay at the meeting because there would be a termination. According to the Council's attorney, Council member Huffman had ongoing issues with Verdeen Backstrom's job performance and intended to move for his termination at the July 14 meeting.¹

When the Council reached the added agenda item, there was a discussion with Mr. Backstrom about the new overtime policy implemented by the Council at the June 2009 meeting. After the discussion, Council member Staloch moved to terminate Mr. Backstrom. The motion passed with Council members Staloch, Motis, and Huffman voting to terminate Mr. Backstrom's employment.²

The requesters allege that the three members of the Council who voted to terminate Mr. Backstrom's employment met without public notice to discuss the matter prior to the July 14 meeting.

¹ Council member Huffman works regularly with Mr. Backstrom, the water and sewer maintenance supervisor, because Mr. Huffman holds the "water, sewer, and garbage" portfolio.

² See Exhibit 1 to Letter from City Attorney J. Thomas Traynor Jr. to Job Service North Dakota (Aug. 25, 2009) (statement of Council member Rita Staloch).

ISSUE

Whether a quorum of the Council met prior to the July 14, 2009, meeting in violation of N.D.C.C. § 44-04-20, to discuss public business without providing public notice.

ANALYSIS

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public and preceded by sufficient public notice.³ A “meeting” is a formal or informal gathering or a work session of a quorum of the members of the governing body of a public entity regarding public business.⁴ A “quorum” means one-half or more of the governing body.⁵ Conversations among less than a quorum of council members are generally not prohibited even if they relate to public business.⁶ However, a related series of phone calls or face-to-face meetings that collectively involve a quorum of the members may constitute a meeting if these gatherings have been held to avoid the open meetings law.⁷

The requesters believe that the three Council members who voted for Mr. Backstrom’s termination met prior to the July 14 meeting without public notice because the termination vote occurred with no forewarning or discussion. However, as stated in the “FACTS PRESENTED” above, there was a discussion during the July 14 meeting before Mr. Backstrom’s termination.⁸ During the meeting, Mr. Backstrom was asked about his apparent disregard for the new overtime policy, and in response he told the Council to leave him alone because he knew his job.⁹ He also stated that the overtime for the part-time maintenance man was approved by the street department.¹⁰ Council member Motis, who holds the streets portfolio, denied that the overtime had been approved.¹¹ At that point, Council member Staloch moved for Mr. Backstrom’s termination.¹²

³ N.D.C.C. §§ 44-04-19, 44-04-20. See also N.D.A.G. 2001-O-03.

⁴ N.D.C.C. § 44-04-17.1(8)(a).

⁵ N.D.C.C. § 44-04-17.1(14).

⁶ N.D.A.G. 2006-O-11.

⁷ N.D.A.G. 98-O-05; see also N.D.A.G. 2005-O-07.

⁸ The meeting minutes do not indicate that a discussion took place regarding any agenda item. However, according to the Council’s attorney who listened to the tape recording of the meeting, a discussion did occur.

⁹ See Exhibit 1 to Letter from City Attorney J. Thomas Traynor Jr. to Job Service North Dakota (Aug. 25, 2009) (statement from Council member Rita Staloch).

¹⁰ Id.

¹¹ Id.

¹² Id.

The question of whether the Council members met without providing public notice to discuss terminating Mr. Backstrom's employment is one of fact.¹³ North Dakota law requires me to base open meetings opinions on the facts given by the public entity.¹⁴ According to Council members Staloch, Huffman, and Motis, they did not meet prior to the July 14 meeting in order to orchestrate Mr. Backstrom's termination.¹⁵ Rather, their votes to terminate Mr. Backstrom were based on problems each of them had encountered with Mr. Backstrom related to their separate Council portfolios. Thus, it is my opinion that no violation of the open meetings law occurred.

CONCLUSION

The Council did not hold a meeting in violation of N.D.C.C. § 44-04-20.

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Attorney General

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¹³ See N.D.A.G. 2001-O-03.

¹⁴ N.D.C.C. § 44-04-21.1(1).

¹⁵ Letter from City Attorney J. Thomas Traynor Jr. to Assistant Attorney General Mary Kae Kelsch (Aug. 21, 2009).