

**OPEN RECORDS AND MEETINGS OPINION
2010-O-06**

DATE ISSUED: May 17, 2010

ISSUED TO: Kindred 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 Verne R. Wolf and Robert A. Young asking whether the Kindred City Council violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding meetings that were not publicly noticed or open to the public.

Todd Bachmeier also requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether minutes of the January 6, 2010, meeting of the Kindred City Council met the requirements of N.D.C.C. § 44-04-21(2)(c).

FACTS PRESENTED

The Kindred City Council (Council) consists of Mayor Bob Clarke and council members Rich Schock, Josh Staton, Jeff Wanner, and Deb Grossnickle. Monthly meetings are held at City Hall the first Wednesday of every month at 7 p.m.

The Council's meeting room is adjacent to the auditor's office. Generally, council members go through the auditor's office before the meeting to pick up meeting information binders. Approximately fifteen minutes before the December 2, 2009, meeting Mayor Clarke, along with Council members Grossnickle, Staton, Schock, and Wanner, were in the auditor's office. Also present were City Attorney John Shockley, City Engineer Jon Wilczek, Public Works Superintendent Ken Blilie, Cass County Sheriff's Deputy Leroy Beaulieu, and Auditor Twila Morrison.

Similarly, about fifteen minutes before the January 6, 2010, regular meeting, Mayor Clarke along with Council members Staton and Schock were in the Auditor's office to pick up the information for the meeting. Also present were City Engineer Jon Wilczek and Auditor Twila Morrison.

The requesters allege that public business was discussed by the Council in the auditor's office prior to the December 2, 2009, and January 6, 2010, meetings. Todd Bachmeier also alleges that the Council is not fully documenting what occurs at the meetings in the minutes. Mr. Bachmeier provided a recording of the January 6, 2010, meeting that has been reviewed by a member of my staff.

ISSUES

1. Whether a quorum of the Council discussed public business prior to the December 2, 2009, and January 6, 2010, Council meetings without providing notice to the public.
2. Whether the minutes of the January 6, 2010, meeting of the Council sufficiently describe the topics discussed during the "Public Forum" portion of the meeting.

ANALYSIS

Issue One

All meetings of a public entity must be open to the public.¹ A "meeting" means a formal or informal gathering, whether in person or through other means such as telephone or video conference of a quorum of the members of the governing body of a public entity regarding public business.² "Meeting" includes work session, but does not include chance or social gatherings where public business is not considered.³ A "quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.⁴ "Public business" is defined as:

[A]ll matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity's use of public funds.⁵

¹ N.D.C.C. § 44-04-19.

² N.D.C.C. § 44-04-17.1(8)(a)(1).

³ N.D.C.C. § 44-04-17.1(8)(b).

⁴ N.D.C.C. § 44-04-17.1(14).

⁵ N.D.C.C. § 44-04-17.1(11).

OPEN RECORDS AND MEETINGS OPINION 2010-O-06

May 17, 2010

Page 3

The requesters allege that the Council discussed public business while in the auditor's office prior to its monthly meetings in December and January without providing public notice that a meeting was taking place. As explained in the "FACTS PRESENTED" above, typically council members go through the auditor's office in order to pick up the meeting information binders.⁶ Thus, the Council agrees that the Mayor and Council members were in the auditor's office from 6:45 to 6:55 p.m. before the December 2, 2009, and January 6, 2010, meetings.⁷ However, the Council denies that the discussions that took place related to public business.⁸ In any opinion issued under N.D.C.C. § 44-04-21.1, the Attorney General must base the opinion on the facts given by the public entity.⁹

As the definition indicates, a "meeting" of a governing body must pertain to "public business." Although a quorum of a governing body was present prior to the December 2, 2009, meeting, public business was not discussed. Thus, one of the elements required for a meeting was missing.¹⁰ Therefore, is it my opinion that meetings that required public notice did not take place prior the Council's December 2, 2009, and January 6, 2010, meetings.¹¹

Issue two

Minutes of an open meeting must include, at a minimum, the information listed in N.D.C.C. § 44-04-21(2), which includes a "list of topics discussed regarding public business."¹² In past opinions this office has explained it is not necessary that minutes reflect the specific discussion or concerns raised by members of the public at the meetings.¹³

⁶ Letter from Christopher M. McShane, Kindred City Attorney, to Mary Kae Kelsch, Assistant Attorney General (Apr. 12, 2010).

⁷ Id.

⁸ Before the December 2 meeting Council members Schock and Staton discussed dike work in Rieles Acres, a separate city, being done by Council member Shock's employer. Engineer Wilczek and Auditor Morrison were discussing the icy roads caused by the snowfall on December 2. Attorney Shockley and Public Works Superintendent Blilie were discussing farming practices. Before the January 6 meeting the individuals present discussed the vehicles they owned in high school.

⁹ N.D.C.C. § 44-04-21.1(1).

¹⁰ See N.D.C.C. § 44-04-17.1(8)(a).

¹¹ The requesters allegations are limited to whether notice was required for the time the Council was in the auditor's office and not that the Council failed to provide public notice of the regularly scheduled meetings.

¹² N.D.C.C. § 44-04-21(2)(c).

¹³ N.D.A.G. 98-O-14. See also N.D.A.G. 2005-O-08.

Here, Mr. Bachmeier alleges that the minutes did not fully document what occurred during the "Public Forum" part of the meeting. The "Public Forum" section of the published minutes of the January 6, 2010, meeting of the Council states:

Arlen Blumer had issues with the snow blower on December 26th.

Laura Hehn wanted to clarify that she wants the city council to determine if the fence that Mr. Schmidt has is really considered a pasture fence and whether the animals that graze should be 300' away. This issue will be considered in the spring.

Todd Bachmeier wanted to know why we have a new attorney. Mr. McShane responded that Mr. Shockley was promoted to shareholder at the firm and it was the firm's decision to appoint Mr. McShane as the representative for the city.

Bob Young wanted a response to Ms. Morrison's comments and why some of his email questions have not been responded to.

Perry Morrison had comments to Bob Young and Todd Bachmeier regarding the TIF.

Verne Wolf responded to Mr. Morrison's remarks and agreed that the TIF issue is confusing and maybe all the TIFs should just be abolished.¹⁴

The recording of the meeting confirms that the minutes are not a verbatim report of the "Public Forum" portion of the meeting. However, the minutes are not required to be a verbatim report. Rather, the minutes only have to include a listing of the topics discussed by the governing body.¹⁵ In this case, the minutes provide more than the minimum required by law. Thus, it is my opinion that the minutes of the January 6, 2010, minutes meet the requirements of N.D.C.C. § 44-04-21(2).

CONCLUSIONS

1. A quorum of the Council did not discuss public business prior to the December 2, 2009, and January 6, 2010, Council meetings so public notice was not necessary.

¹⁴ Minutes, Kindred City Council Meeting, Jan. 6, 2010.

¹⁵ See N.D.C.C. § 44-04-21(2)(c). The minutes must also include: the names of the members of the governing body attending the meeting; the date and time the meeting was called to order and adjourned; a description of each motion made and whether the motion was seconded; the results of every vote taken at the meeting; and, the vote of each member on every recorded roll call vote. N.D.C.C. § 44-04-21(2).

OPEN RECORDS AND MEETINGS OPINION 2010-O-06

May 17, 2010

Page 5

2. The minutes of the January 6, 2010, meeting of the Council sufficiently describe the topics discussed during the "Public Forum" portion of the meeting.

Wayne Stenehjem
Attorney General

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