

**OPEN RECORDS AND MEETINGS OPINION
2012-O-01**

DATE ISSUED: January 19, 2012

ISSUED TO: McIntosh County Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Francis Materi on behalf of The Wishek Star asking whether the McIntosh County Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting that was not preceded by public notice.

FACTS PRESENTED

The McIntosh County Commission (Commission) is a three-member commission. On October 3, 2011, Commission chairman Ronald Meidinger and a county employee, road supervisor Dennis Glas,¹ were checking flood-damaged roads when they were approached by an employee of William Smith Asphalt Paving. The paving company employee offered to perform some road patchwork and paving for the county that same day. Commissioner Meidinger agreed to have the work done and the asphalt company immediately began to repair a damaged highway and pave the parking lot behind the courthouse.

The following day, the Commission held its regular meeting and road supervisor Glas explained to the other Commissioners that the asphalt paving company had approached him and Commissioner Meidinger on October 3, 2011. Supervisor Glas informed the Commission of the work estimates² and the Commission unanimously approved the projects.³

ISSUE

Whether the Commission held a meeting that was not preceded by public notice.

¹ The road supervisor is not a member of the Commission.

² The estimate for the highway repair was \$48,000 and the estimate for the parking lot paving was \$34,000.

³ Minutes, McIntosh Cnty. Comm'n, Oct. 4, 2011.

ANALYSIS

All “meetings” of the governing body of a public entity are required to be open to the public unless otherwise specifically provided by law and must be preceded by sufficient public notice.⁴ Special, or emergency meetings, may be scheduled upon short notice.⁵ The definition of “meeting” is not limited to face-to-face gatherings of a quorum of the members of a governing body, thus, a “meeting” could occur via telephone conversations.⁶

The local paper, The Wishek Star, published an article on October 12, 2011, that suggested Commissioner Meidinger consulted with the other Commissioners before approving the asphalt work. When asked, Commissioner Meidinger denies contacting the other Commissioners prior to approving the asphalt work. He explains that he approved the work because the Commission had discussed paving these two areas several times during past meetings. Thus, he was confident that he had the authority to approve the paving work without consulting the other two Commissioners. By statute, an Attorney General’s opinion issued pursuant to N.D.C.C. ch. 44-04 must be based on the facts provided by the public entity.⁷ Thus, it is my opinion that a meeting of the McIntosh County Commission did not occur on October 3, 2011.

Wayne Stenehjem
Attorney General

mkk/vkk

⁴ N.D.C.C. § 44-04-19; N.D.C.C. § 44-04-20.

⁵ N.D.A.G. 2005-O-20. See also N.D.A.G. 2004-O-09 and N.D.A.G. 2003-O-07.

⁶ N.D.A.G. 2011-O-17; N.D.A.G. 2000-O-08.

⁷ N.D.C.C. § 44-04-21.1(1).