

**OPEN RECORDS AND MEETINGS OPINION
2014-O-11**

DATE ISSUED: August 28, 2014
ISSUED TO: Churchs Ferry 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 Lorrie Sandberg asking whether the Churchs Ferry City Council violated N.D.C.C. § 44-04-20 by failing to properly notice a meeting and by continuing to discuss public business after the meeting was adjourned.

FACTS PRESENTED

The Churchs Ferry City Council (Council) held a regularly scheduled meeting on July 14, 2014.¹ The notice of the meeting was posted on June 9, 2014, in Churchs Ferry's City Hall and provides, in part:

July 14, 2014
Masonic Hall
113 3rd Street
5 p.m.

City Council Meeting Agenda

- 1) Call to Order
- 2) Acknowledge Visitors
- 3) Reading & Approval of Minutes
- 4) Presentation of Bills
- 5) Unfinished Business
- 6) New Business
- 7) Adjournment²

¹ Letter from City of Churchs Ferry to Att'y Gen.'s office (Aug. 4, 2014). Six people reside in Churchs Ferry. The Council meets every second Monday of each month at the Masonic Hall.

² Id., See also Agenda, Churchs Ferry City Council (July 14, 2014).

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Ms. Sandberg alleges the meeting agenda was never posted, the agenda was not proper, and the Council continued to discuss public business after adjourning the meeting.³

ISSUES

1. Whether the Council's notice and agenda for the July 14, 2014, regular meeting met the requirements of N.D.C.C. § 44-04-20.
2. Whether the Council violated N.D.C.C. § 44-04-20 by continuing to discuss public business after the July 14, 2014, regular meeting was adjourned.

ANALYSIS

Issue One

"Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity."⁴ A meeting notice must include the "date, time, and location of the meeting and, if practicable, the topics to be considered."⁵ The agenda should include all topics the governing body anticipates it will discuss at the time the notice is prepared.⁶ Notice of regular meetings must be posted at the principal office of the governing body, if such exists; filed at the appropriate central location – for city level bodies with the city auditor or on the city's website; and posted at the location of the meeting on the day of the meeting.⁷

The Council posted notice of the meeting on June 9, 2014, at City Hall.⁸ The Council did not post notice at the location of the meeting because in the past, the notices were

³ Email from Lorrie Sandberg to Att'y Gen.'s office (July 17, 2014, 6:08 PM).

⁴ N.D.C.C. § 44-04-20(1).

⁵ N.D.C.C. § 44-04-20(2).

⁶ Id.; see also N.D.A.G. 2011-O-04.

⁷ N.D.C.C. § 44-04-20(4). Notice must also be provided to "anyone requesting such information." N.D.C.C. § 44-04-20(5). Council confirms no one has ever requested personal notification of any meetings. See Email from Mayor Paul Christenson to Sandra Voller, Asst. Att'y Gen. (Aug. 5, 2014, 6:55 pm).

⁸ Letter from City of Churchs Ferry to Att'y Gen.'s Office (Aug. 4, 2014). Ms. Sandberg alleges there was no notice posted at the locations "normally used for posting the monthly meeting." The Council explains that City Hall is used for various events and, in this case, was used for a school reunion on June 28-29. In response to Ms. Sandberg's allegations, the Council speculates that the notice may have been taken down or blown off the door during the event, but reiterates that the notice was posted on June 9 at City Hall. City Hall is considered the principal office of the Council and City Auditor. See Email from Mayor Paul Christenson to Sandra Voller, Asst. Att'y Gen. (Aug. 5, 2014, 6:55 PM).

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being torn down.⁹ However, the Council has been meeting at the same location for the last three years.¹⁰ This office previously determined that a public entity substantially complied with the notice requirements of N.D.C.C. § 44-04-20 when it provided all the notice required by law except for posting the notice at the location of the meeting.¹¹ I therefore find the Council posted notice in substantial compliance with N.D.C.C. § 44-04-20.¹²

Ms. Sandberg complains that the agenda only “listed the bare minimum” and was not proper. As this office explained in past opinions, in the case of regular meetings, use of general phrases such as “old business” and “new business” may be acceptable.¹³ Specifically, this office previously acknowledged Churchs Ferry’s use of general phrases in the agenda for regular meetings, including “bills,” “old business,” and “new business,” complied with the notice requirements of N.D.C.C. § 44-04-20, because at the time the notice was prepared, the auditor was unaware of any specific topics the Council anticipated discussing at the meeting.¹⁴ Likewise here, the auditor prepared the July 14 regular meeting agenda and, at the time the agenda was prepared and posted on June 9, 2014, it included all anticipated topics to be discussed.¹⁵ Accordingly, it is my opinion that the agenda substantially complied with N.D.C.C. § 44-04-20.

Issue Two

All “meetings” of the governing body of a public entity must be open to the public and preceded by sufficient notice.¹⁶ In order for a gathering of a governing body to be

⁹ Email from Mayor Christenson to Sandra Voller, Asst. Att’y Gen. (Aug 5, 2014, 6:55 pm).

¹⁰ Telephone interview by Sandra Voller, Asst. Att’y Gen. with Mayor Paul Christenson (Aug. 5, 2014)

¹¹ N.D.A.G. 2006-O-10; N.D.A.G. 2002-O-10; N.D.A.G. 98-O-09.

¹² Although I do not find a violation at this time, from here forward, the Council should post notice at the location of the meeting on the day of the meeting.

¹³ N.D.A.G. 2011-O-14 (“At a regular meeting, ‘a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken’ at the meeting. The meeting agenda for a regular meeting can be amended on the day of the meeting or during the meeting. From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity.”).

¹⁴ N.D.A.G. 2011-O-14 (“It is not surprising for cities with populations as small as Nome or Churchs Ferry to have very basic agendas for their regular meetings as opposed to larger cities where a greater population means additional issues.”)

¹⁵ Letter from City of Churchs Ferry to Att’y Gen.’s office (Aug. 4, 2014) and Email from Mayor Christenson to Sandra Voller, Asst. Att’y Gen. (Aug. 5, 2014, 6:55 PM). See also N.D.A.G. 2010-O-12 (City of Nome’s use of phrases “old business” and “new business” was proper; although the phrases were sparse, they are acceptable because the notices were for regular meetings and the auditor was unaware of any specific topics the Council anticipated discussing at the meetings when she posted the notices).

¹⁶ N.D.C.C. §§ 44-04-19 and 44-04-20.

considered a “meeting,” a quorum¹⁷ must be present and discussing “public business.”¹⁸ Ms. Sandberg alleges the Council members continued to discuss public business after adjourning the meeting. The Council denies it engaged in discussing public business after the meeting. Opinions issued by this office must be based on the facts given by the public entity.¹⁹ Accordingly, it is my opinion that the Council did not violate open meetings law.

CONCLUSIONS

1. The notice and agenda of the July 14, 2014, regular meeting substantially complied with notice requirements of N.D.C.C. § 44-04-20.
2. The Council did not violate open meetings law because it did not continue to discuss “public business” after adjourning its regular meeting.

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¹⁷ N.D.C.C. § 44-04-17.1(15) (“quorum” is defined as “one-half or more of the members of the governing body”).

¹⁸ N.D.C.C. §§ 44-04-17.1(9)(a) (definition of “meeting”) and 44-04-17.1(12) (definition of “public business” includes all matters that relate or may foreseeably relate in any way to the performance of the public entity’s governmental functions or use of public funds).

¹⁹ N.D.C.C. § 44-04-21.1.