

**OPEN RECORDS AND MEETINGS OPINION  
2016-O-19**

DATE ISSUED: September 23, 2016

ISSUED TO: Williston City Commission

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Greg Hennessy asking whether Williston City Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by meeting without providing notice.

**FACTS PRESENTED**

On January 26, 2016, during a regular meeting, the Williston City Commission passed amendments to three ordinances affecting adult entertainment establishments and the sale of alcohol in such establishments.<sup>1</sup> Ordinances 1034 and 1035 effectively prohibited the sale of alcohol in adult entertainment establishments.<sup>2</sup> Ordinance 1032 amended the City's zoning ordinance which would require the adult establishments to relocate to another zoning district within twelve months from the effective date of the ordinance.<sup>3</sup> The enforcement and penalty provisions of the ordinances were published on February 7, 2016.<sup>4</sup>

Mayor Klug sent a letter, dated February 19, 2016, to two adult establishments located within Williston, regarding the new ordinances.<sup>5</sup> The letter explained that ordinance 1032 has a one year grace period for the establishments to come into compliance and

---

<sup>1</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016); see also Minutes, Williston City Comm'n (Jan. 26, 2016).

<sup>2</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016); see also Minutes, Williston City Comm'n (Jan. 26, 2016).

<sup>3</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016); see also Minutes, Williston City Comm'n (Jan. 26, 2016).

<sup>4</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016).

<sup>5</sup> Id.; see also Letter from Howard Klug, Mayor, City of Williston, to Heartbreakers Gentlemen's Club and Whispers Gentlemen's Club (Feb. 19, 2016).

move into the proper zoning district.<sup>6</sup> The letter also explained that ordinances 1034 and 1035 did not have a grace period, but the City would allow the establishments 90 days from the effective date to make a determination on whether the establishments would operate as a bar or as a cabaret and implement the changes.<sup>7</sup>

One of the adult establishments, Heartbreakers Gentlemen's Club, asserts that at the public hearing on January 26, 2016, it believed that all of the ordinances would have a twelve month grace period.<sup>8</sup> It therefore asserts that the Commission must have met in secret sometime after this public hearing to decide that ordinances 1034 and 1035 would only have a 90 day grace period.<sup>9</sup>

#### ISSUE

Whether the Commission held a meeting without providing public notice in violation of N.D.C.C. §§ 44-04-19 and 44-04-20.

#### ANALYSIS

N.D.C.C. § 44-04-19 requires all "meetings" of the governing body of a public entity to be open to the public unless otherwise provided by law and such meetings must be preceded by sufficient public notice in substantial compliance with N.D.C.C. § 44-04-20.<sup>10</sup> The question of whether a governing body met secretly to discuss public business is one of fact.<sup>11</sup> North Dakota law requires this office to base open meeting opinions on the facts given by the public entity.<sup>12</sup>

In response to inquiries from this office, the Commission denies meeting outside of properly noticed regular and special meetings.<sup>13</sup> The Commission explains that after

---

<sup>6</sup> Letter from Howard Klug, Mayor, City of Williston, to Heartbreakers Gentlemen's Club and Whispers Gentlemen's Club (Feb. 19, 2016).

<sup>7</sup> Id.

<sup>8</sup> See Letter from Greg Hennessy, att'y for Heartbreakers Gentlemen's Club, to Att'y Gen.'s Office (May 5, 2016).

<sup>9</sup> Id.

<sup>10</sup> N.D.C.C. §§ 44-04-19; 44-04-20.

<sup>11</sup> N.D.A.G. 2011-O-02; N.D.A.G. 2010-O-14; N.D.A.G. 2009-O-19; N.D.A.G. 2001-O-18; N.D.A.G. 2001-O-15; N.D.A.G. 2001-O-03

<sup>12</sup> N.D.C.C. § 44-04-21.1(1).

<sup>13</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016); see also Acknowledgement Statement from Commissioners Brad Bekkedahl (signed Aug. 4, 2016), Tate Cymbaluk (signed Aug. 3, 2016), Chris Brostuen (signed Aug. 2, 2016), and Deanette Piesik (undated).

the ordinances were published, Williston Police Department contacted the City Attorney's office regarding enforcement of the ordinances.<sup>14</sup> The City Attorney then met with Mayor Klug.<sup>15</sup> After this meeting, Mayor Klug decided to give the 90 day grace period for enforcement of ordinance 1034 and 1035.<sup>16</sup> This decision was made by Mayor Klug "individually and without consulting any other Commissioner."<sup>17</sup>

Accordingly, it is my opinion that the Commission did not hold a meeting in violation of N.D.C.C. §§ 44-04-19 and 44-04-20.

#### CONCLUSION

The Commission did not hold a secret meeting in violation of N.D.C.C. §§ 44-04-19 and 44-04-20.

Wayne Stenehjem  
Attorney General

sld  
cc: Greg Hennessy (via email only)

---

<sup>14</sup> Letter from Jordon Evert, Williston City Att'y, to Att'y Gen.'s Office (June 9, 2016).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.