

**OPEN RECORDS AND MEETINGS OPINION  
2019-O-08**

DATE ISSUED: May 13, 2019

ISSUED TO: City of Napoleon

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Paul Hamers asking whether the City of Napoleon violated N.D.C.C. § 44-04-20 by failing to notice meetings.

**FACTS PRESENTED**

The Napoleon City Council is composed of six council members and a mayor. It holds regular meetings on the first Monday of each month.<sup>1</sup> During a meeting on December 4, 2018, the chief of police questioned the need for a municipal court.<sup>2</sup> The City Council tabled the issue so that everyone would have a “chance to check into this change further.”<sup>3</sup> After the December meeting, the Mayor along with two other council members, met with the chief of police and municipal judge to address the issue and try to fix the problem.<sup>4</sup> The Mayor and two council members also met with the Logan County Commissioners at the County Commissioner’s March meeting to discuss the issue.<sup>5</sup>

The next time the issue was discussed by the City Council was during its April 1, 2019, meeting in which another council member asked why the Mayor and two other members met with the Logan County Commissioners.<sup>6</sup> The Mayor responded that it was inquiring into whether the County Commissioners would approve a request for cases to be

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<sup>1</sup> Letters from Todd Moos, Mayor, City of Napoleon, to Att’y Gen.’s Office (Apr. 14 and 16, 2019).

<sup>2</sup> Minutes, Napoleon City Council (Dec. 4, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> Letters from Todd Moos, Mayor, City of Napoleon, to Att’y Gen.’s Office (Apr. 14 and 16, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

brought before the district court instead of the municipal court.<sup>7</sup> No decisions were made at the City Council or County Commission meetings on this issue during the timeframe at issue in this opinion.<sup>8</sup>

### ISSUE

Whether the Napoleon City Council violated N.D.C.C. § 44-04-20 by failing to notice meetings.

### ANALYSIS

All “meetings” of a public entity must be open to the public and noticed in substantial compliance with N.D.C.C. § 44-04-20. A “meeting”<sup>9</sup> occurs when a “quorum”<sup>10</sup> of a “governing body”<sup>11</sup> is present and its “public business”<sup>12</sup> is being considered or discussed. The Mayor and two council members do not constitute a “quorum” of the Napoleon City Council.

However, the definition of a “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.<sup>13</sup> Under this definition, when a governing body delegates authority to any two or more people to perform any function on its behalf, including gathering information, reporting, or recommending or taking action, a “committee” is formed that is subject to open meetings law.<sup>14</sup> A governing body does not need to make a formal motion for the committee to be subject to open meetings law.<sup>15</sup> Rather, if the governing body of a public entity consents, authorizes, or otherwise delegates authority to a group of people to perform any function on behalf of a governing body, a committee is formed.<sup>16</sup> When a quorum of the committee gathers to perform the function delegated, it is holding a “meeting” that must be noticed in compliance with N.D.C.C. § 44-04-20.<sup>17</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

<sup>10</sup> N.D.C.C. § 44-04-17.1(15) (definition of “quorum”).

<sup>11</sup> N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

<sup>12</sup> N.D.C.C. § 44-04-17.1(12) (definition of “public business”).

<sup>13</sup> N.D.C.C. § 44-04-17.1(6).

<sup>14</sup> N.D.A.G. 2018-O-09; N.D.A.G. 2018-O-07.

<sup>15</sup> N.D.A.G. 2018-O-09; N.D.A.G. 2016-O-15.

<sup>16</sup> N.D.A.G. 2018-O-09; N.D.A.G. 2018-O-07; N.D.A.G. 2016-O-15.

<sup>17</sup> N.D.A.G. 2018-O-09; N.D.A.G. 2018-O-07.

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Here, the Mayor and two council members met with various other individuals without the full Napoleon City Council's approval or knowledge.<sup>18</sup> Without the full governing body consenting, authorizing, or otherwise delegating a task to the Mayor and the two council members, no committee was formed that would trigger open meetings law.<sup>19</sup> It was therefore not a violation when the Mayor and two city council members met with various individuals and the Logan County Commissioners<sup>20</sup> without posting notice.

The remaining City Council members deny having any conversations regarding this issue outside of the City Council meetings.<sup>21</sup> Opinions issued pursuant to N.D.C.C. § 44-04-21.1 must take the facts of the public entity.

CONCLUSION

The Napoleon City Council did not violate N.D.C.C. § 44-04-20 because the discussions by the Mayor and two council members were not subject to open meetings law requirements.

Wayne Stenehjem  
Attorney General

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cc: Paul Hamers (via email only)

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<sup>18</sup> Letters from Todd Moos, Mayor, City of Napoleon, to Att'y Gen.'s Office (Apr. 14 and 16, 2019).

<sup>19</sup> See N.D.A.G. 2018-O-18 (mayor, individually and without city council participation, contacting entities did not trigger open meetings law); N.D.A.G. 2016-O-19 (mayor making a decision individually without consulting any other commissioner did not trigger open meetings law).

<sup>20</sup> The Logan Cnty. Comm'n would be responsible for posting its own notice of its meeting under open meetings law.

<sup>21</sup> Letter from Todd Moos, Mayor, City of Napoleon, to Att'y Gen.'s Office (Apr. 14, 2019) with attached signed statement. A member of my staff also had follow up conversations with Council member Foster.