

**OPEN RECORDS AND MEETINGS OPINION
2019-O-18**

DATE ISSUED: October 17, 2019

ISSUED TO: City of Minot

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Rob Port asking whether the City of Minot violated N.D.C.C. § 44-04-19 by holding council meetings outside of city limits.

FACTS PRESENTED

The Minot City Council held a special meeting, noticed as an “executive retreat,” on July 31 – August 1, 2019, in the City of Washburn, located approximately seventy miles south of Minot.¹ Notice of the retreat’s location was posted two weeks in advance of the meeting.² No final decisions were made at the retreat, rather, the Council “broadly discuss[ed] topics as a way to provide guidance to the City Manager for when and how to move forward with developing policies, procedures, and code modifications, all of which would need to be further discussed and ultimately approved by the City Council at a later time and place.”³

ISSUE

Whether the Minot City Council meeting outside of city limits violates N.D.C.C. § 44-04-19 because the location is inaccessible to the public.

ANALYSIS

“Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.”⁴ The meeting must be “accessible” to the public in order to comply

¹ Agenda, Minot City Council Exec Retreat (July 31 – Aug. 1, 2019); Letter from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 15, 2019). The Council’s regular meetings are on the first and third Monday of each month so this was considered a special meeting of the Council.

² Letter from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 15, 2019).

³ *Id.*, see also Minutes, Minot City Council Exec. Retreat (July 31 – Aug. 1, 2019).

⁴ N.D.C.C. § 44-04-19(1).

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with open meetings law.⁵ “Although the proximity of the public entity’s meeting place to the people affected by the public entity’s decisions is not specifically addressed in N.D.C.C. § 44-04-19, holding a meeting a substantial distance away from the public entity’s jurisdiction, could result in the denial of the public’s access to the meeting.”⁶

This office previously issued two opinions on whether meetings held in locations other than the principal office of state-level governing bodies violated open meetings law, by considering and analyzing the following factors: “the jurisdiction of the public entity, the proximity of the meeting place to the persons affected by the public entity’s decisions, and the purpose behind the choice of location.”⁷ This office cautioned that although individual or infrequent meetings at a location outside of a governing body’s principal jurisdiction may not violate the open meetings law, a different conclusion might be reached if the governing body consistently met at the outside location or it appears the governing body is doing so with the intent of avoiding the open meetings law.⁸

The state-level entities at issue in the opinions were the North Dakota State University (NDSU) Research and Technology Park (Technology Park) and the State Board of Higher Education (SBHE), whose jurisdictions extend beyond the respective principal offices.⁹ The Technology Park held a meeting in Minneapolis, Minnesota, in order to reach out to business contacts and alumni attending an NDSU football game.¹⁰ The meeting was accessible to those affected by decisions of the Technology Park and it was permissible to hold the meeting out of state.¹¹ The SBHE, although headquartered in Bismarck, has statewide jurisdiction, and rotates its meeting location among the

⁵ N.D.C.C. § 44-04-19(2) (“the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.”).

⁶ N.D.A.G. 2002-O-12 (citing *Rhea v. School Bd. Of Alachua Cnty*, 636 So.2d 1383, 1386 (Fla. Dist. Ct. App. 1994) (meeting of a county school board held 100 miles from the board’s headquarters at a convention hotel did not afford citizens of county a reasonable opportunity to attend); 1979-80 Mich. Op. Atty. Gen. 386 (while the open meetings act does not dictate that a meeting be held within the jurisdictional limits of the public body’s jurisdiction, if a meeting is held so far from the public it serves that it would be difficult or inconvenient for citizens residing in the area served by the public body to attend, the meeting could not be considered as being held at a place available to the general public)).

⁷ N.D.A.G. 2012-O-03 (“the ‘jurisdiction’ of a public entity does not necessarily refer to physical boundaries, but often refers to the scope of its authority or the ‘public business’ of the public entity.”); N.D.A.G. 2002-O-12.

⁸ N.D.A.G. 2012-O-03.

⁹ N.D.A.G. 2012-O-03; N.D.A.G. 2002-O-12.

¹⁰ N.D.A.G. 2012-O-03.

¹¹ *Id.*

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eleven state college and university campuses to allow access to all those affected by its decisions.¹²

This office has never applied the above factors or analysis to a municipality. North Dakota open records and meetings law are based on, and similar to, Florida's Sunshine Laws and past opinions from this office have turned to Florida courts and opinions for guidance in interpretation.¹³ Florida has determined that because municipalities do not have extra-territorial jurisdiction unless specifically provided by law, they are therefore prohibited from holding meetings outside their boundaries.¹⁴ This is supported by another legal doctrine: "in the absence of statutory authorization, a municipal council has no authority to hold meetings outside the municipal limits, and all acts and proceedings in such a meeting are void."¹⁵

I decline to adopt such a bright line rule, recognizing there are times when the governing body of a municipality may need to meet outside of its primary jurisdiction, for example, to meet with Legislators during session, to gather information not available in the governing body's principal location, or to attend a meeting called by another entity that is unavailable or impractical to bring to the principal location.¹⁶ As such, factors

¹² N.D.A.G. 2002-O-12.

¹³ N.D.A.G. 2007-O-05; N.D.A.G. 2006-O-06; N.D.A.G. 2004-L-25; N.D.A.G. 2002-O-05; N.D.A.G. 2001-O-11.

¹⁴ Op. Att'y Gen. Fla. 2008-01 (2008) (in the absence of law providing otherwise, a municipality has no "authority to hold meetings at which official business is conducted outside the municipal boundaries" and even though city hall was temporarily unavailable, could not hold city council meetings in neighbor jurisdiction); Op. Att'y Gen. Fla. 75-139 (1975) (constitution and statutory law restricting municipality exercise of extra-territorial powers absent specific authority, prohibited a municipality legislative and governing body from holding meetings outside municipal boundaries). Other jurisdictions are split on this issue. See *Wiedemann v. Town of Hilton Head Island*, 542 S.E.2d 752 (S.C. 2001) (necessity and benefits of the town holding workshop forty-five minutes outside municipal limits outweighed the cost or delay of the public attending the meeting under a preponderance of evidence standard); Op. Att'y Gen. Kan. 82-133 (1982) (expensive and inconvenient for those citizens of the "public" at large interested in the business and affairs of the city commission to travel hundreds of miles for a meeting).

¹⁵ *Town of Paradise Valley v. Acker*, 411 P.2d 168 (Ariz. 1966) (Town of Paradise Valley passed an ordinance to annex certain property at a meeting outside of town limits in violation of open meetings law rendering the decision to annex void), citing 37 Am. Jur. 669, Mun. Corps. § 54; see also Op. Att'y Gen. Ky. 02-OMD-78 citing 56 Am. Jur. 2nd Mun. Corps. § 160.

¹⁶ See N.D.A.G. 98-O-18 (City Council visiting a neighboring City Council's meeting because discussions pertained to its public business).

should be weighed and considered.¹⁷ However, because of the limited jurisdiction of a municipality, unlike the state-level entities previously analyzed by this office, when a meeting of a municipal governing body occurs outside of its jurisdiction, the purpose and need for the meeting will be closely scrutinized by this office.

In this case, the Council does not dispute that the retreat location was outside the jurisdiction of Minot but argues the off-site location was “not so substantial that it would prohibit the public from accessing the meeting” and that the site was “easily identifiable” and provided “adequate space for the public.”¹⁸ No options were provided for Minot citizens to access the meeting remotely and no transportation aids were set up or offered.¹⁹ This was the second time the Council met outside city limits for a yearly retreat²⁰ and the Council explains that it “wished to hold the Retreat ‘off-site’ to break out of normal routines and to limit City Council members’ distractions from everyday life (personal issues; full time jobs; etc.), so the members could focus solely on the agenda items.”²¹

The Washburn site was chosen because the City wanted a location within one hour’s drive that provided an easy to find, comfortable/casual, and accessible space that was relaxing and inspired creativity where the City Council members and City Manager could wholly focus on the agenda and break out of normal routines. The off-site facility in Washburn offered a break from the formalities of typical meetings where the City Council members and City Manager could focus on teambuilding, bonding, and creative brainstorming away from typical daily distractions and interruptions.²²

All of the reasons for holding the meeting at the site in Washburn are reasonable and I appreciate the concept of holding retreats for members of governing bodies to facilitate the free-flow of thoughts and discussion. However, the countervailing and weighty

¹⁷ In addition to the above factors for state-level entities, additional factors may be considered such as whether the public has remote access to the meeting and whether transportation is offered to the public who wish to attend the meeting. This is not meant to be an all-inclusive list, but will be analyzed on a case-by-case basis.

¹⁸ Letter from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 15, 2019).

¹⁹ Email from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 29, 2019, 10:06 AM).

²⁰ The City Council held a retreat at the same location on October 25, 2018. Letter from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 15, 2019).

²¹ Letter from Kelly Hendershot, Att’y, City of Minot, to Att’y Gen.’s Office (Aug. 15, 2019).

²² *Id.*

consideration must be the right of citizens to attend the meeting. Here, the reasons for holding the meeting in Washburn, however sound, do not outweigh the potential inconvenience and expense for Minot citizens whose business it is the Council conducts. It is therefore my opinion that the retreat of the Minot City Council seventy miles from its jurisdiction was a meeting that was “inaccessible” to the public and therefore violated open meetings law.

CONCLUSION

The Minot City Council meeting outside of city limits violated N.D.C.C. § 44-04-19 because the location was inaccessible to the public.

STEPS NEEDED TO REMEDY VIOLATION

The Minot City Council should carefully review its meeting minutes for the retreat and add in further details regarding any topic and discussion that occurred. The updated meeting minutes must be provided to the requestor of this opinion, and anyone else requesting them, free of charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.²³ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁴

Wayne Stenehjem
Attorney General

sld
cc: Rob Port (via email only)

²³ N.D.C.C. § 44-04-21.1(2).

²⁴ *Id.*