

**OPEN RECORDS AND MEETINGS OPINION
2021-O-01**

DATE ISSUED: February 24, 2021

ISSUED TO: County of Steele

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Lance Straabe asking whether the County of Steele violated N.D.C.C. § 44-04-19 by denying access to a public meeting.¹

FACTS PRESENTED

The Steele County Commission (Commission) met in person at the Steele County Courthouse (Courthouse) for a special meeting on September 15, 2020.² To allow for social distancing, the meeting was held in the third floor courtroom of the Courthouse rather than the regular Commissioners Room on the second floor.³ The special meeting was attended by Chairman Ted Johnson, commission members Richard Strand, Russell Walcker, Randy Richards, Steele County Auditor Emily Wigen, and Lance Straabe.⁴ The public could attend in person or receive a recording of the meeting via e-mail or flash drive after the meeting.⁵

Pursuant to Steele County's Covid policy, the doors to the Steele County Courthouse were locked at the time of the meeting.⁶ All access doors had a public notice with a number provided for building access and Covid screening.⁷ Steele County Auditor

¹ E-mail from Lance Straabe to Att'y Gen.'s Office (Sept. 15, 2020, 10:00 PM).

² Letter from Charles A. Stock, State's Att'y, Steele Cnty., to Att'y Gen.'s Office (Sept. 24, 2020).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

OPEN RECORDS AND MEETINGS OPINION 2021-O-01

February 24, 2021

Page 2

Emily Wigen asked Deputy Auditor Carly Idso to be at the courthouse shortly before 6 pm to let any members of the public into the meeting.⁸

Notice of the meeting was posted on the Steele County Courthouse doors, the first and second floors of the Courthouse, the county website, and in the Steele County Press.⁹ The agenda was also posted on doors of the Courthouse stating the meeting was an open public meeting and directing interested parties to contact the Auditor, at the provided phone number, for information on attending.¹⁰

Mr. Straabe arrived at the Courthouse approximately 10 minutes before the meeting.¹¹ Both of his calls to the Auditor to get inside went unanswered.¹² Mr. Straabe then sent a follow-up e-mail to the Auditor.¹³ Deputy Auditor Carly Idso arrived through the back door of the Courthouse at 5:59 p.m.¹⁴ She let Mr. Straabe in through the front door of the Courthouse less than a minute later.¹⁵ Ms. Idso then conducted a Covid screening before Mr. Straabe could go upstairs to the Commission meeting.¹⁶ The required health screening takes approximately 30 seconds to answer 3 questions and do a forehead temperature scan.¹⁷ After

⁸ Letter from Carly Idso, Deputy Auditor, Steele Cnty., to Att’y Gen.’s Office (Sept. 22, 2020). Letter from Charles A. Stock, State’s Att’y, Steele Cnty., to Att’y Gen.’s Office (Sept. 24, 2020).

⁹ Letter from Charles A. Stock, State’s Att’y, Steele Cnty., to Att’y Gen.’s Office (Sept. 24, 2020).

¹⁰ *Id.*

¹¹ E-mail from Lance Straabe to Att’y Gen.’s Office (Sept. 15, 2020).

¹² *Id.*

¹³ *Id.*

¹⁴ Letter from Carly Idso, Deputy Auditor, Steele Cnty., to the Att’y Gen.’s Office (Sept. 22, 2020). Mr. Straabe describes different times than those provided by the Commission. “Attorney General’s opinions under N.D.C.C. § 44-04-21.1 must be based on the facts given by the public entity.” *See* N.D.A.G. 98-O-15, N.D.A.G. 98-O-11.

¹⁵ Letter from Charles A. Stock, State’s Att’y, Steele Cnty., to Att’y Gen.’s Office (Sept. 24, 2020); *see also*, Letter from Carly Idso, Deputy Auditor, Steele Cnty., to Att’y Gen.’s Office (Sept. 22, 2020).

¹⁶ Letter from Charles A. Stock, State’s Att’y, Steele Cnty., to Att’y Gen.’s Office (Sept. 24, 2020); *see also*, Letter from Carly Idso, Deputy Auditor, Steele Cnty., to Att’y Gen.’s Office (Sept. 22, 2020).

¹⁷ Letter from Amy Czapiewski, Tax Dir./Deputy Auditor, Steele Cnty., to Att’y Gen. Office (Sept. 22, 2020).

conducting Mr. Straabe's Covid screening, Ms. Idso "clocked in" at 6:01 p.m.¹⁸ The Commission meeting started at approximately 6:01 p.m.¹⁹ When Mr. Straabe arrived at the Commission meeting, the meeting had already started.²⁰ Following the meeting, Mr. Straabe requested a copy of the recorded meeting, which was provided to him the next day.²¹

ISSUE

Whether the Steele County Commission violated N.D.C.C. § 44-04-19 at its September 15, 2020, special meeting by denying access to a public meeting when the Courthouse doors were locked during the meeting.

ANALYSIS

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.²² This section is violated when any person is denied access to a meeting, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.²³ To be open to the public, 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.²⁴

In 1998, this office found a violation of N.D.C.C. §44-04-19 when a meeting was held in a building that was locked after the meeting started, preventing a person from attending the meeting.²⁵ In that instance, there was no way to contact anyone who arrived after the door was locked.

¹⁸ Letter from Carly Idso, Deputy Auditor, Steele Cnty., to Att'y Gen.'s Office (Sept. 22, 2020); Letter from Charles A. Stock, State's Att'y, Steele Cnty., to Att'y Gen.'s Office (Sept. 24, 2020); Timecard, Carly Idso (Sept. 23, 2020).

¹⁹ Letter from Charles A. Stock, State's Att'y, Steele Cnty., to Att'y Gen.'s Office (Sept. 24, 2020).

²⁰ E-mail from Lance Straabe to Att'y Gen.'s Office (Sept. 15, 2020, 10:00 PM).

²¹ Letter from Charles A. Stock, State's Att'y, Steele Cnty., to Att'y Gen.'s Office (Sept. 24, 2020).

²² N.D.C.C. § 44-04-19.

²³ N.D.C.C. § 44-04-19(1).

²⁴ N.D.C.C. § 44-04-19(2).

²⁵ N.D.A.G. 98-O-17.

OPEN RECORDS AND MEETINGS OPINION 2021-O-01

February 24, 2021

Page 4

Here, the requester arrived at the Steele County Courthouse before the auditor and deputy auditor, who were designated to let people into the building, arrived. Although he had to wait for one of them to arrive to be let in the door, the deputy auditor was there just before the Commission meeting was due to begin at 6 p.m.

The process of letting Mr. Straabe in, conducting the Covid screening, and walking to the meeting room took a few minutes.²⁶ Although the meeting had been called to order at 6 p.m., Mr. Straabe entered the meeting room minutes after 6 p.m.

The doors of the courthouse were locked pursuant to the county's Covid policy. The Commission provided information, through its notice and signs on the Courthouse doors, for the public to contact the Auditor's office to gain access to the Courthouse. On the evening of the September 15, 2020, special meeting, the county deputy auditor arrived after Mr. Straabe, but was still able to let him in and conduct the Covid screening so that Mr. Straabe was able to join the meeting minutes after it started. It is therefore my opinion that the Commission did not deny access to a public meeting and did not violate the open meetings law.

CONCLUSION

The Steele County Commission did not violate N.D.C.C. § 44-04-19 at its September 15, 2020, special meeting. Therefore, no further action is necessary to remedy this issue.

Wayne Stenehjem
Attorney General

cc: Lance Straabe (via email only)

²⁶ Letter from Charles A. Stock, State's Att'y, Steele Cnty., to Att'y Gen.'s Office (Sept. 24, 2020); *see also*, Letter from Carly Idso, Deputy Auditor, Steele Cnty., to Att'y Gen.'s Office (Sept. 22, 2020).