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OPEN RECORDS AND MEETINGS OPINION
2025-O-10

DATE ISSUED: July 9, 2025

ISSUED TO: City of New Town

CITIZEN'S REQUEST FOR OPINION

Jacquelyn Halonen requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the City of New Town violated N.D.C.C. § 44-04-19 by asking city employees to leave during a meeting.

FACTS PRESENTED

The New Town City Council (City Council) held a regular meeting on January 18, 2023.¹ The meeting took place after working hours at 5:00 p.m. in the Council Room.² One of the items on the agenda was "Council Concerns: Salary Employees."³ When the City Council reached this agenda item, Mayor Standish asked four city employees to leave the meeting.⁴

ISSUE

Whether the City Council violated N.D.C.C. § 44-04-19 by asking employees to leave the room during an open meeting when employee salaries were discussed.

ANALYSIS

Unless otherwise provided by law, all meetings of a public entity must be open to the public.⁵ The law is violated when a person is denied access to a meeting, unless the denial is due to a reasonably unexpected lack of physical space,⁶ the meeting is properly closed pursuant to a statute,⁷ or a statute otherwise authorizes the denial. An impermissible denial of access "can be explicit or constructive."⁸

¹ Notice, City of New Town City Council Jan. 18, 2023.

² *Id.*

³ *Id.*

⁴ Email from Jacquelyn Halonen to Annique M. Lockard, Assistant Att'y Gen., Off. Of Att'y Gen. (Feb. 8, 2023, 1:57 PM).

⁵ N.D.C.C. § 44-04-19.

⁶ N.D.C.C. § 44-04-19(1).

⁷ N.D.A.G. 2015-O-09, *citing* N.D.A.G. 2014-O-19; N.D.A.G. 2007-O-05.

⁸ N.D.A.G. 2007-O-05, *citing* N.D.A.G. 98-O-16.

In a past opinion, this office examined a school board meeting at which the school board president told a parent that the president “preferred” that the parent’s daughter not attend a meeting.⁹ The school district asserted to this office that the parent “could have insisted her daughter be allowed to attend” the meeting and that the choice not to attend was voluntary.¹⁰ The school board president’s comment had a “chilling effect” on the parent’s willingness to assert her daughter’s right to attend the meeting, however, and as a result, the school district violated the open meetings law.¹¹

This office also found a violation of open meetings law when the State Board of Higher Education (SBHE) president openly requested that a SBHE meeting be limited to SBHE members.¹² She acknowledged that others had a right to be present at the meeting but made it clear she and the other board members wanted them not to attend. This office noted that public entities may reasonably apply personnel policies regarding attendance at open meetings (e.g., requiring employees to use leave to attend), but they cannot deny employees’ attendance.¹³

In the matter at issue, the four employees who were asked to leave the City Council meeting were not acting in any official capacity at the meeting, and the meeting was not held during work hours. Personnel policies regarding attendance were not applicable. Additionally, the agenda item at issue was not the subject of a closed session of the City Council. Instead, the City Council explained that the four employees were asked to leave the meeting for the discussion about length of employment and salary increases because “[i]t gets embarrassing for the employees to be in on this meeting, makes the employee feel very uncomfortable.”¹⁴ This is not a lawful reason to ask individuals to leave an open meeting or to chill their willingness to attend the meeting.¹⁵

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* This opinion also cites a court opinion from Florida and a Tennessee Attorney General opinion (both states have similar open meetings laws) and found a public entity violated open meetings laws “when it asked [members of the public] to voluntarily excuse themselves from the . . . meeting,” *citing Port Everglades Auth. v. Int’l Longshoremen’s Ass’n, Loc. 1922-1*, 652 So.2d 1169, 1170 (Fla. 4th DCA 1995) and that “a request to leave can be a powerful tool for coercing a person to waive the person’s right to attend a meeting because the person may understand that by remaining, it may antagonize board members and influence their decision. ‘In such a context [requesting a person to leave] . . . would have a chilling effect upon the exercise of the individual’s right to be present during [the open meeting],” *citing* Tenn. Op. Att’y Gen. 1980, 80-504.

¹² N.D.A.G. 2014-O-19.

¹³ *Id.*

¹⁴ Email from Eileen Zaun, Auditor, City of New Town, to Annique M. Lockard, Assistant Att’y Gen., Off. Of Att’y Gen. (Mar. 1, 2023, 11:50 AM).

¹⁵ This office has explained multiple times, regardless of how uncomfortable it might be for a governing body to receive unfavorable information during an open meeting, the public has a right to hear a report as it is given to the governing body. *See* N.D.A.G. 2010-O-13 “[r]egardless of how uncomfortable it might be to receive unfavorable information during an open meeting,

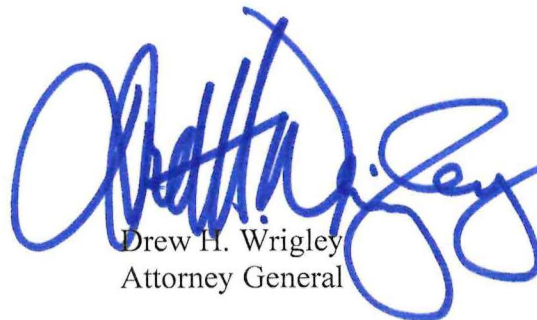
CONCLUSION

The City Council violated open meetings law when it asked employees to leave the room during a meeting when employee salaries were discussed.

STEPS NEEDED TO REMEDY VIOLATION

The City Council must create detailed minutes regarding the discussions that took place on January 18, 2023. The updated minutes should be provided to Jacquelyn Halonen free of charge. I would also encourage the members of the City Council to visit the Attorney General's website for information regarding its responsibilities under the State of North Dakota's open records and meetings law.

While I have every reason to expect the City of New Town will remedy this situation, 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. § 44-04-21.2.¹⁶ Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.¹⁷



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cc: Jacquelyn Halonen

the public had a right to hear the report,” and N.D.A.G. 2004-O-21 “no matter how uncomfortable it might be for a governing body to discuss an employee’s job performance in public, there is no exception to the open meetings law for personnel matters.” *Citing* N.D.A.G. 2004-O-19; N.D.A.G. 2001-O-17. Therefore, a governing body cannot ask people to leave solely because it is not comfortable with their presence.

¹⁶ N.D.C.C. § 44-04-21.1(2).

¹⁷ *Id.*