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OPEN RECORDS AND MEETINGS OPINION
2025-O-12

DATE ISSUED: September 10, 2025

ISSUED TO: Jacobson Memorial Hospital Care Center

CITIZEN'S REQUEST FOR OPINION

Dr. Alan Lindemann requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Jacobson Memorial Hospital Care Center violated the open meetings laws by refusing public access to its May 31, 2022, and June 28, 2022, meetings.

FACTS PRESENTED

The Board of Directors ("Board") of the Jacobson Memorial Hospital Care Center ("JMHCC") holds regular board meetings on the last Tuesday of every month.¹ Dr. Alan Lindemann wished to attend the Board's May 31, 2022, and June 28, 2022, meetings.² Dr. Lindemann appeared at the May 31, 2022, meeting and addressed the Board "for the first 5-10 minutes to state a small message regarding the hospital," but was not allowed to attend the full meeting.³ Dr. Lindemann complains he was "escorted out or told to leave the meeting" by JMHCC's chief executive officer.⁴ JMHCC contends it is not required to have its meetings open to the public because it is not a public entity subject to the open meetings laws.⁵

JMHCC is a private non-profit corporation located in Elgin, North Dakota.⁶ It is a 25-bed critical access hospital with three provider-based rural health clinics.⁷ It provides healthcare and medical services, including swing bed care, emergency care, primary care, and acute care, to the

¹ Letter from Justin Hagel, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Oct. 10, 2022).

² Email from Diane Haugen, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Aug. 24, 2022, 11:49 AM).

³ Letter from Dr. Alan Lindemann, to Off. of Att'y Gen. (June 28, 2022).

⁴ *Id.*

⁵ Letter from Justin Hagel, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Oct. 10, 2022).

⁶ *Id.*

⁷ *Id.*

surrounding communities.⁸ JMHCC receives funding from a variety of sources. The joint federal-state Medicaid program and the federal Medicare program reimburse JMHCC for medical services provided to eligible members of the public.⁹ JMHCC also receives payments from private health insurance companies for services rendered directly to privately insured patients and payments from insured and uninsured patients for out-of-pocket costs.¹⁰

JMHCC also has received funds from the City of Elgin's sales tax fund.¹¹ In 2013, JMHCC received \$30,000 for a Vitros 350 Chemistry Analyzer.¹² In 2016, JMHCC received \$25,000 for a CT Scanner upgrade.¹³ In 2017, JMHCC was given \$5,000 for its remodeling project related to its "A Place Called Home Campaign."¹⁴

According to JMHCC, it "does not receive any other funding from the state or any political subdivision of the state, including the county or municipal political subdivisions, outside [of] the above listed programs and previously disclosed payment from the City of Elgin last occurring in 2017."¹⁵

ISSUES

1. Whether JMHCC is a "public entity" subject to the open meetings laws.
2. Whether JMHCC violated the open meetings laws by refusing public access to its May 31, 2022, and June 28, 2022, meetings.

ANALYSIS

Issue One

The definition of a "public entity" subject to open records and open meetings laws includes "[o]rganizations or agencies supported in whole or in part by public funds, or expending public

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Minutes, Elgin Sales Tax Comm. (Mar. 17, 2016).

¹³ *Id.*

¹⁴ Minutes, Elgin Sales Tax Comm. (Nov. 7, 2017). While these minutes reflect that the Jacobson Memorial Hospital Foundation requested the money, JMHCC states it received the funds. However, this opinion is limited to JMHCC and does not address the Jacobson Memorial Hospital Foundation.

¹⁵ Letter from Justin Hagel, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Oct. 10, 2022).

funds.”¹⁶ A nongovernmental organization, even if formed as a private non-profit corporation, is a “public entity” for open records and open meetings laws if it is supported by public funds or expends public funds.¹⁷ “Public funds” are defined as, “cash and other assets with more than minimal value received from the state or any political subdivision of the state.”¹⁸ An organization is “supported in whole or in part by public funds” when it “receive[s] public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment.”¹⁹ Alternatively, an organization is not considered to be “supported by public funds” when the “goods and services provided in exchange for those funds are reasonably identified in an agreement or contract and have a fair market value that is equivalent to the amount of public funds it receives.”²⁰ “When an organization is supported by public funds there is no exchange of goods or services for funds.”²¹

Here, JMHCC receives funding from two main sources. First, JMHCC receives payments from private health insurance companies, Medicaid, and Medicare for healthcare services provided to eligible patients.²² This office previously determined that such payments from Medicare, Medicaid, and private health insurance companies are not public funds because those “sources represent[ed] payment for services rendered directly to the beneficiaries of the private insurance carriers and federal and state third-party funding sources.”²³

Second, JMHCC received funds from the City of Elgin in 2013, 2016, and 2017 from the City’s sales tax fund.²⁴ According to JMHCC, it received \$30,000 for a Vitros 350 Chemistry Analyzer, \$25,000 for a CT Scanner upgrade, and \$5,000 for its remodeling project related to its “A Place Called Home Campaign.”²⁵ JMHCC argues it is not supported by public funds because the funds it received from the City of Elgin’s sales tax fund were restricted for specific purchases, and JMHCC retained no discretion over how the funds were to be used.²⁶

¹⁶ N.D.C.C. § 44-04-17.1(13)(c).

¹⁷ *Id.*

¹⁸ N.D.C.C. § 44-04-17.1(14).

¹⁹ N.D.C.C. § 44-04-17.1(10).

²⁰ N.D.A.G. 2015-O-05, *citing* N.D.A.G. 2015-O-01; N.D.A.G. 2001-O-10.

²¹ *Adams Cnty. Rec. v. Greater N.D. Ass’n*, 529 N.W.2d 830, 836 (N.D. 1995) (“support” does not include a bargained-for exchange of value).

²² Letter from Justin Hagel, Att’y, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Oct. 10, 2022).

²³ N.D.A.G. 2004-O-04; *see also* N.D.A.G. 2024-O-06 n. 14 (stating any funds received directly from the federal government are not considered “public funds” under the statutory definition), *citing* N.D.A.G. 2015-O-01; N.D.A.G. 98-O-23.

²⁴ Letter from Justin Hagel, Att’y, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Oct. 10, 2022).

²⁵ Minutes, Elgin Sales Tax Comm. (Mar. 17, 2016); Minutes, Elgin Sales Tax Comm. (Nov. 7, 2017).

²⁶ Letter from Justin Hagel, Att’y, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Oct. 10, 2022).

JMHCC has not provided any contract or agreement that reasonably identifies specific goods or services it provides to the City of Elgin in exchange for the public funds it received from the city's sales tax fund.²⁷ Rather, JMHCC requested the public funds from the city to subsidize and fund its ongoing remodeling projects.²⁸ While these projects may indirectly benefit city residents, they constitute a direct benefit to JMHCC, and it is clear there is no exchange of goods or services from JMHCC to the city for these public funds.

JMHCC's argument that it is not supported by public funds because it retained little discretion over how to spend the funds from the city is not persuasive. This office has long held that "[t]he general purpose of the open records and meetings laws is to provide the public with the right and the means to determine how public funds are spent and how government business is conducted."²⁹ This office recently explained that a different nongovernmental healthcare entity was a "public entity" because it was supported by and expended public funds received from mill levies, a city's healthcare sales tax fund, and rural ambulance service district.³⁰ The sales tax funds were made available through an application process, and if awarded, the funds could be expended only for the reasons outlined in the successful application.³¹ Nonetheless, this office concluded the nongovernment entity was a public entity to the extent it was supported by and expended the public funds.³²

It is my opinion that JMHCC is a "public entity" subject to the open records and meetings laws to the extent it is supported by and expends the city's sales tax funds. Records and meetings related to such funds and their uses are open unless otherwise protected by law.

Issue Two

All meetings of a public entity must be open to the public, except as otherwise provided by law.³³ "Meeting" means a formal or informal gathering, whether in person or through other means such

²⁷ See N.D.A.G. 2003-O-10 (state general funds received for general support when paid without specifying any goods or services the organization was required to provide in exchange for the funds); N.D.A.G. 2002-O-09 (organization was considered supported by public funds due to lack of contract identifying specific services to be provided in exchange for public funds); N.D.A.G. 98-O-24.

²⁸ N.D.A.G. 2004-O-04 (public funds subsidize and fund ongoing operations).

²⁹ N.D.A.G. 98-O-23, *citing Adams Cnty. Rec. v. Greater N.D. Ass'n*, 529 N.W.2d 830, 833 (N.D. 1995).

³⁰ N.D.A.G. 2024-O-06 (nongovernmental entity was a "public entity" to the extent it was supported by and expended public funds received from the city's healthcare sales tax); *see also* N.D.A.G. 2000-O-07 (nongovernmental entity was a "public entity" because it was supported by and expended the sales tax proceeds it received from the city).

³¹ N.D.A.G. 2024-O-06.

³² *Id.*

³³ N.D.C.C. § 44-04-19.

as a telephone or video conference, involving a “quorum”³⁴ of the members of the “governing body”³⁵ regarding public business.³⁶ The phrase “public business” is defined as “all matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity’s governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity’s use of public funds.”³⁷

The portion of a meeting of the governing body of a public entity as defined in N.D.C.C. § 44-04-17.1(13)(c)³⁸ which does not involve public business is not required to be open to the public.³⁹

While JMHCC is a “public entity” and is subject to the open meetings law regarding the use of the sales tax proceeds received from the city, only the portions of the meetings concerning the use of those funds are subject to the open meeting laws.⁴⁰ My office has reviewed the meeting minutes from the May 31, 2022, and June 28, 2022, meetings, and based on the minutes, the Board did not discuss the approval or expenditure of those public funds during the meetings.⁴¹ Accordingly, it is my opinion that JMHCC’s Board did not violate the open meetings law when it prohibited Dr. Lindemann or others from attending its May 31, 2022, and June 28, 2022, meetings.

³⁴ N.D.C.C. § 44-04-17.1(15) (definition of a “quorum” means “one-half or more of the members of a governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity”).

³⁵ N.D.C.C. § 44-04-17.1(6) (definition of a “governing body” means “the multimember body responsible for making a collective decision on behalf of a public entity. ‘Governing body’ also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body”).

³⁶ N.D.C.C. § 44-04-17.1(9)(a).

³⁷ N.D.C.C. § 44-04-17.1(12).

³⁸ N.D.C.C. § 44-04-17.1(13)(c) (the definition of “public entity” means “[o]rganizations or agencies supported in whole or in part by public funds, or expending public funds”).

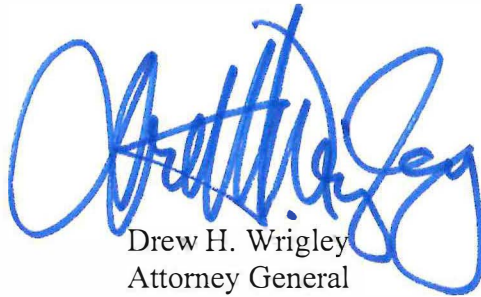
³⁹ N.D.C.C. § 44-04-19.

⁴⁰ See N.D.A.G. 2024-O-06 (“[R]ecords of entities that are subject to the open records law merely because they are in part supported by public funds are limited to the records pertaining to the use of public funds.”), *citing* N.D.A.G. 2006-O-04; N.D.A.G. 2004-O-04 (finding a public entity did not violate the open meetings law when it prohibited an individual from attending a meeting that was not related to the use of public funds when the entity was a “public entity” based on receipt of those funds).

⁴¹ Minutes, Bd. of Dirs., JMHCC (May 31, 2022); Minutes, Bd. of Dirs., JMHCC (June 28, 2022).

CONCLUSIONS

1. JMHCC is a “public entity” subject to the open meetings laws to the extent it is supported by or expends public funds.
2. JMHCC did not violate the open meetings laws by refusing public access to its May 31, 2022, and June 28, 2022, meetings because the meetings did not relate to public funds.



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cc: Dr. Alan Lindemann