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OPEN RECORDS AND MEETINGS OPINION
2025-O-19

DATE ISSUED: December 5, 2025

ISSUED TO: Burleigh County Commission

CITIZEN'S REQUEST FOR OPINION

Barb Knutson requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Burleigh County Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting not preceded by public notice.

FACTS PRESENTED

The Burleigh County Commission (Commission) held a regular meeting on December 5, 2022.¹ The Commission is composed of five at-large elected commissioners, one of whom serves as Chairperson.² During the November 8, 2022, general election, three Commission seats were open. Voters elected Steve Schwab, Wayne Munson, and Jerry Woodcox to fill those vacancies.³ The terms of office for the newly elected commissioners began on December 5, 2022.⁴

Prior to the December 5, 2022, meeting, a series of one-on-one conversations occurred between two sitting commissioners and the newly elected commissioners:

- Prior to the election, Commissioner Becky Matthews met with Commissioner-Elect Munson where they discussed county issues and portfolios. The parties also discussed the chairperson position and Munson stated he would like to nominate Matthews for chair.⁵

¹ Letter from Barb Knutson to Drew H. Wrigley, Att'y Gen., Off. of Att'y Gen. (Jan. 2, 2023); Email from Julie Lawyer, State's Att'y, Burleigh Cnty., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Mar. 8, 2023, 10:09 AM).

² Email from Julie Lawyer, State's Att'y, Burleigh Cnty., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Mar. 8, 2023, 10:09 AM).

³ *Results*, BURLEIGH CNTY., <https://www.burleigh.gov/elections/results/> (choose "2022 General Election Results") (last visited June 23, 2025).

⁴ N.D.C.C. § 11-10-05.1 (stating a county commissioner's regular term begins on the "first Monday in December" after the election).

⁵ Email from Becky Matthews, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 9, 2023, 7:34 AM); Email from Wayne Munson, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 8, 2023, 6:29 PM).

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- On November 14, 2022, Commissioner Matthews met with Commissioner-Elect Munson again to discuss interests in portfolio assignments.⁶
- After the election, Commissioner-Elect Munson spoke with fellow Commissioner-Elect Woodcox about time commitments and portfolio preferences. Munson also shared his intent to nominate Commissioner Matthews as chair.⁷
- Sometime after the election, Commissioner-Elect Schwab contacted Commissioner Brian Bitner with general questions about the Commission and the portfolio selection process.⁸
- After the November 21, 2022, Commission meeting,⁹ Munson briefly spoke with Commissioner Bitner about the Sheriff's Office portfolio.¹⁰
- Prior to the December 5, 2022, meeting, Commissioner Matthews returned a phone call to Commissioner-Elect Woodcox, during which he inquired about the portfolio assignment process. They discussed their respective interests in portfolios, and Commissioner Matthews expressed an interest in serving as chair.¹¹

No decisions were made during these discussions, and the topics of portfolio assignments and selection of a chair were discussed and resolved at the December 5, 2022, public meeting.¹²

ISSUE

Whether the Commission held "meetings" through various means without providing public notice in substantial compliance with N.D.C.C. § 44-04-20.

⁶ Email from Becky Matthews, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 9, 2023, 7:34 AM).

⁷ Email from Wayne Munson, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 8, 2023, 6:29 PM).

⁸ Email from Brian Bitner, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 6, 2023, 12:50 PM).

⁹ This meeting was attended solely by the then-sitting members of the Commission, as the terms of office for the newly elected commissioners had not yet commenced pursuant to N.D.C.C. § 11-10-05.1.

¹⁰ Email from Wayne Munson, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 8, 2023, 6:29 PM); Email from Brian Bitner, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 6, 2023, 12:50 PM).

¹¹ Email from Becky Matthews, Comm'r, Burleigh Cnty., to Julie Lawyer, State's Att'y, Burleigh Cnty. (Jan. 9, 2023, 7:34 AM).

¹² Email from Julie Lawyer, State's Att'y, Burleigh Cnty., to Barb Knutson (Jan. 13, 2023, 4:42 PM); Meeting Minutes, Burleigh Cnty. Comm'n (Dec. 5, 2022).

ANALYSIS

Unless otherwise specifically provided by law, all “meetings” of a public entity are required to be open to the public and must be preceded by sufficient public notice.¹³ A “meeting” includes both formal and informal gatherings, whether in person or through electronic means such as telephone or email, involving a quorum of the members of the governing body of a public entity regarding public business.¹⁴ A “meeting” also includes a series of smaller gatherings collectively involving a quorum if the members discuss or receive information regarding items of public business and hold the gatherings for the purpose of avoiding the open meetings law.¹⁵ In order to establish a quorum, “one-half or more of the members of the governing body” must be present.¹⁶

The Commission argues there was no quorum of commissioners involved in the conversations. The conversations in question took place before the newly elected commissioners, Munson, Woodcox, and Schwab, were officially members of the governing body. Under N.D.C.C. § 11-10-05.1, the terms of these individuals did not begin until “the first Monday in December next succeeding the officer’s election,” which in this case was December 5, 2022.¹⁷ Therefore, they were not yet “members” of the Commission for purposes of establishing a quorum. Because only two sitting members, Commissioners Matthews and Bitner, individually met with the commissioners-elect, these one-on-one conversations did not involve a quorum of the current governing body.¹⁸

This office has previously concluded that individual communications between less than a quorum of board members and non-members are not considered a “meeting,” provided the non-board member does not relay the substance of those discussions to a quorum of board members, suggest

¹³ N.D.C.C. §§ 44-04-19, 44-04-20.

¹⁴ N.D.C.C. §§ 44-04-17.1(9) (definition of “meeting”); 44-04-17.1(12) (definition of “public business” includes all matters that relate to a public entity’s performance of its governmental functions or use of public funds).

¹⁵ N.D.C.C. § 44-04-17.1(9).

¹⁶ N.D.C.C. § 44-04-17.1(15) (definition of “quorum” includes “one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity”).

¹⁷ N.D.C.C. § 11-10-05.1.

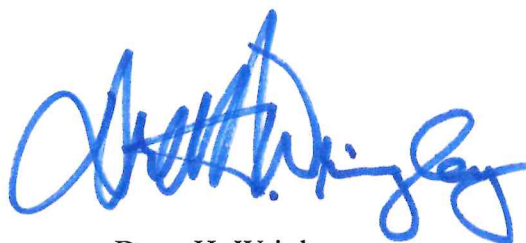
¹⁸ Although less than a quorum participated, meetings may still fall under the open meetings law if the governing body consents or otherwise delegates authority to two or more people to perform any function on its behalf. *See* N.D.A.G. 2005-O-02 (“[A] committee delegated authority to perform *any function*, including fact gathering, reporting, or recommending action, as well as taking action, on behalf of a governing body is subject to the state’s open meetings laws[.]” (citation omitted)). However, this office has not received any information indicating that the Commission consented to or otherwise delegated authority to the two commissioners to meet with the commissioners-elect.

a course of action, or otherwise build support or facilitate consensus through the individual conversations.¹⁹

Similarly, the individual conversations between the two sitting commissioners and commissioners-elect involved less than a quorum of current commissioners. This office has not received any information suggesting that the contents of the conversations were relayed among a quorum of the Commission. The discussions appear to have remained isolated, no decisions were made during these conversations, and the topics of portfolio assignments and selection of a chair were later discussed and resolved at the December 5, 2022, public meeting. Accordingly, the Commission did not violate the open meetings law.

CONCLUSION

The Commission did not hold “meetings” through various means without complying with open meetings law requirements. The conversations took place before the commissioners-elect officially assumed office, therefore, they were not yet “members of the governing body” for purposes of forming a quorum. Additionally, the conversations involved less than a quorum of sitting commissioners and were not relayed among a quorum of commissioners. With these facts and circumstances, there were no open meetings law violations.



Drew H. Wrigley
Attorney General

amr

cc: Barb Knutson

¹⁹ N.D.A.G. 2019-O-10; *see also* N.D.A.G. 2015-O-06 (finding a violation of the open meetings law when the chairperson of the commission asked the auditor to act as a liaison by conveying information and building consensus on a matter of public business with the entire commission); N.D.A.G. 2015-O-04 (finding a violation of the open meetings law when two commissioners met with various departments about the police chief’s resignation, and the substance was relayed to other commissioners through phone calls and discussions, which collectively involved a quorum and served to build consensus regarding a separation agreement); N.D.A.G. 2011-O-17 (finding a “meeting” occurred when the mayor contacted a quorum of the city council through a series of telephone calls to convey information about a lawsuit filed against the city and actions taken in response, which constituted public business).