

**OPEN RECORDS AND MEETINGS OPINION
2001-O-13**

DATE ISSUED: September 27, 2001

ISSUED TO: Karl Hoppe, City Auditor, Grace City

CITIZEN'S REQUEST FOR OPINION

On September 17, 2001, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ronald Brakke asking whether the Grace City Council violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting which was not preceded by sufficient public notice and by conducting a meeting which could not be heard by the members of the public who attended the meeting.

FACTS PRESENTED

On August 20, 2001, this office issued an opinion to Grace City indicating that, because the City had neglected to appoint an official newspaper as required in N.D.C.C. § 40-01-09, its notice of a special meeting on June 27, 2001, was deficient. N.D.A.G. 2001-O-08. Notice of a special meeting of a city council must be provided to the official city newspaper. N.D.C.C. § 44-04-20(6).

To remedy the City's violation, this office concluded that two meetings must be held. The purpose of the first meeting was to appoint an official newspaper. As explained in N.D.A.G. 2001-O-08, an official newspaper had to be appointed before the City could properly hold a special meeting to ratify the actions taken on June 27. After the City appointed an official newspaper, a second meeting was required for the purpose of ratifying the actions taken at the June 27 special meeting.

This office provided a large packet of informational material to the City along with its copy of the opinion issued by this office. Due to the size of the package, regular delivery of the opinion was not available and the city auditor apparently was unable to pick up the opinion and related material at the post office until Saturday, August 25, 2001. The August 20 opinion gave the City seven days to take the remedial actions identified in the opinion. As a result, the City was required to conduct the two remedial meetings on very short notice.

The first remedial meeting was held on Sunday, August 26. The City prepared a notice of the meeting as required in N.D.C.C. § 44-04-20. No public meeting room was available at that date and time, so the meeting notice identified the "north end of Myrtle Street in Grace City, ND" as the location of the meeting. An official city newspaper was appointed as required in N.D.A.G. 2001-O-08.

The second remedial meeting was held on Monday, August 27. The City prepared a notice of the meeting as required in N.D.C.C. § 44-04-20. In response to the request for this opinion, the city auditor indicated he sent a copy of the meeting notice by facsimile to the official city newspaper and posted the meeting notice in the local café. Again, due to the time of the meeting, no public meeting room was available and the "north end of Myrtle Street in Grace City, ND" was identified in the notice as the location of the meeting. During the August 27 special meeting, the City ratified two of the three actions taken at the June 27 special meeting. The third item, purchase of a video cassette recorder, was considered moot. This meeting satisfied the remedial steps identified by this office in N.D.A.G. 2001-O-08.

The City met again on August 28 after a special city election.¹ A videotape of this meeting has been reviewed by this office. The meeting lasted seven minutes and the sole item of business was to report the results of the election.

ISSUES

1. Whether the notice of the special City meeting on August 26 was sufficient under N.D.C.C. § 44-04-20.
2. Whether the City violated N.D.C.C. § 44-04-19 by conducting a meeting which could not be heard by the members of the public who attended the meeting.
3. Whether the City violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting which was not open to the public or preceded by public notice to approve the purchase of errors and omissions insurance coverage for the City.

ANALYSES

Issue One:

The facts in this situation are unique. Given the conclusion in N.D.A.G. 2001-O-08 that sufficient public notice was not provided for the June 27 special meeting due to the lack of an official city newspaper, it was necessary for the City to hold another special meeting to appoint an official city newspaper. The city auditor prepared and retained a

¹ Mr. Brakke also complains he was not allowed to watch the ballots be counted. This complaint does not involve a meeting of a quorum of the members of the city council and is beyond the scope of an opinion issued under N.D.C.C. § 44-04-21.1.

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copy of the meeting notice as required in N.D.C.C. § 44-04-20, but notice to the official city newspaper was impossible at that point because one had not yet been appointed. This situation was contemplated by this office in issuing N.D.A.G. 2001-O-08. In addition, notice could not be posted at the meeting location because the meeting was scheduled to be held in an outdoor location. One cannot reasonably allege this was a "secret meeting" when it was held on a public street corner. It is my opinion the notice of the City's special meeting on August 26 was sufficient under these unique circumstances.

Issue Two:

Mr. Brakke attended the City's August 28 meeting and apparently assisted with the recording of the meeting on videotape. As Mr. Brakke alleges, a large fan was running during the meeting which made the recording very difficult to hear. It is reasonable to conclude that a meeting which cannot be heard by the public is the equivalent of a closed or secret meeting and would be a violation of N.D.C.C. § 44-04-19. However, the videotape also reveals that after Mr. Brakke complained he could not hear the discussion at the meeting, the city auditor invited Mr. Brakke to move his chair up to the meeting table. Mr. Brakke chose not to do so, based in part on a city council member stating that the meeting was over. Although the fan was closer to the meeting table than to Mr. Brakke, the members of the city council apparently had no difficulty hearing each other. Had Mr. Brakke accepted the invitation to move his chair to the meeting table, he also would have been able to hear the discussion. Under the facts presented, it is my opinion the City did not violate N.D.C.C. § 44-04-19.

Issue Three:

Mr. Brakke's last allegation is that the City obtained errors and omissions insurance without making that decision in a properly-noticed open meeting. The city auditor has explained to this office that the policy was simply renewed automatically and no meeting was held to discuss the renewal. The premium was simply paid as a bill owed by the City. Accordingly, there was no meeting on the insurance policy and the City did not violate N.D.C.C. §§ 44-04-19 or 44-04-20.

CONCLUSIONS

1. The City provided sufficient public notice of its special meeting on August 26, 2001.
2. The City did not violate N.D.C.C. § 44-04-19 when it invited Mr. Brakke to sit at the meeting table if he could not hear the discussion.

3. The City did not hold an illegal meeting to discuss the renewal of its errors and omissions insurance coverage.

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