

**OPEN RECORDS AND MEETINGS OPINION
2008-O-01**

DATE ISSUED: January 28, 2008

ISSUED TO: Forbes City Council

CITIZEN'S REQUEST FOR OPINION

Marge Rohrbach alleges that the Forbes City Council ("Council") violated the open meetings law because a quorum of the Council held an informal gathering at which the members discussed public business in violation of N.D.C.C. § 44-04-19.

FACTS PRESENTED

On October 1, 2007, the City of Forbes held a regular meeting of the Forbes City Council. The morning before the meeting, the husband of a Council member had coffee at the Forbes Equity Exchange Elevator with a group of individuals that included another Council member. The subject of the conversation concerned the failure of a local saloon to obtain a special event permit. Marge Rohrbach, owner of the saloon, alleges that this discussion constituted a meeting in violation of the open records laws.¹

ISSUE

Whether the Forbes City Council violated N.D.C.C. § 44-04-19 because a quorum of Council members discussed public business at a gathering that was not open to the public.

ANALYSIS

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.² A "meeting" means a formal or informal gathering of a quorum of the members of the governing body of a public entity regarding public business.³ A "quorum" means 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.⁴

¹ Ms. Rohrbach also alleged that the Council held unauthorized meetings in June 2007, but a request for an opinion about those gatherings is not timely. See N.D.C.C. § 44-04-21.1(1) (request for an opinion regarding compliance with the requirements for an open meeting must be made within 90 days of the alleged violation).

² N.D.C.C. § 44-04-19.

³ N.D.C.C. § 44-04-17.1(8)(a)(1).

⁴ N.D.C.C. § 44-04-17.1(14).

According to the mayor, a quorum of Council members did not meet informally at the Forbes Equity Exchange Elevator and discuss public business on the morning of October 1 or on any other occasion. This office must base the opinion on the facts given by the public entity,⁵ which, in this case, denies that a quorum was present.

The governing body of a city with a council form of government is the city council, which includes the mayor and council members.⁶ Forbes has a five-member city council, including the mayor. Only one member of the Council was present at the Equity Exchange Elevator. Therefore, because a quorum of members of the governing body was not present, the Council did not violate N.D.C.C. § 44-04-19 by holding an unauthorized public meeting.⁷ Based on the foregoing, it is my opinion that the Council did not violate the open meetings law.⁸

CONCLUSION

A quorum of the Forbes City Council did not hold an informal gathering on the morning of October 1, 2007, prior to its regular meeting held that evening; therefore, a meeting did not occur and the Council did not violate N.D.C.C. § 44-04-19 requiring open meetings.

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⁵ N.D.C.C. § 44-04-21.1(1).

⁶ N.D.C.C. § 40-08-01; N.D.A.G. 2004-O-12.

⁷ See N.D.A.G. 2004-O-12 (when two members of a five-member city council were present at a meeting, a quorum was not present).

⁸ The fact that the agenda for the evening's meeting was known does not imply that an unnoticed meeting took place. This office previously held that "it would be appropriate for the presiding officer of a governing body to contact the other members to determine which items to include on the agenda of the next meeting, as long as the conversations do not include information-gathering or discussion regarding the substance of the issues on the agenda." N.D.A.G. 98-O-05.