

**OPEN RECORDS AND MEETINGS OPINION  
2009-O-16**

DATE ISSUED: September 9, 2009

ISSUED TO: Oriska City Commission

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Paulette Omdahl asking whether the Oriska City Council violated the open meetings law by failing to provide proper notice of meetings, and by failing to provide personal notice of a Council meeting as requested.

**FACTS PRESENTED**

The Oriska City Council ("Council") holds its regular meetings on the first Monday of each month. On April 27, 2009, Ms. Omdahl asked to receive a meeting notice for the Council's May meeting. Her intent was to determine whether any version of the notice included an agenda listing the topics for the meeting, which are not included in the notice posted at City Hall. When no notice arrived by the first Monday of May, Ms. Omdahl called the city auditor on May 4 to ask why a copy of the May 4 meeting notice was not sent to her. The auditor explained the Council instructed him not to send out a copy of the notice because posting notice at City Hall was sufficient. Ms. Omdahl was not informed of the agenda for the meeting during her call with the auditor and did not receive a copy of the notice.

Generally meeting notices are posted on the door of the Oriska City Hall three days before the meeting. The May meeting notice stated the following:

City  
Meeting  
May 4<sup>th</sup>  
7:30 PM  
City  
Hall

No notice of the June 2009 Council meeting was posted.

## ISSUES

1. Whether the Council violated N.D.C.C. § 44-04-20 when it failed to include an agenda in the notice of its regular May 2009 meeting.
2. Whether the Council violated N.D.C.C. § 44-04-20 when it failed to post a notice of its June 2009 meeting.
3. Whether the Council violated N.D.C.C. § 44-04-20 when it failed to provide personal notice of the May 2009 meeting to an individual after she asked to receive a copy of the notice.

## ANALYSES

### Issue one

"Unless otherwise provided by law, public notice must be given in advance" of all meetings of the governing body of a public entity.<sup>1</sup> Notice of meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.<sup>2</sup> Notice of a regular meeting "must contain the date, time, and location of the meeting and, if practicable, the topics to be considered."<sup>3</sup>

The Council admits that it knew that delinquent water bills would be a topic discussed at the May 4 meeting at the time the notice was drafted.<sup>4</sup> However, it was not included in the notice because it is a topic discussed at almost every Council meeting.

In 2008, the city of Nome, North Dakota, did not include agenda items in the notice for regular meetings because it was a small community, had a part-time auditor, and often had only routine business such as paying bills to consider. Thus, the city of Nome did not believe it was practicable for the city council to include an agenda with every notice and cited N.D.C.C. § 44-04-20(2) which states that a notice must contain the topics to be considered only "if practicable."<sup>5</sup> This office explained that "if practicable" means that if the governing body expects to discuss a topic when the notice is prepared, it is required to be included in the notice.<sup>6</sup>

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<sup>1</sup> N.D.C.C. § 44-04-20(1) (emphasis added); N.D.A.G. 2006-O-07.

<sup>2</sup> N.D.C.C. § 44-04-20(9).

<sup>3</sup> N.D.C.C. § 44-04-20(2) (emphasis added); N.D.A.G. 2008-O-23.

<sup>4</sup> Telephone Interview with Norman Erber, City Auditor (Aug. 10, 2009).

<sup>5</sup> N.D.C.C. § 44-04-20(2); see also N.D.A.G. 2006-O-07.

<sup>6</sup> N.D.A.G. 2006-O-07.

Here, the Council makes a similar argument explaining that it was not necessary to include the topics in the notice because of the routine nature of the topics discussed at the regular meetings. The fact that a topic may be routine does not remove the obligation in N.D.C.C. § 44-04-20(2) to include a topic in a meeting notice if the governing body is expected to address it at the meeting.

By failing to include a topic expected to be addressed by the Council at the time the notice was drafted, the Council failed to substantially comply with notice requirements of N.D.C.C. § 44-04-20.

#### Issue two

No notice was posted for the Council's June 2009 meeting at City Hall. Although preparation of the notice is commonly delegated to an employee of a public entity, the governing body's presiding officer is responsible for ensuring that sufficient notice is provided under N.D.C.C. § 44-04-20.<sup>7</sup> Thus, it is my opinion that the Council failed to substantially comply with § 44-04-20 when it failed to post a notice of its June 2009 meeting.

#### Issue three

“The governing body’s presiding officer has the responsibility of assuring that such public notice is given at the same time as such governing body’s members are notified, and that this notice is available to anyone requesting such information.”<sup>8</sup>

The Council intentionally refused to provide a copy of its May 4 meeting notice to Ms. Omdahl after she asked to receive a copy. In its response to this office, the Council explains that Oriska is a small town and everyone lives within five blocks of city hall.<sup>9</sup> It also attempted to justify its refusal by arguing that the city does not have the extra money to print extra copies and mail them to everyone in the city.<sup>10</sup>

Regardless of the size of the town, the open meetings law expressly requires the governing body of a public entity to provide personal notice to any individual asking to receive notice of meetings.<sup>11</sup> Here, only one person requested a notice for one meeting, so the economic impact is negligible.

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<sup>7</sup> N.D.C.C. § 44-04-20(5); see N.D.A.G. 2004-O-09; N.D.A.G. 98-O-13.

<sup>8</sup> N.D.C.C. § 44-04-20(5) (emphasis added).

<sup>9</sup> Letter to Attorney General Wayne Stenehjem from Alderman Carl Trader, July 2009.

<sup>10</sup> Id.

<sup>11</sup> N.D.C.C. § 44-04-20(5).

As I recently explained, the law is silent as to how meeting notices are provided to those individuals asking for individual notice.<sup>12</sup> Thus, the notice could have been hand delivered or even provided orally.<sup>13</sup> The goal of a governing body is to provide the relevant information to any person seeking information.<sup>14</sup> It does not have to be cost prohibitive.

Because the Council intentionally refused to provide the meeting notice information as requested by Ms. Omdahl, it is my opinion that the Council failed to substantially comply with N.D.C.C. § 44-04-20(5).

### CONCLUSIONS

1. The Council violated N.D.C.C. § 44-04-20 when it failed to include an agenda in the notice of its regular May 2009 meeting.
2. The Council violated N.D.C.C. § 44-04-20 when it failed to post a notice of its June 2009 meeting.
3. The Council violated N.D.C.C. § 44-04-20(5) when it failed to provide Ms. Omdahl notice of the May 2009 meeting, as requested.

### STEPS NEEDED TO REMEDY VIOLATIONS

The Oriska City Council must include the topics it expects to discuss at its regular meetings in its meeting notices. It must prepare, post for one week, and file with the city auditor a proper notice, including an agenda, for its May 4 and June 1, 2009, meetings.<sup>15</sup> A copy of the May and June notices must be provided to the requester at no cost.

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

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<sup>12</sup> N.D.A.G. 2009-O-13; N.D.A.G. 2009-O-04.

<sup>13</sup> See N.D.A.G. 2009-O-13 (a violation did not occur when the end result was that the relevant information about the meeting was provided).

<sup>14</sup> See Id.

<sup>15</sup> A "Sample Meeting Notice" suggesting the listing of agenda topics as separately numbered paragraphs is found on the Attorney General's website, under the Open Records & Meetings tab and Sample for Giving Public Notice of Meetings PDF, which is found at <http://www.ag.nd.gov/OpenRecords/ORM.htm>.

under N.D.C.C. § 44-04-21.2.<sup>16</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>17</sup>

Wayne Stenehjem  
Attorney General

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<sup>16</sup> N.D.C.C. §44-04-21.1(2).

<sup>17</sup> Id.