

**OPEN RECORDS AND MEETINGS OPINION  
2010-O-05**

DATE ISSUED: April 20, 2010

ISSUED TO: Kindred City Council

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Verne R. Wolf asking whether the Kindred City Council violated N.D.C.C. § 44-04-20 by failing to provide public notice of a meeting in substantial compliance with the open meetings law.

**FACTS PRESENTED**

At its December 2, 2009, regular city council meeting, the Kindred City Council (Council) announced plans to hold a special meeting on January 20, 2010, to discuss the policy regarding the calculation of excess increments in tax increment financing (TIF) districts.<sup>1</sup> The requester attended that meeting and understood that the city's policy regarding excess increments in TIF districts was the only topic on the agenda for the special meeting.

Between the December 2, 2009, meeting when the special meeting was first announced and the date of the meeting, the agenda changed. The agenda for the special meeting that was originally posted listed three items: 1) roll call; 2) energy grants; and 3) draft policy on TIF special assessments. Later, after meeting with the city attorney, an accountant, and the auditor on January 15, 2010, the mayor amended the agenda to list the following topics: 1) roll call; 2) ground rules for meeting; 3) energy grant; and 4) discuss TIF excess increment calculation and distribution. The amended agenda was e-mailed to a reporter at the official newspaper of the city, posted at city hall, on the city website, and filed in the auditor's office.<sup>2</sup>

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<sup>1</sup> Minutes, Kindred City Council, Dec. 2, 2009.

<sup>2</sup> Letter from Christopher M. McShane, City Attorney, to Mary Kae Kelsch, Assistant Attorney General, Mar. 5, 2010.

Mr. Wolf alleges that the city violated the notice requirements of the open meetings law by changing the meeting agenda from the original topics announced at the December meeting and by failing to notify the newspaper.

### ISSUES

1. Whether the Council violated N.D.C.C. § 44-04-20 when it amended an agenda of a special meeting prior to the meeting.
2. Whether the Council violated N.D.C.C. § 44-04-20(6) by failing to provide notice to its official newspaper.

### ANALYSES

#### Issue one

Notice of any meeting of a public entity must contain the date, time, location, and topics expected to be discussed.<sup>3</sup> The notice must be posted at the principal office of the governing body holding the meeting, at the location of the meeting on the day of the meeting, and in the case of a city, filed with the city auditor.<sup>4</sup> Because special or emergency meetings may be called on very short notice, the topics that may be considered are limited to those included in the notice. In addition, notice must be provided to the public entity's official newspaper, if any, and any representatives of the news media who have requested notice of special or emergency meetings.<sup>5</sup>

The law does not prohibit a governing body from amending an agenda prior to a special meeting. In fact, if an additional topic arises prior to a special meeting, a governing body must amend the agenda in order to discuss the topic at the meeting.<sup>6</sup> The announcement that a special meeting would take place to discuss TIF districts at the Council's December 2, 2009, meeting did not prevent later modification of the agenda. Here, the modification occurred prior to the special meeting, the notice was amended to reflect the change, re-posted, and provided to the official newspaper. Thus, it is my opinion that the notice substantially complied with N.D.C.C. § 44-04-20.

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<sup>3</sup> N.D.C.C. § 44-04-20(2).

<sup>4</sup> N.D.C.C. § 44-04-20(4).

<sup>5</sup> N.D.C.C. § 44-04-20(6); see also N.D.A.G. 2007-O-02 (notice of emergency or special meetings must be given to any representative of the news media who has requested notice, at the same time notice is given to members of the governing body).

<sup>6</sup> But see N.D.C.C. § 44-04-20(2) and N.D.A.G. 2003-O-12 (new agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting).

Issue two

Mr. Wolf asserts that the Council failed to give notice of the January 20 special meeting to the Cass County Reporter. As stated in "Issue One," notice of a special meeting must be provided to the public entity's official newspaper.<sup>7</sup> In previous opinions I have explained that the requirement to provide notice to a newspaper does not require publication by the newspaper.<sup>8</sup> The purpose of the notice is to alert representatives of the media of the meeting and the topics that will be discussed, so they can send a reporter to cover the meeting if they choose to do so.<sup>9</sup>

According to the Council, a copy of the revised notice of the January 20, 2010, meeting was provided to the Cass County Reporter by e-mail.<sup>10</sup> In any opinion issued under N.D.C.C. § 44-04-21.1, the Attorney General must base the opinion on the facts given by the public entity.<sup>11</sup> Accordingly, it is my opinion that the Council provided notice of the special meeting to its official newspaper in compliance with the open meetings law.

CONCLUSIONS

1. The Council did not violate N.D.C.C. § 44-04-20 by amending the agenda of a special meeting prior to the meeting.
2. The Council provided notice of a January 10, 2010, special meeting to the City's official newspaper in compliance with N.D.C.C. § 44-04-20(6).

Wayne Stenehjem  
Attorney General

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<sup>7</sup> N.D.C.C. § 44-04-20(6).

<sup>8</sup> N.D.A.G. 2009-O-09; see also N.D.C.C. § 44-04-20(1); N.D.A.G. 2003-O-20; N.D.A.G. 2003-O-13.

<sup>9</sup> N.D.A.G. 2003-O-20; N.D.A.G. 2003-O-13.

<sup>10</sup> Letter from Christopher M. McShane, City Attorney, to Mary Kae Kelsch, Assistant Attorney General, Mar. 5, 2010.

<sup>11</sup> N.D.C.C. § 44-04-21.1(1).