

**OPEN RECORDS AND MEETINGS OPINION  
2015-O-09**

DATE ISSUED: May 14, 2015

ISSUED TO: Benedict 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 Allen and Lisa Tomlinson asking whether the Benedict City Council violated N.D.C.C. § 44-04-19 by asking people to leave the room for a special meeting.

**FACTS PRESENTED**

The Benedict City Council (Council) held a regular meeting on March 9, 2015.<sup>1</sup> After the meeting, the Council announced that there would be a special meeting and asked everyone to leave the room.<sup>2</sup> The Council proceeded to meet with the city engineer to discuss advertising for bids for a city lift station improvement project.<sup>3</sup>

**ISSUE**

Whether the Benedict City Council violated N.D.C.C. § 44-04-19 by asking the public to leave the room so it could confer with the city engineer about a city project.

**ANALYSIS**

Unless otherwise provided by law, all meetings of a public entity must be open to the public.<sup>4</sup> The law is violated if a person is denied access to a meeting unless the access is due to lack of physical space.<sup>5</sup> It is a violation of open meetings law when members

---

<sup>1</sup> Letter from Ron Barrette, Mayor, City of Benedict, to Sandra DePountis, Asst. Att'y Gen. (received Mar. 26, 2015).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> N.D.C.C. § 44-04-19.

<sup>5</sup> N.D.C.C. § 44-04-19(1).

## OPEN RECORDS AND MEETINGS OPINION 2015-O-09

May 14, 2015

Page 2

of the public are asked to leave an open meeting when there is no statutory authority for closing such meeting.<sup>6</sup>

When the Council met with the city engineer to discuss a city lift station project, it was holding a meeting subject to open meetings law. According to the Council, the project was contentious so the public was asked to leave in order to avoid disruptive behavior.<sup>7</sup> This office previously explained that although members of the public must have access to meetings of a governing board of a public entity, the public does not have the right to participate or speak at a public meeting.<sup>8</sup> In addition, a public body has the authority to adopt reasonable rules and policies to ensure that a public meeting is conducted in an orderly manner, including the orderly behavior of those attending.<sup>9</sup> Therefore, there are steps that may be taken to control the decorum of a meeting that are not as drastic as preventing public attendance.

The Council's reason for closing the meeting to the public was not legally authorized<sup>10</sup> so it was a violation of the open meetings law to ask the public to leave an otherwise open meeting regarding public business.<sup>11</sup>

### CONCLUSION

The Benedict City Council violated open meetings law when it asked members of the public to leave the room during a discussion relating to public business.

---

<sup>6</sup> N.D.A.G. 2014-O-19; N.D.A.G. 2007-O-05.

<sup>7</sup> Letter from Ron Barrette, Mayor, City of Benedict, to Sandra DePountis, Asst. Att'y Gen. (received Mar. 26, 2015).

<sup>8</sup> N.D.A.G. 2007-O-11.

<sup>9</sup> Id.

<sup>10</sup> Even if such discussions could be properly closed to the public under appropriate statutory authority, the Council must follow N.D.C.C. § 44-04-19.2 to hold an executive session.

<sup>11</sup> In their request for an opinion, Allen and Lisa Tomlinson also allege the Council performed a similar action after the February 9, 2015, meeting. Letter from Allen and Lisa Tomlinson, to Att'y Gen. (Mar. 11, 2015). However, N.D.C.C. § 44-04-21.1 authorizes this office to review only those alleged violations which have occurred within the 30 days preceding this office's receipt of the opinion request. Although this office cannot therefore address the February 9, 2015, meeting, I would urge the Council to review the open meetings law, specifically those addressing when a meeting can be closed and the proper procedure for closing such meetings.

### STEPS NEEDED TO REMEDY VIOLATION

The Benedict City Council must create detailed minutes regarding the discussions that took place on March 9, 2015, between it and the city engineer regarding the city lift station improvement project. The updated minutes should be provided to Mr. and Mrs. Tomlinson, free of charge. I would also encourage the members of the Council to visit the Attorney General's website for information regarding its responsibilities under the State of North Dakota's open records and meetings law.

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 under N.D.C.C. § 44-04-21.2.<sup>12</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>13</sup>

Wayne Stenehjem  
Attorney General

sld  
cc: Allen and Lisa Tomlinson (via email only)

---

<sup>12</sup> N.D.C.C. § 44-04-21.1(2).

<sup>13</sup> Id.