

**OPEN RECORDS AND MEETINGS OPINION
2016-O-07**

DATE ISSUED: April 19, 2016

ISSUED TO: Flasher 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 Stewart Merritt asking whether the Flasher City Commission violated N.D.C.C. § 44-04-20 by failing to properly notice a meeting.

FACTS PRESENTED

The Flasher City Commission held a regular meeting on December 9, 2015.¹ A quorum of the Commission was not present so it was announced the meeting would be rescheduled for December 15, 2015.² Stewart Merritt alleges the December 15, 2015, meeting was not properly noticed.³

ISSUES

Whether notice for the December 15, 2015, Flasher City Commission meeting was provided in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.⁴ For regularly scheduled meetings, the notice must be

¹ Letter from Sherry Schmidt, Flasher City Auditor, to Sandra L. DePountis, Asst. Att'y Gen. (Dec. 29, 2015).

² Id. The City of Flasher treated the Dec. 15, 2015, meeting as a special meeting even though it was a rescheduled regular meeting. Notice was posted for the rescheduled meeting. See N.D.A.G. 98-O-09 ("when a meeting is postponed or rescheduled, notice of the rescheduled meeting must be provided as required in N.D.C.C. § 44-04-20.").

³ Email from Stewart Merritt to Attorney General's office (Dec. 16, 2015, 12:42 pm).

⁴ N.D.C.C. § 44-04-20; see also N.D.C.C. § 44-04-17.1(13)(b) (definition of "public entity" includes commissions of political subdivisions).

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posted at the principal office of the governing body, if such exists, at the location of the meeting on the day of the meeting, and, for city-level bodies, either filed with the city auditor's office or posted on the public entity's website.⁵ For emergency or special meetings, notice must also be given to the public entity's official newspaper, and to any representatives of the news media who requested to be notified of the special meetings.⁶ Finally, notice must be given for all regular or special meetings to anyone requesting such information.⁷

The notice for the December 15, 2015, meeting was posted on the front door of the City of Flasher's main office building,⁸ filed with the auditor, and given to the Superintendent of Flasher Public Schools who requested to receive notification of any upcoming meeting.⁹ In addition, a reporter from the Grant County News/Carson Press was present during the December 9, 2015, meeting when it was announced that due to lack of a quorum, the meeting would be rescheduled for December 15, 2015.¹⁰

The City of Flasher agrees that it did not provide personal notice to Mr. Merritt. Mr. Merritt alleges that he requested personal notice of special in May 2015.¹¹ The City Auditor, however, denies ever receiving a request from Mr. Merritt to be notified of any upcoming meeting.¹² Opinions issued by this office must be based on the facts given by the public entity.¹³ Accordingly, it is my opinion that the December 15, 2015, meeting of

⁵ N.D.C.C. § 44-04-20(4).

⁶ N.D.C.C. § 44-04-20(6). If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located.

⁷ N.D.C.C. § 44-04-20(5).

⁸ The City of Flasher office building is considered the principal office of the City of Flasher and was the location of the meeting. See Letter from Sherry Schmidt, Flasher City Auditor, to Sandra L. DePountis, Asst. Att'y Gen. (Dec. 29, 2015).

⁹ Letter from Sherry Schmidt, Flasher City Auditor, to Sandra L. DePountis, Asst. Att'y Gen. (Dec. 29, 2015).

¹⁰ Id. Section 44-04-20(6), N.D.C.C., does not dictate the medium in which the newspaper is required to receive notice, it merely requires that the governing body "notify the public entity's official newspaper." Because a reporter of the official newspaper was present during the announcement that the meeting would be rescheduled for Dec. 15, 2015, the newspaper was notified of the meeting.

¹¹ Email from Stewart Merritt to Attorney General's office (Dec. 16, 2015, 12:42 pm).

¹² Letter from Sherry Schmidt, Flasher City Auditor, to Sandra L. DePountis, Asst. Att'y Gen. (Dec. 29, 2015). The Commission also denies receiving such a request. The Auditor, after receiving a copy of Mr. Merritt's letter addressed to the Office of Attorney General has since begun providing notice to Mr. Merritt.

¹³ N.D.C.C. § 44-04-21.1(1).

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the Flasher City Commission complied with the notice requirements of N.D.C.C. § 44-04-20.

CONCLUSION

Notice for the December 15, 2015, Flasher City Commission meeting was provided in substantial compliance with N.D.C.C. § 44-04-20.

Wayne Stenehjem
Attorney General

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cc: Stewart Merritt (via email only)