

**OPEN RECORDS AND MEETINGS OPINION
2016-O-16**

DATE ISSUED: July 27, 2016

ISSUED TO: City of Bisbee

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Robert Fleming asking whether the City of Bisbee violated N.D.C.C. §§ 44-04-20 and 44-04-21 by failing to provide notice or take minutes of a special meeting.

FACTS PRESENTED

During its February 29, 2016, regular meeting, the Bisbee City Council (Council) voted to terminate the employment of a city maintenance worker.¹ The maintenance worker was not in attendance at the meeting, so the Council scheduled a special meeting for March 1, 2016, to meet with the worker and inform him of the Council's decision.²

ISSUE

Whether the Bisbee City Council violated N.D.C.C. §§ 44-04-20 and 44-04-21 by failing to post notice or take minutes of a special meeting held on March 1, 2016.

ANALYSIS

Unless otherwise provided by law, all meetings of a public entity must be open to the public.³ A "meeting" is defined as a "formal or informal gathering or a work session... of [a] quorum of the members of the governing body of a public entity regarding public business."⁴ Governing bodies of public entities must provide notice of upcoming meetings in compliance with N.D.C.C. § 44-04-20 and take minutes of meetings in compliance with N.D.C.C. § 44-04-21(2).

A quorum of the Council⁵ met with the maintenance worker on March 1, 2016, to discuss his termination. Personnel issues, including termination of public employees,

¹ Email from Tammy Larson, Auditor, City of Bisbee, to Sandra L. DePountis, Asst. Att'y Gen. (May 3, 2016, 11:21 am).

² *Id.*

³ N.D.C.C. § 44-04-19; *see also* N.D.C.C. § 44-04-17.1(13)(b) (definition of "public entity" includes commissions of any political subdivisions).

⁴ N.D.C.C. § 44-04-17.1(9)(a).

⁵ Email from Tammy Larson, Auditor, City of Bisbee, to Sandra L. DePountis, Asst.

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are considered public business as defined by N.D.C.C. § 44-04-17.1(12) because they relate to the performance of a governmental function and the use of public funds.⁶ The Council was unaware that this gathering would be considered a meeting subject to open meetings law requirements so no notice was posted and no minutes were taken, which were violations of N.D.C.C. §§ 44-04-20 and 44-04-21(2).

CONCLUSION

The Bisbee City Council violated open meetings law when it failed to provide notice or take minutes of a special meeting.

STEPS NEEDED TO REMEDY VIOLATION

The Bisbee City Council must create detailed minutes of the March 1, 2016, special meeting and provide the minutes to Mr. Fleming, and anyone else requesting a copy of the minutes, free of charge.

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. § 44-04-21.2.⁷ It may also result in personal liability for the person or persons responsible for the noncompliance.⁸

Wayne Stenehjem
Attorney General

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cc: Robert Fleming (via email only)

Att'y Gen. (May 3, 2016, 2:16 pm) (four or the Council members were present, along with the maintenance worker and city auditor).

⁶ See N.D.A.G. 2016-0-01 (improper to discuss termination of employee in executive session); N.D.A.G. 2015-0-06 (violation of open meetings law when serial conversations regarding termination of employee held outside of public meeting); N.D.A.G. 2005-0-02 (no matter how uncomfortable it might be for a governing body to discuss an employee's job performance in public, there is no exception of the open meetings law for personnel matters).

⁷ N. D .C.C. § 44-04-21.1(2).

⁸ *Id.*