

**OPEN RECORDS AND MEETINGS OPINION
2018-O-11**

DATE ISSUED: July 2, 2018

ISSUED TO: Bismarck-Mandan Mayors' Committee for People with Disabilities

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from S. Paul Jordan asking whether Bismarck-Mandan Mayor's Committee for People with Disabilities violated N.D.C.C. § 44-04-20 by failing to post notice of a meeting.

FACTS PRESENTED

The Bismarck-Mandan Mayors' Committee for People with Disabilities (Committee) holds regular meetings on the second Tuesday in January, May, and September.¹ The Committee last met on May 8, 2018.

ISSUE

Whether the Bismarck-Mandan Mayors' Committee for People with Disabilities properly posted notice of its May 8, 2018, regular meeting.

ANALYSIS

"Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity."² An agenda noting the date, time, location of the meeting, and topics to be considered, and notice of any executive session, for city level bodies, must be posted for each regular meeting either with the city auditor or on the city's website, at the location of the meeting on the day of the meeting, at the entity's main office, if such office exists, and given to anyone requesting to receive notice of upcoming meetings.³

¹ <https://cityofmandan.com> (follow "City Government." then "Boards & Committees," then "Bismarck-Mandan Mayor's Committee for People with Disabilities").

² N.D.C.C. § 44-04-20.

³ N.D.C.C. § 44-04-20.

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The Committee's policy is to post notice depending on which city would be holding the meeting, Bismarck or Mandan. As the May 8, 2018, meeting was held in Mandan, the Committee posted its agenda on the City of Mandan's website, filed with the city auditor, on the City of Mandan's bulletin board, and at the location of the meeting on the day of the meeting.⁴

This office previously recognized that when an entity serves two public entities, notice must be posted at each jurisdiction.⁵ Therefore, although the Committee complied with the requirements in the City of Mandan, the Committee also serves the City of Bismarck and the agenda must also be posted on either the City of Bismarck's website or with the Bismarck city auditor. It is therefore my opinion that the Committee violated N.D.C.C. § 44-04-20 when it failed to post the meeting notice with the City of Bismarck.

In addition, the agenda for the May 8, 2018, meeting was sent to Committee members on January 10, 2018, with a revised email sent out March 28, 2018.⁶ However, the agenda was not posted at the above locations until April 6, 2018.⁷ Section 44-04-20(5), N.D.C.C., requires notice to be given at the same time the members of the governing body receive notice and an agenda.⁸ It was therefore a violation when the Committee failed to post timely notice in compliance with N.D.C.C. § 44-04-20.

CONCLUSION

The Committee, as an entity of both Bismarck and Mandan, violated open meetings law when it failed to post notice with the City of Bismarck. The Committee also failed to timely post notice at the same time members of the governing body received the agenda of the meeting.

STEPS NEEDED TO REMEDY VIOLATION

The Committee must provide a copy of its May 8, 2018, meeting minutes to Mr. Jordan, and anyone else requesting them, free of charge.

⁴ See Letter from DesaRae Berreth, Chairperson, Bismarck-Mandan Mayor's Comm. for People with Disabilities, Office of Att'y Gen. (June 14, 2018). No one requested to receive personal notice of upcoming meetings.

⁵ N.D.A.G. 2015-O-12; N.D.A.G. 2005-O-10.

⁶ Letter from DesaRae Berreth, Chairperson, Bismarck-Mandan Mayor's Comm. for People with Disabilities, Office of Att'y Gen. (June 14, 2018).

⁷ *Id.*

⁸ See also N.D.A.G. 2016-O-04.

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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. § 44-04-21.2.⁹ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁰

Wayne Stenehjem
Attorney General

sld

cc: S. Paul Jordan

⁹ N.D.C.C. § 44-04-21.1(2).

¹⁰ *Id.*