

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 98-O-18**

DATE ISSUED: August 11, 1998

ISSUED TO: Marvin Gillig, Regan City Mayor
Kelly Bauer, Regan City Auditor
David Lindell, Regan City Attorney

CITIZEN'S REQUEST FOR OPINION

On April 29, 1998, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from David Young asking whether the Regan City Council violated N.D.C.C. § 44-04-20, regarding notice of meetings, and N.D.C.C. § 44-04-21, regarding meeting minutes.

FACTS PRESENTED

During the April 6, 1998, regular meeting of the Regan City Council, two daughters of David Young made a request to the Council for a permit to build a tree house. After the girls made their request, the Council realized that the request was for more than just a tree house; it was for a building surrounded by trees. The Council had questions over what was to be involved and asked for more specifics. The Council decided it should wait until the next meeting to take any action on the girls' request. Moving on to other business, the Council reviewed a citizen's request for a permit to move a building into the city, and determined it was important for the Council to receive proof of ownership and a complete formal layout of the building and site. The city auditor suggested that the same information be provided by David Young regarding the tree house, and that Mr. and Mrs. Young should attend the next meeting. Mayor Gillig was asked to call David Young and suggest that he come to the next meeting. The minutes of the April 6, 1998, regular meeting as prepared by the city auditor state, in regard to the Young request: "There was discussion in regards to a permit being offered to the Young girls for a tree house. The board decided to table the decision for a permit until the next meeting in May, since the description was for more than a simple tree house and requested that the parents come next time." In his opinion request, David Young stated that both of his daughters and two other adult citizens of Regan indicated the City Council, at this meeting, did not request that the parents attend the next meeting.

On April 7, 1998, the Regan City Council held a special meeting to discuss a citizen's moving of some buildings into the city without a permit. One council member was concerned that the buildings would be moved into the city the next morning. Also, the Council was concerned that the buildings would obstruct a drain. At 4:30 p.m., Mayor Gillig and another council member went to the city auditor's residence and requested

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that the auditor contact the remaining council members to discuss the situation. The meeting was called to order at 4:55 p.m. at the city auditor's residence and adjourned at 5:28 p.m. Notice of the meeting was not provided to the public or the media. Minutes of the meeting were kept and published; however, the minutes do not indicate the location of the meeting.

On April 15, 1998, Mayor Gillig received a telephone call from the Wilton city auditor to inform him that Dietrich Sanitation (the current holder of the sanitation contract with the cities of Wilton and Regan) and representatives of one or two other sanitation companies would be present at a Wilton City Commission meeting later that day to explain their operations. Both Regan's and Wilton's sanitation contracts were to expire shortly. Mayor Gillig wanted to attend the Wilton meeting to listen to the presentations by the different sanitation companies. He asked two other council members if they wished to go to Wilton with him and listen to the information. Thus, three of the five Regan City Council members attended the Wilton meeting. The attendance at the meeting was not the result of directions from the Regan City Council. None of the Regan City Council members in attendance at the Wilton meeting spoke during the meeting. They did not discuss any business regarding the city of Regan during the trip from Regan to Wilton. They did, however, repeat some of the information obtained amongst themselves during the ride back to Regan to make sure they understood everything correctly to present at the next council meeting.

ISSUES

1. Whether the minutes of the April 6, 1998, regular meeting of the Regan City Council are correct.
2. Whether proper notice was given of the April 7, 1998, special meeting of the Regan City Council.
3. Whether the minutes of the April 7, 1998, special meeting must state the location of the meeting.
4. Whether attendance by three of the five Regan City Council members at the April 15, 1998, meeting of the Wilton City Commission to listen to the presentations by various sanitation companies constitutes a meeting of the Regan City Council, which requires public notice.
5. Whether proper notice was given of the April 15, 1998, special meeting of the Regan City Council.

ANALYSES

Issue One:

The minutes of the April 6, 1998, regular meeting of the Regan City Council state that the Council "requested that the parents [Mr. and Mrs. Young] come next time." David Young contends that the City Council did not make such a request at its April 6, 1998, meeting. The Attorney General's office does not review all alleged inaccuracies in meeting minutes. This office determines whether minutes meet the minimum requirements as specified in N.D.C.C. § 44-04-21(2). Among other things, the minutes must include "[a] list of topics discussed regarding public business." N.D.C.C. § 44-04-21(2)(c). Mr. Young does not contend that the minutes do not include all of the topics discussed at the April 6, 1998, meeting. State law provides that it is the duty of the city auditor to "attend all meetings of the governing body and keep a complete record of its proceedings. The official proceedings are to be signed by the auditor when they are prepared and by the executive officer upon board approval at a subsequent meeting." N.D.C.C. § 40-16-03(1). Thus, it is the responsibility of the city auditor and city council to make sure that minutes of meetings are accurate. The Attorney General's office will only review the content of meeting minutes to determine whether they meet the minimum requirements as specified in N.D.C.C. § 44-04-21(2).

Issue Two:

This office has previously summarized the public notice that must be provided for meetings:

Public notice of a meeting must be provided at the same time the members of the governing body of a public entity are notified, and is the responsibility of the governing body's presiding officer. N.D.C.C. § 44-04-20(5). The notice must be posted at the public entity's main office, if any, and filed, in the case of cities, with the city auditor. N.D.C.C. § 44-04-20(4). On the day of the meeting, the notice must be posted at the location of the meeting, if different from the public entity's main office. Id. In addition, for special or emergency meetings, the presiding officer or designee must notify the public entity's official newspaper and any other members of the media who have requested it.

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N.D.A.G. 98-O-10. No notice was provided of the April 7, 1998, special meeting at the city auditor's residence. Although it appears that the determination to hold this special meeting was made suddenly sometime in the afternoon of April 7, the city still needed to comply with the public notice requirements as indicated above. If there was time before the meeting, the city should have contacted the city's official newspaper to notify it of the special meeting. If it was not reasonably possible to provide public notice before the meeting, the Council was required to comply with the law by providing public notice the next day that a meeting had been held. N.D.A.G. 98-O-10. Here, no notice was provided either before or after the meeting. Thus, it is my opinion that proper notice was not given of the April 7, 1998, special meeting of the Regan City Council.

Issue Three:

The minutes of the April 7, 1998, special meeting of the Regan City Council were published in the newspaper. However, the minutes did not state the location of the meeting. N.D.C.C. § 44-04-21(2) provides for the minimum requirements of meeting minutes. These requirements do not provide that the minutes state the location of the meeting. A meeting notice must state the location of the meeting. N.D.C.C. § 44-04-20(2). Thus, it is my opinion that the minutes of the April 7, 1998, special meeting did not need to state the location of the meeting.

Issue Four:

A quorum of the members of the Regan City Council attended a meeting of the Wilton City Commission where presentations were made by different sanitation companies.

When a quorum of the members of a governing body of a public entity attend the meeting of another group, and the group's discussion pertains to the public business of the governing body, the attendance of the members of the governing body is a "meeting." N.D.A.G. 98-O-08; N.D.A.G. 1996-F-09. This conclusion applies even if the commissioners merely listen and do not participate in the meeting.

N.D.A.G. 98-O-08. The City of Regan's sanitation contract was soon to expire, and members of the Regan City Council attended the April 15, 1998, Wilton City Commission meeting to hear presentations by various sanitation companies who were explaining their operations. This presentation certainly pertained to public business of the Regan City Council. Thus, it is my opinion that the attendance of three of the five Regan City Council members at the Wilton City Commission meeting was a "meeting" of

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the Regan City Council, required to be open to the public under N.D.C.C. § 44-04-19, preceded by public notice in compliance with N.D.C.C. § 44-04-20, and followed by minutes in compliance with N.D.C.C. § 44-04-21.

Issue Five:

No notice was provided of the April 15, 1998, meeting of the Regan City Council that occurred by their attendance at the Wilton City Commission meeting. If there was time before the meeting, the city should have contacted the city's official newspaper to notify it of the meeting. In addition, as discussed in Issue II above, notice had to be filed with the city auditor and posted at the city's main office. Therefore, it is my opinion that proper notice was not given of the April 15, 1998, meeting of the Regan City Council.

CONCLUSIONS

1. The Attorney General will review meeting minutes to determine whether the minimum requirements of N.D.C.C. § 44-04-21(2) are met, and, beyond that, will not review meeting minutes to determine their accuracy.
2. It is my opinion that proper notice was not given of the April 7, 1998, special meeting of the Regan City Council.
3. It is my opinion that the minutes of the April 7, 1998, special meeting of the Regan City Council were not required to state the location of the meeting.
4. It is my opinion that the attendance of three of the five Regan City Council members at an April 15, 1998, meeting of the Wilton City Commission to listen to presentations by various sanitation companies constituted a meeting of the Regan City Council, of which public notice was required to be given.
5. It is my opinion that proper notice was not given of the April 15, 1998, special meeting of the Regan City Council.

STEPS NEEDED TO REMEDY VIOLATIONS

A notice of the April 7, 1998, special meeting of the Regan City Council needs to be prepared, specifying that minutes are available upon request. The notice must be posted in the city's main office, if any, and filed with the city auditor. Since minutes of

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this meeting were prepared and published in the city newspaper, the city need not notify the city newspaper again that this meeting occurred.

Notice of the April 15, 1998, special meeting of the Regan City Council needs to be prepared specifying that minutes of that meeting will be available upon request. The notice must be posted in the city's main office, if any, and filed with the city auditor, and a copy must be given to the city's official newspaper. In addition, once minutes are prepared of the April 15, 1998, meeting, a copy must be provided to the city's official newspaper.

Failure to issue a notice of a meeting or take other corrective measures as 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. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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