

N.D.A.G. Letter to Nething (Aug. 18, 1986)

August 28, 1986

Mr. David E. Nething
Office of City Attorney
P.O. Box 1059
Jamestown, ND 58402

Dear Dave:

Thank you for your letter of August 18, 1986, requesting our response to three questions which have occurred with respect to the proposed demolition of the armory building in Jamestown.

Your first question is whether a city council may consider a matter not on their agenda without suspending their rules of procedure. Nowhere in the North Dakota Century Code are there any statutes providing for the method by which meetings of a city council are to be held. N.D.C.C. § 40-08-10 provides for the meetings of the council, but does not discuss the manner in which the meetings are to be held or the various procedural rules which must be adopted. Obviously, the Legislature has left such matters to the discretion of the individual city councils across the state.

There is one state statute which discusses agendas of open meetings of public bodies. N.D.C.C. §44-04-20 states, in part, as follows:

44-04-20. NOTICE OF PUBLIC MEETINGS REQUIRED --
EXCEPTIONS -- SCHEDULE SET BY STATUTE, ORDINANCE, OR
RESOLUTION. . . .However, the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, shall not affect the validity of the meeting or the actions taken thereat.

Thus, for the purposes of state law, the deviation from an agenda by a governing body is permissible.

According to your letter, the Jamestown City Council has adopted Roberts Rules of Order as its own procedural rules. I have no doubt but that the Jamestown City Council is well within their authority to decide to follow these particular rules in handling their meetings and agenda items. However, I am not in a position to provide an opinion interpreting Roberts Rules of Order or the applicable Jamestown city ordinances. Since the state and its statutes are not involved, I am without sufficient authority to interpret, discuss, or resolve procedural matters involving the city which are governed solely by their own ordinances.

As a general discussion, I would suggest that if the city has adopted specific rules, or has referenced a standard order of rules, with respect to the manner in which their business is to be conducted, business not conducted in compliance with those rules is suspect and may be subject to challenge in terms of its validity.

Your second question inquires as to the validity of the action of the city council in selling the armory given the various amendments and substitute motions which occurred at the meeting in question. Again, my answer to you in response to your first question is as applicable here. The state statutes do not provide the method by which cities may transact business. Where a city has adopted rules of procedure by which its business is handled, business not transacted in compliance with those rules is suspect and may be subject to challenge.

Finally, your third question concerns the validity of a private sale of property to an individual where the property is valued in excess of \$2,500. In this instance, we do have a specific state statute discussing the question posed. N.D.C.C. § 40-11-04 clearly provides that property estimated "by the governing body of the municipality to be of a value less than two thousand five hundred dollars" may be sold at private sale upon resolution of the governing body. In all other cases, such property may be sold "only at public sale." Obviously, if the armory in question is valued by the governing body at an amount in excess of \$2,500 it may be sold only at a public sale.

I have received your letter of August 25, 1986, providing additional information on this matter. However, I do not believe these additional facts would alter my conclusions. Furthermore, I would agree with your conclusions as stated in your letter.

Sincerely,

Nicholas J. Spaeth

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