

January 22, 2013

LEGISLATIVE SUBCOMMITTEES - OPEN MEETINGS REQUIREMENTS

This memorandum is in response to a request for information regarding whether meetings of subcommittees of standing committees of the Legislative Assembly are subject to the open meetings requirements under the Constitution of North Dakota and the North Dakota Century Code.

Section 14 of Article IV of the Constitution of North Dakota provides that "[a]ll sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, must be open and public." In addition, Section 5 of Article XI of the Constitution of North Dakota requires "all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state..." to be open to the public unless otherwise provided by law.

To further define the open meetings requirements under the constitution, the Legislative Assembly has adopted statutory requirements that are applicable to "public entities." Under North Dakota Century Code Section 44-04-17.1, the definition of a "public entity" includes:

Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function[.]

Section 44-04-17.1 also defines the term "governing body" as "the multimember body responsible for making a collective decision on behalf of a public entity." The term also includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."

Section 44-04-19 reiterates the constitutional open meetings requirement by stating that "all meetings of a public entity must be open to the public." Section 44-04-20 requires advance public notice of meetings and Section 44-04-20 requires that minutes be kept of the meetings. The minutes must include:

- a. The names of the members attending the meeting;

- b. The date and time the meeting was called to order and adjourned;
- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

In addition to the constitutional and statutory provisions relating to open meetings, the Attorney General has issued several opinions regarding the applicability of the open meetings requirements to subcommittees. The Attorney General has consistently opined that any delegation by a governing body to a smaller group of the governing body does not excuse the smaller group from adhering to the open meetings requirements to which the governing body is subject. The Attorney General has noted that the group does not have to be authorized to take final action on public business to be considered subject to the open meetings requirements and has stated "the group need only be authorized by the governing body to take some action, including information gathering or holding discussions, for the group to be a "governing body" by delegation." N.D.A.G. 2009-O-05 March 12, 2009, to Mandan City Commission (a two-member commission portfolio is a committee despite being less than a quorum of the city commission)

In conclusion, the Constitution of North Dakota requires meetings of the Legislative Assembly to be open and public. Statutory requirements specifically define whether an entity, such as a subcommittee, is subject to open meetings requirements. Under the North Dakota Century Code, a group delegated the responsibility to meet and discuss items of public business is considered a governing body of a public entity which is subject to open meetings requirements. Several opinions of the Attorney General have further clarified the applicability of the open meetings requirements to meetings of subcommittees. Under statute, a public meeting must be noticed in advance and a record of the proceedings must be kept.