

To: North Dakota Attorney General Office  
Submitted via Online Form, May 28, 2024

Hello:

I'm writing to request an Attorney General Opinion on recent actions of the City of Minot taken during a Special City Council Meeting on May 6th.

On May 6th, Minot City Council met at a Special Meeting which included Executive Session. The listed agenda item included:

### 3. EXECUTIVE SESSION: POTENTIAL LAND PURCHASE

*The topic of discussion will be regarding a potential land purchase by the City of Minot. The City Council will discuss negotiating strategy and/or provide negotiating instructions to its attorney or other negotiators regarding a potential contract for which negotiation is likely to occur in the immediate future. An open meeting on this topic would have an adverse fiscal effect on the bargaining position of the city if discussed at a public meeting. See N.D.C.C. 44-04-19.1(9).*

The full agenda can be viewed here:

[https://www.minotnd.gov/AgendaCenter/ViewFile/Agenda/\\_05062024-1205?html=true](https://www.minotnd.gov/AgendaCenter/ViewFile/Agenda/_05062024-1205?html=true)

Upon reconvening in open session, the City Council proceeded with the following motion and actions:

1. Approve the purchase of 11 3rd St. and 311 1st Ave NE in the amount of \$310,000 plus closing costs;
2. Approve the earnest money in the amount of \$1,000 being issued prior to second reading of the budget amendment;
3. Approve the budget amendment to allocate funding for the purchase; and
4. Authorize the Mayor to sign any necessary documents to complete the acquisition.

I believe this may be a violation of:

44-04-20.6: [...] Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

The practice of declaring a generic agenda item and then acting on one with specificity in the same meeting has the effect of obscuring transparency and limiting public accountability. In this case, the effect was -- in essence -- the secret purchase of land -- that was completed within 3 minutes of the public receiving notice of its potential.

Further, I believe this issue may be tied to an additional Special Meeting and Executive Session that took place on April 15th.

That agenda item can be viewed here:

[https://www.minotnd.gov/AgendaCenter/ViewFile/Agenda/\\_04152024-1198?html=true](https://www.minotnd.gov/AgendaCenter/ViewFile/Agenda/_04152024-1198?html=true)

I do not know the extent of discussion or topics of that executive session because of this emerging practice of obscuring discussion topics behind generic agenda items.

Additionally, I believe that it is possible that the extent of discussions at either the May 6th or April 15th meetings included topics not protected by executive session exceptions.

I believe this because a rational decision making process on the potential to negotiate for real estate includes two essential parts.

1. The decision to negotiate at all, or the desire, suitability to purchase.
2. The negotiating/offer strategy.

In reviewing records of the City of Minot, I can find no mention of the real estate at 100 3rd St NE as being desired or considered for purchase. Therefore, at some point in some discussion somewhere, the City Council must have become compelled to believe that it was necessary to enter into negotiation for purchase. As such, I would request clarification on whether that component -- the argument in favor of entering into purchase negotiations -- of an executive session -- if it took place -- is protected from public review by N.D.C.C.

I have requested release of the digital recordings of the executive sessions through the City's FOIA request system. The City responded with acknowledgement that the records can be made public through action of the governing board, and I believe the City's legal department is acting to draft such an action item for consideration at their next meeting.

I will also share that my interactions with the City have been professional and responsive. I simply believe given the effectual outcome of the City's interpretation of N.D.C.C. that an Attorney General review and clarification of these practices is in the Public interest.

Respectfully,

Josh Wolsky, Publisher, TheMinotVoice.com