

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION  
No. 2000-O-01**

DATE ISSUED: January 24, 2000

ISSUED TO: Donna Black Cloud, Business Manager, Solen Public School District

**CITIZEN'S REQUEST FOR OPINION**

On December 9, 1999, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Gabe Plante, President of the Solen School Board, asking whether the Board violated N.D.C.C. §§ 44-04-19 and 44-04-19.2 by holding an executive session without sufficient statutory authority and without announcing the Board's reason for the executive session.

**FACTS PRESENTED**

The Solen Public School District Board (Board) held a special meeting on December 3, 1999. According to the facts in Mr. Plante's request for this opinion, which have not been disputed by the Board, both Mr. Plante and the school business manager advised the Board on the requirements of the open meetings law and the limited authority of the Board to hold an executive session. Despite this advice, and the fact that no executive session was included in the notice of the special meeting as required by N.D.C.C. § 44-04-20, a majority of the Board voted to convene in executive session. At that point, Mr. Plante refused to continue to preside over the Board's meeting and did not attend the executive session. No legal authority or explanation for the executive session was offered by the Board before going into executive session.

The executive session lasted for approximately 90 minutes and was recorded. Minutes of the executive session were prepared as well.

**ISSUES**

1. Whether the Board violated N.D.C.C. § 44-04-19.2 by failing to announce the legal authority and general topics of discussion for its executive session on December 3, 1999.
2. Whether the Board violated N.D.C.C. § 44-04-19 by holding an executive session which was not authorized by state law.

## ANALYSES

### Issue One:

Even if a governing body of a public entity has authority under state law to hold an executive session, the governing body still must comply with the procedural requirements in N.D.C.C. § 44-04-19.2. Included among these requirements is the need to announce the general topics to be discussed during the executive session and the legal authority for holding an executive session on those topics. N.D.C.C. § 44-04-19.2(2)(b). The Board does not dispute that it failed to announce the topics it planned to discuss and the legal authority for its executive session. Accordingly, it is my opinion that the Board violated N.D.C.C. § 44-04-19.2.

### Issue Two:

In addition to the procedural problem with the Board's executive session on December 3, 1999, Mr. Plante alleges that the Board had no legal authority to hold an executive session on the topics which were actually discussed during the executive session. After reviewing the recording of the executive session, I agree with this allegation.

Although numerous items were discussed in the executive session, they all centered around the same two issues: the difficulties arising from the vacant position of school superintendent, including the need to fill the vacancy in order to satisfy state accreditation requirements, and concerns regarding the chain of authority within the administration of the school district.

All meetings of the Board, as the governing body of a North Dakota public school district, must be open to the public unless otherwise specifically provided by law. N.D.C.C. § 44-04-19. Here, there is no statutory authority for the Board to discuss the topics described in the preceding paragraph, nor has the Board offered any legal authority for its executive session. It is my opinion that the Board violated N.D.C.C. § 44-04-19 by holding an executive session which was not authorized by law.

## CONCLUSIONS

1. The Board violated N.D.C.C. § 44-04-19.2 by failing to announce the legal authority and general topics of discussion for its executive session on December 3, 1999.
2. The Board violated N.D.C.C. § 44-04-19 by holding an executive session which was not authorized by state law.

### STEPS NEEDED TO REMEDY VIOLATIONS

The Board needs to make the recording of its executive session available to the public upon request as an open record. See N.D.C.C. § 44-04-18. In addition, the minutes of the executive session must be added to the minutes of the open portion of the December 3 meeting. Finally, the Board must hold a new meeting, preceded by sufficient public notice under N.D.C.C. § 44-04-20, to reconsider and ratify the actions taken during the December 3 meeting, including the appointment of a new superintendent.

Failure to disclose a record, 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.

Heidi Heitkamp  
Attorney General

Assisted by: James C. Fleming  
Assistant Attorney General

vkk