

**OPEN RECORDS AND MEETINGS OPINION
2006-O-05**

DATE ISSUED: February 28, 2006

ISSUED TO: North Dakota Firefighter's Association

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Darrell Graf asking whether the North Dakota Firefighter's Association ("Association") violated N.D.C.C. § 44-04-20 by failing to give proper notice of the Association's executive board meetings.

FACTS PRESENTED

The Association is a non-profit corporation. Its members consist of the various organized fire departments and fire protection districts within this state. One of the Association's chief activities is conducting annual fire schools.

The Association is governed by an executive board (Board) consisting of eight members.¹ The Board generally conducts two meetings each year in conjunction with its fire training schools and annual convention and other meetings on an as needed basis.

The Association held a telephone conference call meeting on November 2, 2005, and conducted another meeting on January 14, 2006, at the Radisson Hotel in Bismarck.² The Association gives notice of its meetings to its Board members but does not give public notice of its meetings in the manner specified in the open meetings laws.

ISSUE

Whether the Association violated N.D.C.C. § 44-04-20 by failing to give proper notice of its Board meetings.

¹ Constitution and Bylaws of the North Dakota Firefighter's Association (2000).

² The request for an opinion regarding a meeting notice violation must be made within 90 days of the meeting for which an opinion is requested. The Board held several other meetings, but because those meetings occurred more than 90 days before Mr. Graf's request, our office cannot address them. See N.D.C.C. § 44-04-21.1(1).

ANALYSIS

The state's open meetings laws apply to "public entities."³ The definition of "public entity" in N.D.C.C. § 44-04-17.1 is not limited to entities traditionally viewed as "governmental." A nonprofit entity like the Association can be a public entity if it is supported by public funds, is expending public funds,⁴ or is recognized by state law to exercise public authority or to perform a governmental function.⁵ "Public funds" means "cash and other assets with more than minimal value received from the state or any political subdivision of the state."⁶

The Association receives appropriations from the Legislative Assembly to carry out its duties.⁷ For example, in 2005 the Legislature appropriated \$120,000 for the Association. This appropriation represents a substantial portion of the Association's \$175,000 annual budget. In addition, the Association is recognized in state law to perform a governmental function.⁸ There is an entire chapter in the Century Code devoted to the Association. The Association is required by statute to conduct annual fire schools to train firefighters.⁹ It is also required to file annual reports with the Office of Management and Budget listing all the fire schools held in the state.¹⁰ There are several sections of the Century Code dealing with legislative appropriations to the Association.¹¹ It is my opinion that the Association is a public entity subject to the open meetings law because it is supported by public funds and because it is recognized by state law to perform a governmental function.

³ N.D.C.C. § 44-04-18.

⁴ N.D.C.C. § 44-04-17.1(9), (12)(c); N.D.A.G. 2006-O-02; N.D.A.G. 2001-O-11 and N.D.A.G. 2001-O-10.

⁵ N.D.C.C. § 44-04-17.1(12)(a); see also N.D.A.G. 2006-O-02 (Red River Valley Fair Association, which manages the Red River Valley Fair, is a public entity under N.D.C.C. § 44-04-17.1(12)(b) because it is recognized by state law to exercise public authority or perform a governmental function); N.D.A.G. 2003-O-08 (Dakota Center for Independent Living is recognized to perform a governmental function set out in N.D.C.C. ch. 50-06.5); N.D.A.G. 98-O-21 (North Dakota Soil Conservation District is recognized by state law to perform the governmental managing of public lands for purposes set out in N.D.C.C. § 4-22-51).

⁶ N.D.C.C. § 44-04-17.1(13); N.D.A.G. 2006-O-04.

⁷ See e.g. 2005 N.D. Sess. Laws. ch. 10, § 4 (appropriating \$120,000 in two equal payments to the North Dakota Firefighter's Association).

⁸ N.D.C.C. ch. 18-03.

⁹ N.D.C.C. § 18-03-02.

¹⁰ N.D.C.C. § 18-03-03.

¹¹ See N.D.C.C. §§ 18-03-04 through 18-03-08.

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When a state-level governing body holds regularly scheduled meetings, the schedule for these meetings must be filed with the Secretary of State.¹² In this case, the Board does not hold regularly scheduled meetings. When a board does not hold regularly scheduled meetings, the board must treat its meetings as emergency or special meetings and provide notice accordingly.¹³

Unless otherwise provided by law, written public notice must be given in advance of all meetings of a public entity.¹⁴ The notice for a regular, special, or emergency meeting must include the date, time, and location of the meeting, and all topics the governing body expects to consider. This list of topics is also referred to as the agenda.¹⁵ "Topics that may be considered at an emergency or special meeting are limited to those included in the notice."¹⁶ The notice must be posted at the public entity's main office, if any; filed, in the case of a state public entity, with the Secretary of State; and given to anyone requesting this information.¹⁷ On the day of the meeting, the notice must be posted at the location of the meeting.¹⁸ For emergency or special meetings, the Board must notify the official newspaper of the county in which the entity's principal office or mailing address is located, as well as any representatives of the news media who have requested notice.¹⁹

In this case, the Association was not aware that it was a public entity subject to the open records and open meetings law. As a result, the Association failed to provide public notice of its meetings in accordance with the open meeting notice requirements. Accordingly, it is my opinion that the Association violated N.D.C.C. § 44-04-20 by failing to give proper notice of its November 2, 2005, and January 14, 2006, meetings.

CONCLUSION

The Association violated N.D.C.C. § 44-04-20 by failing to give proper notice of its November 2, 2005, and January 14, 2006, meetings.

¹² N.D.C.C. § 44-04-20(3).

¹³ N.D.A.G. 2005-O-17; N.D.A.G. 2005-O-10 (monthly meeting of ambulance board treated as a special meeting because board does not file an annual schedule of regular meetings with the county auditor.); N.D.A.G. 2005-O-07 (special meeting of a committee that did not hold regularly scheduled meetings, but met on an as needed basis); N.D.A.G. Letter to Haner (Nov. 1, 1999) (an emergency or special meeting is one that is held on a day different from the regular meeting day).

¹⁴ N.D.C.C. § 44-04-20(1); N.D.A.G. 2004-O-20.

¹⁵ See N.D.C.C. § 44-04-20(2).

¹⁶ N.D.C.C. § 44-04-20(6).

¹⁷ N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2005-O-14; N.D.A.G. 2004-O-09.

¹⁸ N.D.C.C. § 44-04-20(4).

¹⁹ N.D.C.C. § 44-04-20(6).

STEPS NEEDED TO REMEDY VIOLATION

The Association must in the future give notice of its Board meetings as required by N.D.C.C. § 44-04-20. In addition, the Association must provide copies of the minutes of its November 2, 2005, and January 14, 2006, minutes to Mr. Graf free of charge.

Failure to take the corrective measures 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. § 44-04-21.2.²⁰ It may also result in personal liability for the person or persons responsible for the noncompliance.²¹

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²⁰ N.D.C.C. §44-04-21.1(2).

²¹ Id.