

**OPEN RECORDS AND MEETINGS OPINION  
2011-O-02**

DATE ISSUED: January 12, 2011

ISSUED TO: Wilton School Board

**CITIZEN'S REQUEST FOR OPINION**

This office received two opinion requests under N.D.C.C. § 44-04-21.1 from Bill Harris asking whether the Wilton School Board violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding meetings without providing public notice in substantial compliance with the open meetings law.<sup>1</sup>

**FACTS PRESENTED**

The Wilton School Board (Board) is a five-member board that meets on the second Wednesday of every month. On May 28, 2010, a teacher submitted a letter of resignation to the superintendent of the Wilton school district. When the superintendent received the letter of resignation, he called each Board member, one by one, from the telephone in his office and asked each member to vote either yes or no on the question of whether to release the teacher from the contract.<sup>2</sup> The Board considered the phone calls a "meeting" so notice was posted on the front entryway of the school and outside the superintendent's office before the calls were made to the Board members. The newspaper and the county auditor were not provided notice of the special meeting.

The requester also alleges that the Board met privately on July 4, July 7, and some time between August 8 and 10, 2010.

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<sup>1</sup> The requester alleges the Board held meetings with no public notice on May 4 and 28, 2010. However, the request for an opinion was not received in time to review the May 4 meeting. Thus, this opinion only addresses the May 28 meeting. N.D.C.C. § 44-04-21.1(1).

<sup>2</sup> Whether the special meeting held by telephone was conducted legally cannot be reviewed in this opinion because the meeting did not take place within 30 days of the request for an opinion. See N.D.C.C. § 44-04-21.1(1). Opinion requests alleging violations of N.D.C.C. § 44-04-19(4) must be received within 30 days of the alleged violation. However, a request to review allegations that a meeting occurred without public notice must be made within 90 days of the alleged violation.

On October 20, 2010, the Board held its regular meeting at 7 p.m. The notice was posted on October 15, 2010. The requester alleges that the Board changed the time of the meeting from 7:30 p.m. to 7 p.m. without notice to the public in order to discuss public business before the public arrived at the meeting.

### ISSUES

1. Whether the Board held a special meeting on May 28, 2010, for which notice was not provided in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Board violated N.D.C.C. § 44-04-20 by holding several meetings in July and August of 2010 without public notice.
3. Whether the Board violated N.D.C.C. § 44-04-20 by meeting prior to the October 20, 2010, meeting without providing public notice.

### ANALYSIS

#### Issue One

All meetings of the board of a public school district are required to be open to the public and preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.<sup>3</sup> As with a regular meeting, a notice of a special meeting must be posted at the main office of the governing body, at the location of the meeting on the day of the meeting, and, in the case of a school district, filed with the county auditor.<sup>4</sup> In addition, for special or emergency meetings, the presiding officer or designee, must notify the public entity's official newspaper and any other members of the media who have requested notice.<sup>5</sup> Public notice must be posted at the same time the governing body's members are notified.<sup>6</sup>

As stated in the facts, a quorum of the Board was contacted on May 28, 2010, by the superintendent and each member voted on whether a teacher could be released from the teaching contract. The Board denies this was done in secret because it posted notice of the "meeting" at the usual locations in the school and drafted minutes.<sup>7</sup> Notice, however, was not provided to the county auditor or the official newspaper. The purpose of filing notice with the county auditor is to have a central location for people to find out

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<sup>3</sup> N.D.C.C. § 44-04-20(1).

<sup>4</sup> N.D.C.C. § 44-04-20(4).

<sup>5</sup> N.D.C.C. § 44-04-20(6).

<sup>6</sup> N.D.C.C. § 44-04-20(5).

<sup>7</sup> The Board also took minutes of the meeting.

about public meetings of the Board.<sup>8</sup> The law requires that notice of special, or emergency, meetings be provided to the official newspaper because such meetings are often called on short notice.<sup>9</sup> The notice to the newspaper compensates for the possibility that the public may not otherwise learn about the meeting.<sup>10</sup> By only providing partial notice, the likelihood of the public knowing about the meeting was diminished. Thus, it is my opinion that notice of the special meeting was not provided in substantial compliance with N.D.C.C. § 44-04-20.

### Issue Two

The requester alleges that the Board met privately on July 4, July 7, and at various times from August 8 through August 10, 2010, because teachers at the school were reassigned classes for the 2010-2011 school year and no Board minutes explain the reassignments.

The question of whether the Board met secretly to discuss public business is one of fact. North Dakota law requires me to base open meeting opinions on the facts given by the public entity.<sup>11</sup> In response to this office's inquiry, the Board provided copies of meeting notices and minutes for meetings held on June 28, July 7, July 21, and August 18, 2010. The Board denies that any additional secret meetings took place and explains that it was the superintendent, not the Board, who made the teacher assignments. Consequently, I conclude that the Board did not meet to discuss public business without providing public notice.

### Issue Three

Finally, the requester alleges that the Board purposefully met half an hour before its October 20 regular meeting in order to discuss the allegations of the secret phone meeting addressed in "Issue One." The Board explains that the meeting was always scheduled for 7 p.m. and denies that it met early in order to discuss the alleged open meeting violation before the public showed up for the meeting. In fact, the Board provided minutes of the meeting that indicate the allegation of an open meeting violation was the eighth order of business discussed by the Board.<sup>12</sup> In addition, the copy of the notice for the meeting lists the time as 7 p.m. According to the business manager, the time was not changed and she posted the meeting notice on Friday, October 15,

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<sup>8</sup> See N.D.A.G. 2009-O-03.

<sup>9</sup> Id.

<sup>10</sup> See N.D.A.G. 2009-O-03 and N.D.A.G. 2007-O-05. The notice of a special meeting, however, does not have to be published in the newspaper. See N.D.A.G. 2003-O-13.

<sup>11</sup> N.D.C.C. § 44-04-21.1(1).

<sup>12</sup> Minutes, Wilton Sch. Bd. (Oct. 20, 2010).

2010.<sup>13</sup> It is thus my opinion that the Board did not meet prior to the meeting on October 20, 2010.

### CONCLUSIONS

1. The Board held a special meeting on May 28, 2010, that was not noticed in substantial compliance with N.D.C.C. § 44-04-20.
2. The Board did not violate N.D.C.C. § 44-04-20 by holding several meetings in July and August of 2010 without public notice.
3. The Board did not meet prior to the October 20, 2010, meeting without providing public notice.

### STEPS NEEDED TO REMEDY VIOLATIONS

The Board has already drafted minutes from the telephone meetings and received guidance regarding conference calls. A copy of the minutes from the May 28 meeting should be provided to the requester 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.<sup>14</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>15</sup>

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<sup>13</sup> E-mail from Angela Riehl, Wilton Public Sch. business manager to Mary Kae Kelsch, Assistant Attorney General (Dec. 2, 2010).

<sup>14</sup> N.D.C.C. § 44-04-21.1(2).

<sup>15</sup> Id.