

**OPEN RECORDS AND MEETINGS OPINION
2012-O-04**

DATE ISSUED: March 20, 2012

ISSUED TO: Rye Township Zoning Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Neil Nowatzki asking whether the Rye Township Zoning and Planning Commission violated N.D.C.C. § 44-04-20 by failing to notice a meeting.

FACTS PRESENTED

On Tuesday, November 1, 2011, the Rye Township Zoning Commission met to inspect the site of a proposed new residence before issuing a building permit. A township zoning commission is a governing body created by statute.¹ By law, membership must consist of the three township supervisors and two members appointed from the municipality adjoining the contemplated zoning.² The members of the Zoning Commission who are also township supervisors are Jeffrey Clemetson, David Meagher, and Ryan Scott; Don Campbell and Richard Farroh are the members appointed from Grand Forks, the adjoining municipality.

Notice of the meeting was provided to the county auditor the day after the meeting. No notice was posted at the township office because one does not exist and no notice was posted at the meeting site. Minutes of the meeting were drafted and emailed to the Grand Forks county auditor on November 2, 2011.

Mr. Nowatzki asserts that the county auditor should have been provided notice in advance of the meeting, rather than after the meeting.³

¹ N.D.C.C. § 58-03-13.

² N.D.C.C. § 58-03-13.

³ The requester also alleges that because this was a special meeting of the Rye Township zoning board it was necessary to publish notice in the newspaper ten days in advance of the meeting pursuant to N.D.C.C. § 58-04-02. Pursuant to N.D.C.C. § 44-04-21.1(1), this office may only issue opinions regarding alleged violations of

ISSUE

Whether the November 1, 2011, meeting of the Rye Township Zoning Commission was publicly noticed in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

A township is a political subdivision and is therefore a “public entity” subject to the open records and meeting laws.⁴ Meetings of a public entity’s governing body are required to be open to the public unless otherwise provided by law.⁵ A township zoning commission is a statutorily created governing body within a township created pursuant to N.D.C.C. § 58-03-13. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.⁶

The notice required by N.D.C.C. § 44-04-20 must be posted at the principal office of the governing body, if one exists, and at the location of the meeting on the day of the meeting.⁷ In addition, a township must file the notice in the county auditor’s office or post the notice on the public entity’s website.⁸ In the event of an emergency or special meeting, in addition to the requirements already listed, notification must also be provided to the public entity’s official newspaper at the same time as the members of the governing body’s members are notified.⁹ This notification to the official newspaper under N.D.C.C. § 44-04-20 does not require that the notice be published.¹⁰

According to the Township, notice was not provided to the county auditor before the meeting because the Township thought only the minutes of an “informal” township meeting had to be filed with the county auditor.¹¹

N.D.C.C. § 44-04-18, N.D.C.C. § 44-04-19, N.D.C.C. § 44-04-19.2, N.D.C.C. § 44-04-20, or N.D.C.C. § 44-04-21.

⁴ N.D.C.C. § 44-04-17.1(10), (13)(b) (definition of “political subdivision” includes any . . . township); N.D.A.G. 2009-O-18; N.D.A.G. 98-O-09.

⁵ N.D.C.C. § 44-04-19.

⁶ N.D.C.C. § 44-04-20.

⁷ N.D.C.C. § 44-04-20(4).

⁸ *Id.*

⁹ N.D.C.C. § 44-04-20(6).

¹⁰ N.D.C.C. § 44-04-20(6); N.D.A.G. 2009-O-18; N.D.A.G. 2009-O-03; N.D.A.G. 2007-O-02; N.D.A.G. 2003-O-13.

¹¹ Notice was not posted at the principal office because the township does not have one.

As I explained in the 2009 opinion to Rye Township, the requirements for noticing township meetings in N.D.C.C. ch. 58 are in addition to the notice requirements in N.D.C.C. § 44-04-20.¹² In this case, the Township Zoning Commission failed to provide any advance notice of the special meeting as required under the open meetings law. Therefore, it is my opinion that notice of the meeting was not given in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

A meeting notice containing the time, date, location, and topic of the November 1, 2011, meeting must be drafted and filed with the county auditor. The notice must also explain who to contact in order to obtain a copy of the minutes from that meeting at no 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. § 44-04-21.2.¹³ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁴

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mkk/vkk

¹² N.D.A.G. 2009-O-18.

¹³ N.D.C.C. §44-04-21.1(2).

¹⁴ Id.