Index of Open Meetings Opinions - by Subject

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ATTORNEY CONSULTATION

N.D.A.G. 2020-O-06  
July 8, 2020, to Williston Public School District #1  
Executive session in which the school board’s attorney discussed changes to the policy on enrollment of nonresident schools and the risks, liabilities, costs, and potential legal ramifications was proper under the 2017 expanded definition of “attorney consultation.”

N.D.A.G. 2019-O-19  
October 17, 2019, to North Dakota Board of Chiropractic Examiners  
Attorney consultation properly held in executive session when the Board received threats of litigation and wanted its attorney’s advice on legal risks associated with making a decision on amending its administrative rules.

N.D.A.G. 2016-O-13  
July 26, 2016, to Griggs County Commission  
Before proceeding into an executive session for attorney consultation, a governing body must not only announce the topics to be considered and the legal authority, but must also take a recorded roll call vote.

N.D.A.G. 2015-O-15  
October 12, 2015, to Morton County Commission  
The Commission held a proper executive session for an attorney consultation in which it received its attorney’s advice regarding reasonably predictable litigation.

N.D.A.G. 2015-O-13  
August 7, 2015, to Pembina County Water Resource District Board of Directors  
When opposing counsel is privy to the governing body and its attorney’s conversation, no attorney consultation can take place because the governing body’s bargaining or litigation position would not be adversely affected.

N.D.A.G. 2015-O-01  
January 21, 2015, to Circle of Friends Humane Society  
An impending review by the Office of Attorney General for alleged open meeting violations is not considered an “adversarial administrative proceeding” that would allow a public entity to close a meeting under the guise of “attorney consultation.”

N.D.A.G. 2014-O-09  
August 8, 2014, to Belfield City Council  
Part of the executive session in which the City Council received its attorney’s advice regarding potential liabilities issues and to consider a memorandum prepared by the attorney containing exempt information including “attorney work product” and active “criminal intelligence information” was properly closed to the public. Discussions beyond the scope allowed for attorney consultation and to consider exempt information were inappropriate for an executive session and should have been discussed during the open meeting.
N.D.A.G. 2014-O-08  August 8, 2014, to Crosby City Council
Merely announcing an executive session will be held for “attorney consultation” is not enough to satisfy N.D.C.C. § 44-04-19.2 because this only identifies the legal authority for holding the executive session and fails to announce the topic to be considered. In order to hold an executive session for attorney consultation, the public entity must seek or receive advice from its attorney regarding pending or anticipated litigation, which requires more than a “fear” of litigation or to discuss “potential” legal consequences.

N.D.A.G. 2013-O-11  August 6, 2013, to State Board of Higher Education
A governing body may close an open meeting to receive advice from its attorney if the public entity’s attorney is providing a mental impression, litigation strategy, or advice regarding reasonably predictable civil litigation.

N.D.A.G. 2011-O-14  September 23, 2011, to Churchs Ferry City Council and Tax Equalization Board
Executive session held to discuss that an attorney had been hired to represent the City Council in a lawsuit and to discuss the status of the court case is not authorized by law.

N.D.A.G. 2011-O-05  March 25, 2011, to Fargo City Commission
Governing body may hold executive session “authorized by law” under statute; attorney consultation is one of the legally authorized exemptions to the open meetings law.

N.D.A.G. 2009-O-20  November 13, 2009, to Tioga Airport Authority
Airport Authority did not meet with attorney during executive session so attorney consultation did not occur and letter reviewed was not written by its attorney so it was not attorney work product.

N.D.A.G. 2009-O-14  August 14, 2009, to State Department of Health
Attorney consultation must pertain to litigation or an adversarial administrative proceeding that is “pending” or “reasonably predictable” which requires more than a simple possibility of litigation or adversarial administrative proceedings. The possibility of litigation or a proceeding by or against the governing body must be realistic and tangible.

N.D.A.G. 2007-O-09  June 25, 2007, to Valley City Commission
Once the Commission received the advice from its attorney regarding potential liability issues related to possible disciplinary action, the “attorney consultation” was complete and the open meeting should have reconvened.

N.D.A.G. 2006-L-22  August 16, 2006, to Williston City Attorney
Exclusion of governing body member from an executive session.

N.D.A.G. 2006-O-03  February 14, 2006, to Red River Valley Fair Association
Mere presence or participation of attorney is not “consultation.”

N.D.A.G. 2005-O-04  February 9, 2005, to Cavalier City Council
Reasonably predictable litigation.

N.D.A.G. 2004-O-24  November 4, 2004, to Southwest Multi-County Correction Center
Realistic and tangible threat of litigation.

Tangible threat of litigation.
N.D.A.G. 2003-O-14  October 22, 2003, to Harvey City Council
"Reasonably predictable" requires more than a simple possibility of litigation.

N.D.A.G. 2002-O-10  October 18, 2002, to McKenzie School Board
Discussion of legal options in administrative proceedings.

N.D.A.G. 2002-O-01  January 10, 2002, to Wade Enget
Exemption is waived if adversary is allowed to attend meeting.

Meaning of "reasonably predictable."

N.D.A.G. 2000-O-12  October 17, 2000, to Scott Solem
Governing body has legal interest but is not a party.

N.D.A.G. 2000-O-03  January 31, 2000, to Duane Schurman
Can only be held during a properly noticed open meeting.

N.D.A.G. 99-O-07  June 29, 1999, to Ed Malazdrewicz
Discussion regarding a change in a licensing board's decision.

N.D.A.G. 99-O-06  June 14, 1999, to Ed Malazdrewicz
License revocation proceeding is "adversarial administrative proceeding.

N.D.A.G. 99-O-04  April 22, 1999, to Gregory Lange
Does not include status updates.

Discussion directly related to civil action.

Does not include litigation status updates.

Discussion of disciplinary action against chief of police which is not "attorney consultation" must be open.

Attorney-client privilege.

CITIES

N.D.A.G. 2019-O-18  October 17, 2019, to City of Minot
When a governing body of a municipality meets outside city limits, the purpose and need for the meeting will be closely scrutinized to determine whether the meeting is accessible.

N.D.A.G. 2005-O-18  November 8, 2005, to Grand Forks City Council
City violated the notice requirements by stating the wrong township that was to be discussed in executive session.

N.D.A.G. 2005-O-15  September 19, 2005, to Bismarck City Commission
Meeting held by city consultant who was not under contract with city not open meeting.

N.D.A.G. 2005-O-08  May 13, 2005, to Napoleon City Council
City must give notice of its meetings to the public at the same time the governing body's members are notified.
| N.D.A.G. 2005-O-07 | May 12, 2005, to Rolla City Council  
City auditor must actually file the notice of meetings in the auditor’s office. |
|-------------------|---------------------------------------------------------------------------------|
| N.D.A.G. 2005-L-14| April 29, 2005, to Mary Ekstrom  
Delegation of authority from a governing body to one person. |
City auditor’s duty to attend all governing body meeting and keep minutes. |
Delegation must be to group of persons. |
| N.D.A.G. 2003-O-18| November 3, 2003, to Minto Planning and Zoning Committee  
Planning and zoning committee must take minutes of meetings. |
Committees of a city council are subject to same notice requirements as the city council. |
| N.D.A.G. 2003-O-12| September 8, 2003, to Fargo City Commission  
Governing body free to discuss any item of public business at regular meeting. |
| N.D.A.G. 2003-O-05| April 11, 2003, to Glen Ullin City Council  
No delegation of authority to three members of seven member council to act or speak on its behalf of the council. |
| N.D.A.G. 2003-O-03| February 21, 2003, to Minto City Council  
No legal requirement to announce when the open meeting will reconvene after the completion of an executive session. |
City funds to reimburse Minot Area Chamber of Commerce Task Force. |
| N.D.A.G. 92-08 | April 8, 1992, to Mary Nordsven  
Publication of minutes. |
| N.D.A.G. Letter | August 28, 1986, to David Nething  
Procedures for city council meetings. |
| N.D.A.G. 58-186 | November 17, 1958  
Publication and content of minutes. |
| N.D.A.G. 51-20 | January 15, 1951  
Publication and content of minutes. |
| N.D.A.G. 45-68 | June 20, 1945  
Publication and content of minutes. |
CONTRACT STRATEGY

SEE NEGOTIATION STRATEGY SESSIONS

COUNTIES

N.D.A.G. 2005-O-17  November 8, 2005, to Cavalier County Weed Board
County-level governing body should establish a schedule of its regular
meetings and file with the county auditor.

Delegation of duty to keep minutes.

N.D.A.G. 98-F-25  August 11, 1998, to Cynthia Feland
Commissioners have no power to change accurate minutes; publication.

Group responsible for filling vacancies on county commission.

N.D.A.G. Letter  December 24, 1985, to Gail Hagerty
Publication and content of minutes; roll call voting.

N.D.A.G. 72-78  February 23, 1972, to Robert Eckert
State's attorney's inquests.

N.D.A.G. 69-124  November 28, 1969, to L.J. Schirado
Content of published minutes.

Publication and content of minutes.

ECONOMIC DEVELOPMENT

N.D.A.G. 2019-O-12  July 2, 2019, to Linton Industrial Development Corporation
The Linton Industrial Development Corporation properly met in executive
session to discuss protected economic development and financial
information.

Trade secrets and commercial information are of a privileged nature,
competitive disadvantage if disclosed.

N.D.A.G. 2001-O-11  September 13, 2001, to Greg Selbo
Economic development.

Discussion of efforts to recruit a business.

N.D.A.G. 2000-O-07  June 26, 2000, to Tim Priebe
Discussion of economic development records.

N.D.A.G. 95-L-253  November 8, 1995, to Bryan Dvirmak
Commercial and financial information.
EXECUTIVE SESSION, PERSONNEL MATTERS

N.D.A.G. 2020-O-03 May 18, 2020, to City of Napoleon
Generally, personnel matters, including discussion on employment issues, termination of public employees, and job performance evaluations, are not proper for executive session, even though it may be uncomfortable to discuss at an open meeting.

N.D.A.G. 2018-O-16 October 11, 2018, to Williston Public School Board District # 1
Although N.D.C.C. § 44-04-18.27 protects applications for employment, designated finalists' records are open records and discussions regarding the finalists qualifications are required to be held in public.

N.D.A.G. 2017-O-03 May 12, 2017, to Devils Lake Commission
Unauthorized executive session for reviewing job performance evaluations.

N.D.A.G. 2016-O-12 July 26, 2016, to Sargent County Social Service Board
Generally, discussions relating to personnel matters and job performance should be made during an open meeting. However, when such discussions cannot take place without revealing closed and confidential information, an executive session is authorized.

N.D.A.G. 2011-O-10 August 10, 2011, to Cass County Historical Society
Executive session held to discuss personnel matters of potential candidate to hire and to discuss letter regarding Attorney General request, was not authorized by law.

N.D.A.G. 2008-O-02 February 4, 2008, to Burke County Board of County Commissioners
Executive session held to discuss personnel matters that arose during budget process.

N.D.A.G. 2007-O-09 June 25, 2007 to Valley City Commission
Once the legal advice about the liability related to a personnel issue had been received, the commission should have deliberated about the disciplinary action in open meeting.

N.D.A.G. 2006-O-03 February 14, 2006, to Red River Valley Fair Association
N.D.C.C. 44-04-18.1(3).

Personnel matter discussed in executive session.

Statements about job performance.

N.D.A.G. 2003-O-14 October 22, 2003, to Harvey City Council
Job evaluation in executive session.

N.D.A.G. 2001-O-17 December 24, 2001, to Ronald Reichert
Employee reviews and negotiation strategy sessions.

Personnel matters are generally not closed.
Discussion of disciplinary action against chief of police which is not "attorney consultation" must be open.

N.D.A.G. Letter  August 10, 1989, to Sparb Collins
Job interviews are open.

N.D.A.G. 82-63  August 20, 1982, to Joe Crawford
Executive session for nonrenewal of teacher.

N.D.A.G. 78-174  March 15, 1978, to Evan Lips
Teacher renewal meeting.

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

N.D.A.G. 2020-O-03  May 18, 2020, to City of Napoleon
Announcements regarding the topic to be considered before proceeding into executive session is not an isolated statement and it is reasonable to consider discussions before and after the announcement to determine whether it adequately apprises the public of what will be discussed in executive session.

N.D.A.G. 2020-O-02  April 29, 2020, to Bismarck Public School District #1 and Bismarck Public School Board
Even if greater detail could potentially be provided, or an individual would prefer a different description, it does not mean that an announcement before proceeding into executive session fails to meet the minimum requirements of N.D.C.C. § 44-04-20(2).

N.D.A.G. 2016-O-22  December 14, 2016, to Fargo City Commission
Action that goes beyond guidance given to a negotiator, where the governing body authorizes its negotiator to finalize a deal, was "final action" that should have been taken in an open meeting.

N.D.A.G. 2016-O-02  January 13, 2016, to Langdon City Commission
A governing body must include notice sufficient to identify the topic and legal authority of any executive session in its notice if the governing body knows it will be entering into an executive session at the time the notice is prepared.

N.D.A.G. 2016-O-01  January 12, 2016, to South Central Dakota Regional Council
To determine whether an announcement provides sufficient notice of the topic of an executive session so that a member of the public could understand what the governing body was planning to discuss, it is reasonable to consider the discussions occurring immediately before the announcement.

N.D.A.G. 2015-O-16  October 19, 2015, to Stark County
Before proceeding into an executive session for an attorney consultation, the governing body must first pass a motion by recorded roll call vote.

N.D.A.G. 2015-O-15  October 12, 2015, to Morton County Commission
A governing body must pass a motion by recorded roll call vote before proceeding into an executive session for an attorney consultation and negotiation strategy session.
N.D.A.G. 2015-O-13 August 7, 2015, to Pembina County Water Resource District Board of Managers
The mere reference to “negotiations” does not give the public sufficient notice of the legal authorization for holding an executive session.

N.D.A.G. 2013-O-09 June 12, 2013, to Turtle Lake-Mercer School Board
Mere reference to “personnel matters” or a “background check” is insufficient to identify the legal authority required by law to proceed into executive session.

N.D.A.G. 2013-O-05 April 16, 2013, to State Parole Board
It is not sufficient to generally announce legal authority once at the beginning of the meeting for any executive session that will follow throughout the course of the meeting. Instead, the governing body must announce legal authority and topics to be discussed before every executive session. Although this may seem redundant in instances where a governing body enters into numerous executive sessions throughout the course of a meeting, this is of no consequence as this is a technical requirement with the practical purpose of providing sufficient information for the benefit of the attending public.

N.D.A.G. 2011-O-14 September 23, 2011, to Churchs Ferry City Council and Tax Equalization Board
Executive sessions must be electronically recorded. A governing body must first convene in open session, announce topics and legal authority for holding an executive session, before entering into an executive sessions authorized by law.

N.D.A.G. 2011-O-05 March 25, 2011, to Fargo City Commission
Sufficiency of announcement for attorney consultation. The public should clearly understand why citizens cannot attend that portion of the meeting. There is no presumption in the law that an executive session will include attorney consultation, or that a session will include attorney consultation if the announcement is made by the governing body’s attorney.

N.D.A.G. 2010-O-13 October 27, 2010, to City of Grand Forks
A governing body may hold an executive session to consider or discuss closed or confidential records or to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding litigation, adversarial administrative proceedings, or contracts. If an executive session is anticipated at the time the notice is drafted, the agenda must include the general subject matter of the executive session.

N.D.A.G. 2010-O-01 February 5, 2010, to Ward County Commission
Before a governing body may close a meeting to discuss exempt information, it must first convene in open session and, unless a meeting to discuss confidential information is required, pass a motion to hold an executive session. Must also provide notice of executive session, announce topics and legal authority for the executive session, record the executive session, and take final action in open portion of meeting.

N.D.A.G. 2009-O-20 November 13, 2009, to Tioga Airport Authority
Airport Authority failed to comply with procedural requirements when it failed to take a recorded roll call vote on motion to go into executive session, failed to announce proper legal authority and topic of executive session, and failed to record or tape the executive session.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
</table>
Executive session relating to negotiations failed to meet minimum requirements of notice. |
| N.D.A.G. 2009-O-09 | July 1, 2009, to Mandan Board of Park Commissioners  
Notice of executive session met the minimum requirements. Sufficiency of announcement. |
| N.D.A.G. 2008-O-02 | February 4, 2008, to Burke County Board of County Commissioners  
Governing body failed to follow any procedural requirements for executive session. |
When the City of Mandan went into executive session to discuss “negotiations” a discussion of an unrelated property sale was outside the scope of the announced topic of contract negotiation. The announcement must identify the particular contract the governing body is discussing its negotiation in executive session. Final action related to an executive session for negotiation instruction does not have to be taken in open meeting. |
| N.D.A.G. 2005-O-18 | November 8, 2005, to Grand Forks City Council  
Using only the term “negotiations” in the announcement of an executive session is misleading. |
| N.D.A.G. 2005-O-04 | February 9, 2005, to Cavalier City Council  
The notice of the executive session met the minimum requirements. |
Final action not taken during executive session. |
Failed to record executive session. |
Announcement supplemented by member’s discussion identified legal authority and topic. |
| N.D.A.G. 2004-O-10 | May 3, 2004, to Stutsman County Correctional Center  
Legal basis for the executive session was stated prior to going into executive session. |
| N.D.A.G. 2003-O-22 | December 1, 2003, to Walsh County Commission  
Announcement did not refer to negotiation strategy or similar language. |
| N.D.A.G. 2003-O-15 | October 22, 2003, to Fargo Airport Authority  
No legal authority announced and executive session not recorded. |
| N.D.A.G. 2003-O-03 | February 21, 2003, to Minto City Council  
No legal requirement to announce when the open meeting will reconvene after the completion of an executive session. |
| N.D.A.G. 2002-O-10 | October 18, 2002, to McKenzie School Board  
Attendance by non-members. |
| N.D.A.G. 2002-O-01 | January 10, 2002, to Wade Enget  
Announcement of attorney consultation or negotiation strategy session. |
| N.D.A.G. 2001-O-17 | December 24, 2001, to Ronald Reichert  
Announcement for contract negotiation strategy. |


N.D.A.G. 2000-O-02 January 31, 2000, to Dan Fremling and Tom Tupa Vote not required to discuss confidential records.

N.D.A.G. 2000-O-01 January 24, 2000, to Donna Black Cloud Announcement is required.


N.D.A.G. 99-O-04 April 22, 1999, to Gregory Lange Announcement must include both the legal authority and the general topic for the session.


**EXECUTIVE SESSION, RECORDS**

N.D.A.G. 2019-O-19 October 17, 2019, to North Dakota Board of Chiropractic Examiners Records of executive session to review exempt records and for attorney consultation cannot be released unless authorized by the governing body.

N.D.A.G. 2016-O-01 January 2, 2016, to South Central Dakota Regional Council N.D.C.C. § 44-04-19.2(1) merely recognizes that closed or confidential records may be considered in an executive session but does not specifically make any records closed or confidential and therefore this statute by itself cannot be used to close a meeting. Personnel records are generally open to the public.
N.D.A.G. 2013-O-09 June 12, 2013, to Turtle Lake-Mercer School Board
A criminal history record check conducted by the Bureau of Criminal
Investigation that consists of searching confidential law enforcement
databases, is confidential and must be discussed in executive session.

N.D.A.G. 2006-O-14 October 4, 2006, to Williston Family Crisis Shelter
The topic of an executive session must be included in the minutes of an
open meeting.

Recording of an executive session not required to be released.

N.D.A.G. 2004-O-10 May 3, 2004, to Stutsman County Correctional Center
Recording of a closed portion of a meeting is a closed record.

N.D.A.G. 2003-O-15 October 22, 2003, to Fargo Airport Authority
Power-point presentation viewed in executive session.

N.D.A.G. 2000-O-06 May 5, 2000, to Tom Irgens
Discussion of letter from bus driver based on observations as a parent.

N.D.A.G. 2000-O-04 March 15, 2000, to Larry Gegelman
Executive session for discussion of FERPA records.

N.D.A.G. 2000-O-02 January 31, 2000, to Dan Fremling and Tom Tupa
Person with access to records is entitled to attend executive session to
discuss those records.

Portion of administrative hearing must be closed when confidential records
are discussed.

Discussion during executive session must be limited to the confidential
records.

N.D.A.G. 94-F-28 September 2, 1994, to Bill Oban
Executive session to discuss educational records under FERPA.

N.D.A.G. Letter January 21, 1988, to Alan Person
Meeting may be closed to consider confidential records.

N.D.A.G. Letter April 23, 1986, to Joseph Lamb
Discussion of customer information.

N.D.A.G. Letter May 17, 1985, to Orville Hagen
Confidential records and wage claim hearings.

N.D.A.G. 79-210 November 30, 1979, to Irvin Riedman
Discussion of parole board records.

Discussion of confidential student records.

GOVERNING BODY

N.D.A.G. 2021-O-02 April 16, 2021, to the City of Grand Forks
If a panel is not created by a public entity nor delegated authority by the
governing body, it is not subject to the open meetings law.
<table>
<thead>
<tr>
<th>Date</th>
<th>Author</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.D.A.G. 2016-O-15</td>
<td>July 27, 2016, to Fargo Park District</td>
<td>Committees are formed when a governing body delegates any part of its public business to two or more people, regardless of whether the individuals who make up the committee are members of the governing body. Committees are subject to open meetings law.</td>
</tr>
<tr>
<td>N.D.A.G. 2011-O-04</td>
<td>February 7, 2011, to McKenzie Township Board of Supervisors and McKenzie Township Zoning Commission</td>
<td>The board of township supervisors is the governing body of a township. A township zoning commission may be created by a board of township supervisors to allow a township to exercise authority, and it also is a governing body of the township because it exercises authority delegated to it by the board of township supervisors.</td>
</tr>
<tr>
<td>N.D.A.G. 2011-O-03</td>
<td>January 26, 2011, to Towner County Ambulance Service Board</td>
<td>Definition of governing body includes a committee delegated authority to perform any function on behalf of a governing body. A committee appointed by the Board is subject to open meetings law.</td>
</tr>
<tr>
<td>N.D.A.G. 2010-O-13</td>
<td>October 27, 2010, to City of Grand Forks</td>
<td>Grand Forks Events Center Commission, also known as the Alerus Center Commission, is a committee of the Grand Forks City Council and therefore a governing body subject to open meetings law.</td>
</tr>
<tr>
<td>N.D.A.G. 2010-O-10</td>
<td>July 1, 2010, to Kindred City Council</td>
<td>Committee of a City Council, exercising authority delegated to the committee by its council, is a governing body.</td>
</tr>
<tr>
<td>N.D.A.G. 2010-O-01</td>
<td>February 5, 2010, to Ward County Commission</td>
<td>“Governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated. Even though only one county commissioner served on committee, security committee was still subject to open meetings law because it was created by the County Commission.</td>
</tr>
<tr>
<td>N.D.A.G. 2009-O-12</td>
<td>July 17, 2012, to Williams County Commission</td>
<td>A “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body to perform any function. Appointing two member portfolios creates a committee of the governing body. These meetings must be noticed.</td>
</tr>
<tr>
<td>N.D.A.G. 2009-O-05</td>
<td>March 12, 2009, to Mandan City Commission</td>
<td>Appointing two member portfolios creates a committee of the governing body.</td>
</tr>
<tr>
<td>N.D.A.G. 2009-O-03</td>
<td>February 23, 2009, to Rugby City Council and Rugby Public Safety Committee</td>
<td>Meetings of the City’s Public Safety Committee must be noticed.</td>
</tr>
<tr>
<td>N.D.A.G. 2008-O-21</td>
<td>August 24, 2008, to Workforce Safety and Insurance</td>
<td>It was a “meeting” when a quorum of the governance committee of the WSI Board met and discussed the public business of the committee.</td>
</tr>
<tr>
<td>N.D.A.G. 2007-O-15</td>
<td>December 5, 2007, to City of Bottineau</td>
<td>When a governing body delegates part of its public business to a committee of two or more people, the committee must follow open meetings law including providing notice of its meetings.</td>
</tr>
</tbody>
</table>
A committee consisting of the president and vice president of the school board is a committee of a governing body subject to the open meetings requirements.

N.D.A.G. 2005-O-03 February 8, 2005, to City of Fargo
A committee appointed by the mayor at the direction of the city commission that reports to the commission is a governing body.

N.D.A.G. 2005-O-02 January 12, 2005, to Cass County Historical Society
An executive committee authorized by a board is a governing body.

Committee delegated authority to perform any function on behalf of a governing body subject to law.

Delegation to one person doesn’t create a governing body.

N.D.A.G. 2003-O-15 October 22, 2003, to Fargo Airport Authority
Committees set up by governing bodies subject to open meetings law.

County social service board.

Committee of city council.

N.D.A.G. 1999-O-05 May 5, 1999, to Bonnie Johnson and Birch Burdick
Single individual.

Group appointed by county commission is a governing body.

A single individual is not a governing body.

Township board and township electors.

No right to participate in meeting.

Delegations by one individual.

Delegations by one individual.

N.D.A.G. 1996-F-09 April 4, 1996, to Fabian Noack
Meetings of mayor and department heads; recording of open meetings.

N.D.A.G. Letter November 28, 1990, to Jennifer Ring
Student senate meetings.

N.D.A.G. Letter March 19, 1990, to Janet Wentz
Faculty senate meetings and advisory groups.

N.D.A.G. Letter March 17, 1989, to Dan Ulmer
Committees and task forces.
N.D.A.G. Letter  March 29, 1985, to Gail Hagerty
Meeting involving only one board member.

N.D.A.G. 81-10  February 6, 1981, to Wayne Stenehjem
A group created by a school board is a public body.

N.D.A.G. 67-244  January 4, 1967, to Kenneth Raschke
Faculty senate and advisory groups.

**HIGHER EDUCATION**

The State Board of Higher Education’s use of e-mails to discuss public business with a quorum of members were meetings subject to open meetings law.

N.D.A.G. 2013-O-06  April 18, 2013, to State Board of Higher Education
The State Board of Higher Education must properly notice informal, dinner meetings, in which a quorum of members are present and public business is discussed. These meetings are considered special meetings because they were not included in the regular schedule filed with the Secretary of State’s office and were held on a different day than the regularly scheduled meetings.

N.D.A.G. 2006-L-34  October 20, 2006, to Tom Seymour
Faculty advisor to the ND State Board of Higher Education is not a member of the Board but has the right to attend executive sessions.

N.D.A.G. 2006-O-11  July 7, 2006, to State Board of Higher Education
The State Board of Higher Education is a public entity.

N.D.A.G. 2002-O-12  December 18, 2002, to State Board of Higher Education
Proximity of the public entity’s meeting place to people affected by its decisions.

N.D.A.G. 81-41  April 15, 1981, to Kent Alm
Appointment or removal of college president.

N.D.A.G. 81-39  April 13, 1981, to Lloyd Nygaard
Appointment or removal of university staff.

**LABOR DEPARTMENT**

N.D.A.G. Letter  May 17, 1985, to Orville Hagen
Confidential records and wage claim hearings.

**MEETING, DEFINED**

N.D.A.G. 2020-O-01  February 6, 2020, to North Dakota State Board of Accountancy
Ministerial uses of email to set a meeting date and time are not considered a meeting of the public entity subject to open meetings law.
The act of members of a governing body individually filling out an evaluation without the input of other members is not considered a “meeting” subject to open meetings law because it lacks a quorum.

Open meetings law is not triggered when board members reach out individually to non-board members regarding a matter of public business as long as the non-board member does not relay the substance of his or her discussion to a quorum of other board members, suggest a course of action, or build support or consensus through individual conversations.

When three out of the seven members of the City Council meet to discuss public business without approval, knowledge, or delegated authority from the full City Council, it is not a “meeting” subject to open meeting laws as no quorum is present and no committee was formed.

There are no exceptions to the open meeting laws for meetings instigated by the federal government who restricts access. When a quorum of a governing body of a public entity is present and its public business is discussed and considered, it is a meeting subject to open meeting laws.

Email forwarded to quorum of governing body asking for response if any member had a problem with a decision was a tacit vote to approve a decision on a matter of public business outside of a properly noticed meeting.

When a quorum of a governing body is present and receiving information on a matter of public business, a “meeting” occurs that is subject to open meetings law.
<table>
<thead>
<tr>
<th>Issue Date</th>
<th>Commission/Board</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 29, 2016</td>
<td>North Valley Arts Council</td>
<td>When a quorum of a governing body attends a meeting of another group, and the group’s discussion pertains to the public business of the governing body, it is a “meeting” subject to open meetings law.</td>
</tr>
<tr>
<td>September 23, 2016</td>
<td>Williston City Commission</td>
<td>It was not considered a “meeting” subject to open meetings law when the mayor, on his own initiative and without consulting any other Commissioner, makes a decision regarding enforcement of ordinances.</td>
</tr>
<tr>
<td>June 29, 2016</td>
<td>Williston City Commission</td>
<td>When a series of gatherings collectively involve a quorum of a governing body regarding a topic of public business, a “meeting” occurs that is subject to open meetings law.</td>
</tr>
<tr>
<td>August 14, 2015</td>
<td>North Dakota State Board of Dental Examiners</td>
<td>Exchanges of emails between a quorum of a governing body that go beyond ministerial and instead ask questions, express opinions, suggest courses of action, and build consensus, are “meetings” that violated open meetings law.</td>
</tr>
<tr>
<td>August 7, 2015</td>
<td>Pembina County Water Resource District Board of Managers</td>
<td>The delegation of part of a governing body’s public business to one person does not form a committee. When one person is appointed to negotiate on the public entity’s behalf, a “meeting” does not occur because no governing body or committee thereof is present.</td>
</tr>
<tr>
<td>August 6, 2015</td>
<td>Garrison-Max Ambulance District Board of Directors</td>
<td>Analysis on whether a meeting took place by text message is no different than that of any other meeting – as long as the exchange involved a quorum of a governing body and public business is discussed, a meeting occurs subject to notice requirements.</td>
</tr>
<tr>
<td>April 17, 2015</td>
<td>Foster County Commission</td>
<td>A meeting occurred when the Auditor acted as an intermediary or liaison, conveying and circulating information and building consensus on a matter of public business, to the entire Commission.</td>
</tr>
<tr>
<td>September 22, 2014</td>
<td>State Board of Higher Education</td>
<td>It is of no consequence what entity initiates a meeting or sets the agenda, if a quorum of a governing body of a public entity is present and public business of the governing body is discussed, it is a meeting subject to notice requirements that the governing body is responsible for posting.</td>
</tr>
<tr>
<td>September 9, 2014</td>
<td>Mott-Regent School Board</td>
<td>A meeting subject to notice requirements occurs when a quorum of members of a governing body exchange emails regarding public business.</td>
</tr>
<tr>
<td>August 28, 2013</td>
<td>Griggs County Commission</td>
<td>Whenever a quorum of a governing body of a public entity is present and public business is discussed, a meeting occurs subject to open meetings law, even if the governing body is attending another group’s meeting and even if the they are attending the meeting as “concerned citizens.”</td>
</tr>
</tbody>
</table>
N.D.A.G. 2013-O-12  August 6, 2013, to State Board of Higher Education
When less than a quorum of a governing body of a public entity are present at a meeting and at no time did the entire governing body consent or otherwise delegate authority to the members present, a “meeting” does not occur that is subject to open meetings law.

When public business is discussed by a quorum of a governing body through e-mail, a meeting occurs that must be properly noticed. Open meetings law apply to all steps of the decision making process, including information gathering, deliberating, discussing, formulating, narrowing the options, and final action regarding public business.

N.D.A.G. 2013-O-06  April 18, 2013, to State Board of Higher Education
A special meeting is a meeting held on the day other than a regular meeting, as set by filing an annual schedule in January with the Secretary of State’s office for state-level entities. Informal, dinner socials, can still be meetings subject to open meetings law when a quorum is present and public business is discussed.

N.D.A.G. 2013-O-03  March 3, 2013, to Metro Flood Diversion Board of Authority
If a quorum or committee of a governing body attends a meeting of another group and public business of the governing body is discussed, a “meeting” occurs requiring the governing body to comply with open meetings law.

N.D.A.G. 2013-O-01  January 10, 2013, to Ligatorwood Rural District Ambulance Service Board
Telephone calls to a quorum of a Board for ministerial purposes, such as to set the agenda or confirm committee assignments, are not meetings.

N.D.A.G. 2012-O-06  May 18, 2010, to Mandan School Board
When a quorum of members or committee of a governing body attends a meeting where public business is discussed, the gathering is a meeting for which notice must be provided, even if the attendance of a quorum at the meeting is unplanned and unexpected at a public forum.

N.D.A.G. 2012-O-05  March 20, 2012, to Elma Township
Whenever a quorum of a governing body meets, in person or by telephone, to discuss public business, it is a meeting that must be publicly noticed in advance.

N.D.A.G. 2012-O-02  February 6, 2012, to Linton School Board
Series of telephone calls to each Board member separately to discuss an investigation was “meeting” because it was information gathering that is a step in the decision making process. Information provided must be more than ministerial in nature to be considered information gathering.

N.D.A.G. 2011-O-17  December 22, 2011, to Minto City Council
Definition of “meeting” is not limited to face-to-face gatherings and can occur via telephone conversations. Information gathering is a step in the decision making process comparable to discussion, formulating or narrowing of options, or action regarding public business and is considered public business. Thus a meeting can take place even if the purpose is not to build a consensus or take a vote.

N.D.A.G. 2011-O-08  June 28, 2011, to Grand Forks School Board
“Meeting” occurs when a quorum of the governing body continues to discuss public business after the meeting adjourns.
<table>
<thead>
<tr>
<th>Date</th>
<th>Agency</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 25, 2011</td>
<td>Fargo City Commission</td>
<td>Quorum of Commission who met at restaurant after Commission meeting constituted a “meeting” as defined by statute and thus notice was required.</td>
</tr>
<tr>
<td>February 7, 2011</td>
<td>McKenzie Township Board of Supervisors and McKenzie Township Zoning Commission</td>
<td>As long as the elements of the definition of “meeting” are present, it does not matter where the meeting takes place. On-site inspection of City by Board of Township Supervisors and Township Zoning Commission was “meeting.”</td>
</tr>
<tr>
<td>January 12, 2011</td>
<td>Wilton School Board</td>
<td>Meeting occurred when superintendent called each Board member, one by one, from the telephone to ask for vote on whether to release teacher from contract.</td>
</tr>
<tr>
<td>January 4, 2011</td>
<td>Bowdon City Council</td>
<td>A gathering of a quorum of the members of a governing body regarding public business is a “meeting.” A quorum is one-half or more of the governing body’s members.</td>
</tr>
<tr>
<td>November 12, 2010</td>
<td>Mercer County Ambulance Board</td>
<td>The definition of “meeting” is not limited to face-to-face gatherings of a quorum of the members of a governing body. As a result, a meeting could occur by telephone or by other electronic means such as e-mail. For a gathering of a governing body to be considered a “meeting,” two primary elements must be considered: whether a quorum was present and the topic of discussion. Even if no action is taken, as long as the topic is one of public business and a quorum of a governing body is present, the meeting must be publicly noticed.</td>
</tr>
<tr>
<td>October 27, 2010</td>
<td>City of Grand Forks</td>
<td>Negotiations regarding contract between management company and City of Grand Forks were conducted in city attorney’s office rather than with members of Commission. Since no quorum of Commissioners met to discuss contract terms or negotiations, no meeting was held which required public notice.</td>
</tr>
<tr>
<td>July 1, 2010</td>
<td>Cooperstown City Council</td>
<td>Analysis of whether meeting took place by e-mail is no different than that of other meeting. Action does not have to be taken during a gathering of quorum in order for meeting to take place as definition of “meeting” covers all stages of decision-making process, including information gathering.</td>
</tr>
<tr>
<td>May 17, 2010</td>
<td>Kindred City Council</td>
<td>Although a quorum of a governing body was present prior to meeting, public business was not discussed and thus one of the elements required for a meeting was missing.</td>
</tr>
<tr>
<td>September 11, 2009</td>
<td>McClusky City Council</td>
<td>A meeting was held when the City Council met to monitor a person’s access to public records because a quorum was present, the Council as acting in its official capacity, and even though no public business was discussed, public business was performed.</td>
</tr>
</tbody>
</table>
N.D.A.G. 2009-O-13  July 30, 2009, to Mandan School Board
Definition of “meeting” is not limited to gatherings at which formal action is
taken on an item of public business and includes “work sessions.” A retreat
may be a “meeting” for which notice is required.

N.D.A.G. 2009-O-11  July 14, 2009, to Garrison School Board
Two primary elements must be present for a gathering to be considered a
“meeting”: whether a quorum was present and whether public business is
discussed.

N.D.A.G. 2008-O-28  December 12, 2008, to Fargo City Commission
A bus tour of a flood control project by a quorum of city commissioners
was a meeting subject to the open meetings law.

When a governing body delegates authority to a single person, the single
person’s performance of the delegated duty does not trigger open
meetings law.

E-mails and telephone calls between a three-member committee.

The definition of a meeting covers all stages of the decision-making
process, including information gathering. Action is not a prerequisite for
determination of whether a gathering is a meeting.

N.D.A.G. 2008-O-11  June 6, 2008, to Dickinson City Commission and South Heart City Council
Two primary elements must be present for a gathering to be considered a
“meeting”: whether a quorum was present and whether public business is
discussed.

N.D.A.G. 2008-O-10  May 2, 2008, to Stark County Commission and Stark County Zoning Board
A “meeting” may occur at an informal gathering such as a luncheon, even
if hosted by a private entity. As long as a quorum of a governing body
attends and the presentation at the luncheon relates to public business, it
is a meeting.

A quorum of a governing body is necessary for a meeting.

A meeting means a formal or informal gathering of a quorum of the
governing body members regarding public business.

N.D.A.G. 2007-O-14  December 5, 2007, to Mandan City Commission
When the four elements of a “meeting” are present in an email, a “meeting”
takes place that is subject to open meetings law.

N.D.A.G. 2007-O-08  June 8, 2007, to Ward County Commission
When a quorum of commissioners met to discuss a bond issue, it was a
public meeting, even though it took place at a privately funded forum.

N.D.A.G. 2007-O-08  June 8, 2007, to Ward County Commission
A meeting between a quorum of county commissioners and the DOT about
specific county funding during the NDACO annual convention did not fall
into the exception for meetings of state associations in N.D.C.C.
§ 44-04-17.1(8)(b) and must be noticed.
N.D.A.G. 2007-O-08 June 8, 2007, to Ward County Commission
Calls from the chairperson to three commissioners informing them of their individual committee assignments were ministerial and meetings were not subject to notice.

A quorum of a governing body cannot discuss public business after a meeting is adjourned.

N.D.A.G. 2005-L-14 April 29, 2005, to Mary Ekstrom
Delegation to one person does not trigger the open meetings law.

N.D.A.G. 2005-O-03 February 8, 2005, to City of Fargo
Even if a committee has no binding decision making authority the meeting is subject to the open meetings law.

N.D.A.G. 2005-O-02 January 12, 2005, to Cass County Historical Society
Meetings may take place by telephone.

Delegation must be to a group of persons to be a meeting.

Training session a meeting.

N.D.A.G. 2003-O-05 April 11, 2003, to Glen Ullin City Council
Three members of a seven-member city council attending a meeting of another public entity is not a meeting if there is no delegation by the city council.

School board member may participate by telephone or video equipment.

N.D.A.G. 2002-O-07 July 12, 2002 (and August 13 2002 Addendum) to Kindred Public School District
Social gathering of school board members where public business is not discussed is not a meeting.

N.D.A.G. 2001-O-18 December 27, 2001, to Mary O'Donnell
Meeting must involve a quorum.

N.D.A.G. 2001-O-14 October 4, 2001, to Steven McCullough
Series of written communications is not a meeting.

N.D.A.G. 2001-O-07 August 6, 2001, to Steven McCullough
Final action is not required for gathering to be a meeting.

N.D.A.G. 2001-O-05 June 7, 2001, to D. Guy McDonald
School board retreat.

N.D.A.G. 2001-O-03 May 3, 2001, to Paul Koehmstedt
Pre-meeting involving less than a quorum.

N.D.A.G. 2000-O-08 July 14, 2000, to Ellen Elder
Smaller gatherings involving a quorum.

N.D.A.G. 99-O-09 November 1, 1999, to Jeff Sheets
Gathering must pertain to public business to be a meeting.
Attendance at meeting of another group.
Sequential on-site investigations by a quorum.
Gatherings at which staff are given instructions.
Attendance at meeting of another group.
Action need not be taken for gathering to be a meeting.
Four elements to definition of meeting.
Meeting between one member and staff.
Faculty senate meetings and advisory groups.
Meetings by conference call.
All gatherings of a quorum are meetings.
State's attorney's inquests.
Committee minutes must comply with the statutory requirements, including the date of the meeting, final action, and results of roll call votes.
The Office of Attorney General does not review alleged inaccuracies in meeting minutes but only whether they include the minimum requirements of N.D.C.C. § 44-04-21(2). The Office also does not review the sufficiency of minutes until they are approved by the governing body, as deficiencies may be cured.
Minutes must include a sufficiently detailed description of all topics discussed. General, "catch all" phrases, such as "other issues," are not sufficiently detailed because they do not give the public indication of what was actually discussed.
N.D.A.G. 2010-O-06  May 17, 2010, to Kindred City Council
Minimum requirements provided by statute include only requiring a list of topics discussed by governing body and do not require verbatim report.

N.D.A.G. 2005-O-18  November 8, 2005, to Grand Forks City Council
Minutes of regular meeting failed to list who attended the executive session and when it started and ended.

Roll call votes of every member should be reflected in the minutes.

N.D.A.G. 2005-O-08  May 13, 2005, to Napoleon City Council
Minutes may reflect discussions that took place at meeting, but it is not required by statute.

N.D.A.G. 2005-O-02  January 12, 2005, to Cass County Historical Society
Committees subject to the open meetings law must take minutes.

N.D.A.G. 2005-O-01  January 10, 2005, to City of Napoleon
List of topics discussed at a meeting must be listed in the minutes.

General topic of executive session not in minutes.

Accurate information removed from minutes.

Minutes do not have to contain location of meeting.

Topics discussed.

N.D.A.G. 98-O-09  May 7, 1998, to Nick Zaharia
Minutes must contain record of motions and results of votes.

MINUTES, PUBLICATION

N.D.A.G. 99-L-112  November 18, 1998, to Larry Robinson
Vote to disapprove publication.

N.D.A.G. 98-F-25  August 11, 1998, to Cynthia Feland
Unapproved minutes.

N.D.A.G. 92-08  April 8, 1992, to Mary Nordsven
Publication of minutes.

N.D.A.G. Letter  December 24, 1985, to Gail Hagerty
Publication and content of minutes; roll call voting.

N.D.A.G. 69-124  November 28, 1969, to L.J. Schirado
Content of published minutes.

Publication and content of minutes.

N.D.A.G. 67-193  April 11, 1967, to M.F. Peterson
Publication and content of minutes.
NEGOTIATION STRATEGY SESSIONS

N.D.A.G. 2018-O-08  May 17, 2018, to West Fargo School Board
Discussion on various negotiation tactics a governing body could utilize to attract the best candidate including salary ranges and different compensation packages, which could affect its bargaining position if revealed, are negotiation strategy sessions appropriate for executive session.

N.D.A.G. 2017-O-03  May 12, 2017, to Devils Lake City Commission
Unauthorized executive session when reviewed job performance evaluations and made unilateral decision that involved no negotiation strategy or instruction.

N.D.A.G. 2016-O-01  January 12, 2016, to South Central Dakota Regional Council
A governing body may not close a meeting for a “negotiation strategy session” when the governing body is making a unilateral decision to terminate an employee that does not involve any intent negotiating.

N.D.A.G. 2015-O-15  October 12, 2015, to Morton County Commission
The Commission held a proper executive session to discuss negotiation strategy and provide negotiation instructions to its attorney because such discussions would have had an adverse fiscal impact if held in the public.

N.D.A.G. 2015-O-13  August 7, 2015, to Pembina County Water Resource District Board of Managers
If opposing counsel is present during a public entity’s conversations regarding negotiation strategy, there can be no adverse fiscal effect on the position of the public entity and therefore no executive session may be held.

N.D.A.G. 2015-O-04  March 20, 2015, to Fargo City Commission
The City Commission violated open meetings law when it proceeded into an executive session to discuss a separation agreement already negotiated and signed by a public employee.

N.D.A.G. 2013-O-13  August 14, 2013, to the City of Mandan
A meeting is properly closed for negotiation strategy and instruction when the discussions would have an adverse fiscal effect on the bargaining position of the entity.
<table>
<thead>
<tr>
<th>Number</th>
<th>Date</th>
<th>Recipient</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.D.A.G. 2013-O-11</td>
<td>August 6, 2013, to State Board of Higher Education</td>
<td>To close a meeting for negotiation strategy, three elements must be met. Introductory comments in which a governing body receives an updated history, or summary from its negotiator on the status of contract negotiations, is not “negotiation strategy” and should not be discussed during an executive session.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2010-O-11</td>
<td>September 24, 2010, to Grand Forks School Board</td>
<td>Executive session was held related to superintendent’s salary and contract. Statute does not authorize executive session for all contract discussions. Discussions must be in context of negotiation and, even then, discussion is only protected if disclosure of the remarks would have an adverse fiscal effect on the bargaining position of the governing body.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2009-O-09</td>
<td>July 1, 2009, to Mandan Board of Park Commissioners</td>
<td>A governing body may go into executive session to discuss negotiation strategy and position, and these discussions, if held in public, could have caused an adverse fiscal effect on the bargaining position of the Board.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2005-O-21</td>
<td>December 8, 2005, to Harvey School Board</td>
<td>Giving authority to unilaterally issue contracts goes beyond negotiation strategy or instruction.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2005-O-18</td>
<td>November 8, 2005, to Grand Forks City Council</td>
<td>Discussing instructions with the negotiator is not “final action”.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2005-O-03</td>
<td>February 8, 2005, to City of Fargo</td>
<td>Cannot close a meeting for contract negotiation if the other party is in the closed session.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2003-O-22</td>
<td>December 1, 2003, to Walsh County Commission</td>
<td>No authorization to close meeting to receive an update or summary form negotiator on status of contract negotiations.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2001-O-17</td>
<td>December 24, 2001, to Ronald Reichert</td>
<td>Session may not be held to evaluate personnel.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2000-O-09</td>
<td>July 17, 2000, to Ellen Elder</td>
<td>Elements and scope of the exception.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2000-O-05</td>
<td>April 4, 2000, to Larry Gegelman</td>
<td>Terms &quot;strategy&quot; and &quot;instructions&quot; are key terms which limit the exception.</td>
<td></td>
</tr>
</tbody>
</table>
NONGOVERNMENTAL ORGANIZATIONS

See also Public Entity, Defined

N.D.A.G. 2009-O-14  August 14, 2009, to State Department of Health
Private, non-profit trade association may be public entity if supported in
whole or in part by public funds or if it acts as an agent or agency of
government.

N.D.A.G. 2008-O-29  December 12, 2008, to North Dakota High School Activities Association
Recognized by statute as performing governmental functions and is
supported by public funds.

N.D.A.G. 2004-O-14  July 1, 2004, to Fargo-Moorhead Chamber of Commerce
Chamber not subject to open meeting law.

Private, nonprofit hospital may be public entity if supported by public funds.

N.D.A.G. 2003-O-08  July 22, 2003, to Dakota Center for Independent Living
Nonprofit organization recognized by state law.

N.D.A.G. 2003-O-02  February 21, 2003, to James River Senior Citizen’s Center
Senior citizen’s center receiving unrestricted funds used for general
support was public entity.

Minot Area Chamber of Commerce Task Force is supported by public
funds and an agent of the city of Minot.

N.D.A.G. 2001-O-11  September 13, 2001, to Greg Selbo
Economic development corporation.

N.D.A.G. 98-O-23  November 9, 1998, to Howard Swanson
Public funds not limited to cash; de minimis contributions; recognized by
resolution.

Four ways for non-governmental organization to be a public entity.

N.D.A.G. 98-F-19  June 10, 1998, to Carol Olson
Exchange of funds for identified goods and services is not "support" by
public funds.

N.D.A.G. 96-F-18  September 13, 1996, to Gerald Sveen
Organization receiving direct appropriation of government funds is
"expending public funds" and is a public entity.

N.D.A.G. Letter  August 2, 1991, to Ken Solberg
Government self-insurance pool is an agency of its members and is
supported by public funds.

N.D.A.G. Letter  September 19, 1989, to Rod Larson
Supported by public funds and procedures for conducting a meeting.
NOTICE OF MEETINGS

2021-O-12
December 17, 2021 to Horse Race North Dakota
The entity did not provide requested notice and failed to include an agenda or the information necessary to join a remotely-held meeting in its notice.

2021-O-010
September 23, 2021 to the Mandan Public School Board
The school board properly filed notice of its meeting with the county auditor.

2021-O-08
August 26, 2021, to the City of Velva
The city properly filed the notice of its meeting with the city auditor.

2021-O-07
July 8, 2021, to North Prairie Regional Water District
Committees of a public entity must comply with all the notice requirements for special meetings.

2021-O-04
May 12, 2021, to the City of Surrey
The public entity failed to properly notice a special meeting when topics not included on the meeting notice were discussed, and it failed to state the location of the meeting.

2021-O-03
May 12, 2021, to Hope-Page Public School District #85
The governing body has the responsibility to provide notice of its meetings. Failing to provide notice of special meetings is a violation of the open meetings law.

N.D.A.G. 2020-O-05
July 7, 2020, to Williams County School District #8 and Williston School District #1
Once a topic is clearly identified in a properly posted agenda, the notice does not need to include a detailed itemization of every potential statement or position of the governing body as to do so would be infeasible and speculative.

N.D.A.G. 2020-O-04
May 20, 2020, to Williams County School Board for District #8
Once a topic is clearly identified, the meeting notice does not need to include a detailed itemization of every potential statement or position of the members of the governing body as to do so would be infeasible and speculative.

N.D.A.G. 2020-O-03
May 18, 2020, to City of Napoleon
Notice of a regular meeting must include an agenda of all topics the governing body expects to discuss at the time the notice is prepared.

N.D.A.G. 2020-O-01
February 6, 2020, to North Dakota State Board of Accountancy
The Board failed to properly notice a special meeting by posting a wrong meeting date and failing to post an agenda.

N.D.A.G. 2019-O-17
August 14, 2019, to Fargo Park District
Special meeting notices must list specific agenda topics and mere reference to “HR/Staff Review” failed to adequately inform the public of the topics considered at the meeting.
N.D.A.G. 2019-O-16  July 19, 2019, to City of Surrey
Committee meetings were not properly noticed.

N.D.A.G. 2018-O-28  December 11, 2018, to City of Belfield
Requests to receive personal notice of upcoming meetings are effective for
one year unless a different time period is specified. Agendas for special
meetings must specifically identify topics to be discussed and notice of any
executive session.

N.D.A.G. 2018-O-19  November 14, 2018, to TGU School District #60
Special meeting notice that incorrectly identified the committee that was
meeting and lacked the level of specificity needed of special meetings
failed to comply with N.D.C.C. § 44-04-20.

N.D.A.G. 2018-O-11  July 2, 2018, to Bismarck-Mandan Mayors’ Committee for People with
Disabilities
When a governing body serves two public entities, notice must be posted
at each jurisdiction.

N.D.A.G. 2018-O-07  May 17, 2018, to Beulah School Board
Vague phrases such as “additions to the agenda” are not appropriate for
special meetings notices.

N.D.A.G. 2017-O-04  May 12, 2017, to Cass County Commission
Violation of open meetings law when a governing body’s public notice fails
to include all items considered or discussed at a special meeting.

N.D.A.G. 2016-O-18  August 26, 2016, to Center Township Board of Supervisors
Although personal notice does not have to be provided in the exact
manner requested, the public entity must provide notice to individuals in a
practical matter that relays the relevant information contained in the
agenda.

N.D.A.G. 2016-O-17  August 11, 2016, to Lidgerwood Rural District Ambulance Service Board
Because emergency or special meetings may be called upon short notice,
notifying the official newspaper is of particular importance because it
compensates for the possibility that the public may not be aware of the
special or emergency meeting.

N.D.A.G. 2016-O-07  April 19, 2016, to Flasher City Commission
N.D.C.C. § 44-04-20(6) requiring notice of special meetings be given to the
public entity’s official newspaper, does not dictate the medium through
which such notice must be given. A reporter of the official newspaper who
was present during an announcement of an upcoming meeting time and
date received notice of an upcoming meeting that satisfied this
requirement.

N.D.A.G. 2016-O-05  March 23, 2016, to Washburn City Commission
A “committee,” composed of two or more individuals, delegated some part
of the governing body’s public business, are subject to the notice
requirements of N.D.C.C. § 44-04-20 when a quorum of the committee
meets and its delegated business is discussed.
March 15, 2016, to North Dakota Department of Health, State Health Council
Notice must be provided to the public at the same time as members of the governing body are notified of an upcoming meeting, even if no agenda is prepared and the governing body has not discussed or decided what topics will be addressed at the upcoming meeting. Notice should be posted in compliance with N.D.C.C. § 44-04-20, with a reference to “agenda to come” and the entity supplementing the notice with an agenda when it is created.

January 13, 2016, to Langdon City Commission
When a quorum of a governing body gathers to discuss public business an hour before its regular meeting, the early gathering must be noticed because it is a “meeting” subject to open meetings law.

October 19, 2015, to Stark County
The auditor preparing the agenda did not know about a specific topic an attorney was going to bring before the governing body at the time the notice was prepared but since it was a regular meeting, no violation occurred when the attorney added the topic to the agenda to be discussed at the meeting.

August 7, 2015, to Pembina County Water Resource District Board of Managers
It is a violation of open meetings law to only post notice for an “executive session” when the governing body knew at the time the agenda was prepared the topics and legal authority for the executive session and such information was not included in the agenda.

August 6, 2015, to Garrison-Max Ambulance District Board of Directors
The purpose of requiring meeting notices to be filed with the auditor is to have a central location for people to find out about public meetings affecting the city or county.

September 22, 2014, to State Board of Higher Education
General and vague phrases that could have multiple meanings are not appropriate to use in describing an agenda topic for a special meeting.

August 28, 2014, to Churchs Ferry City Council
Use of general phrases in an agenda such as “old business” and “new business” substantially comply with the notice requirements of N.D.C.C. § 44-04-20 when, at the time the notice if prepared, the city auditor is unaware of any specific topics the City Council anticipates discussing at the meeting.

May 15, 2014, to Devils Lake City Council
A committee subject to open meetings law must post notice in compliance with N.D.C.C. § 44-04-20, in addition to any notice requirements from an adopted municipal code.

February 3, 2014, to Linton City Council
N.D.C.C. § 44-04-20(2) requires a meeting notice contain the “location” of the meeting but does not necessarily require a street address. Rather, as long as the notice contains a location that a member of the public could reasonably identify, substantial compliance is met.
N.D.A.G. 2013-O-09 June 12, 2013, to Turtle Lake-Mercer School Board
Notice must contain the general subject matter of any executive session expected or anticipated to be held during the meeting at the time the notice is prepared.

N.D.A.G. 2013-O-06 April 18, 2013, to State Board of Higher Education
General, “catch-all” all phrases, are inappropriate to use for heightened notice requirements of special meetings because they do not adequately provide the public with advance notice of what the public entity would discuss. It is especially important to post notice at the location of the meeting on the day of the meeting when the governing body meets in an unconventional location, such as a private home.

N.D.A.G. 2013-O-05 April 16, 2013, to State Parole Board
Filing a yearly schedule with the appropriate entity, such as the Secretary of State’s office, does not relieve the governing body of its obligation to provide notice of upcoming meeting that includes a list of topics expected to be discussed at time notice is prepared; date, time, and location of the meeting; and anticipated executive sessions.

N.D.A.G. 2013-O-04 April 9, 2013, to Wells County Water Resource District
A regular meeting allegedly beginning a few minutes early substantially complied with notice requirements as minutes indicate the meeting began when scheduled and the governing body did not believe the meeting began early.

N.D.A.G. 2013-O-01 January 10, 2013, to Lidgerwood Rural District Ambulance Service Board
The purpose of an agenda is to provide sufficient information to interested members of the public concerning anticipated business to be discussed by the governing body. General terms that could have numerous meanings do not provide the public with meaningful notice of what a governing body intends to discuss at a special meeting. “Catch-all” phrases in notices are not appropriate for special meetings, however, if the entity limits its discussion to the specific items listed on the agenda, despite the existence of a catch-all item also included on an agenda, no violation occurs.

N.D.A.G. 2012-O-06 May 18, 2012, to Mandan School Board
If an unexpected and unanticipated presence of a quorum of a governing body occurs at a gathering that discusses public business, notice must be provided immediately after the meeting.

Requirements for noticing township meetings in N.D.C.C. ch. 58 are in addition to the notice requirements of N.D.C.C. § 44-04-20.

N.D.A.G. 2011-O-16 November 10, 2011, to Dresden Township Board of Supervisors
Notices of regular meetings only have to be published if a statute specifically requires publication such as when township electors meet. If a public entity does not have an office, the requirement to post notice at the “office” does not apply.
N.D.A.G. 2011-O-15  October 3, 2011, to Valley City Commission
Although public entity must list topics to be discussed at special meeting, it is not required to include a detailed itemization of every step or procedure issue that may arise as to do so would be unfeasible and unnecessary speculative. An entity cannot predict all possible objections, responses, and issues that it must address during the course of a special meeting. Actions taken that are not specifically detailed in the special meeting notice, but are related or within the scope of the topic listed on the notice, are proper.

N.D.A.G. 2001-O-14  September 23, 2011, to Churchs Ferry City Council and Tax Equalization Board
Regular agenda notice’s list of “old business” and “new business” substantially complied with notice requirements of the statute since at the time of posting the notice, the drafter was unaware of any specific topics the Council anticipated discussing at the meeting. Specific statutes applicable to individual public entities or governing bodies that require publication must be followed in addition to the notice requirements of open meeting law.

Special meetings organized very quickly to respond to urgent matter are not obviated as notice requirements of statute allow for notice to be posted quickly. Occasionally there are circumstances where it is not feasible to provide prior notice of a meeting and in these unusual situations, notice should be provided immediately following the meeting in order to substantially comply with the law.

N.D.A.G. 2011-O-10  August 10, 2011, to Cass County Historical Society
County Historical Society failed to comply with notice requirements of special meeting because it failed to file with the county auditor and failed to notify the official newspaper.

Statute does not require public entity provide notice to newspaper of regular meeting unless newspaper requests such notice.

N.D.A.G. 2011-O-06  May 26, 2011, to Cass County Board of Commissioners
Notice of regular meetings includes topics to be considered, “if practicable” which requires the governing body to include in its notice a list of all topics the governing body expects to discuss at the time the notice is prepared. If an agenda item is submitted after the notice is prepared, a governing body may prepare an amended notice and agenda but it is not legally required to do so in the case of a regular meeting. However, if a public entity deliberately omits a topic that it knows will be discussed at the time it prepares the notice, it would violate the law.

The purpose of filing notice with the auditor is to have a central location for people to find out about public meetings of the Board. The notice to the newspaper for special meetings compensates for the possibility that the public may not otherwise learn about the meeting.
N.D.A.G. 2011-O-01  January 4, 2011, to Bowdon City Council
Special meetings called upon short notice must still be properly noticed, which includes contacting public entity’s newspaper. The purpose of the requirement is not to publish notice, but to give the newspaper the opportunity send a reporter to the meeting if it so desires.

N.D.A.G. 2010-O-14  November 12, 2010, to Mercer County Ambulance Board
Notice of regular meetings of County Boards must be filed with the county auditor unless all the notice information, including the agenda items, were previously included in the governing body’s annual schedule.

N.D.A.G. 2010-O-12  September 24, 2010, to Nome City Council
Agenda notice of regular meeting with phrases of “new business” and “old business” was acceptable when at time agenda and notice were drafted and posted, auditor was unaware of any specific topics Council anticipated discussing.

N.D.A.G. 2010-O-11  September 24, 2010, to Grand Forks School Board
Law requires a level of specificity from a special meeting agenda that is not required for regular meetings because a governing body may only discuss topics during the special meeting that are listed on the notice. Catch-all descriptions of agenda items are not appropriate for special meetings.

N.D.A.G. 2010-O-10  July 1, 2010, to Kindred City Council
For emergency or special meetings, the presiding officer of the governing body must assure that notice is given to the public entity’s official newspaper, as well as anyone who has requested notice, at the same time the notice is given to members of the governing body.

Notice of special meetings for a school district must be posted at the main office of the governing body and at the location of the meeting on the day of the meeting, must be filed with the county auditor, and school district must notify official newspaper and any other members who have requested it. Notice of special meeting must contain the topics to be considered in a sufficiently clear manner to substantially comply with statute.

N.D.A.G. 2010-O-05  April 20, 2010, to Kindred City Council
Governing body must amend agenda in order to discuss new topic prior to a special meeting and must also repost and provide notice to official newspaper. Notice of special meeting must be given to public entity’s official newspaper but this requirement does not require publication by the newspaper.

N.D.A.G. 2009-O-18  October 9, 2009, to Ray Township Board of Supervisors
Notice of a regular meeting of a governing body of a public entity must be filed with the county auditor, posted at the public entity’s office if there is one, and posted at the location of a meeting on the day of the meeting. Notice only has to be published if a statute specifically requires publication, such as for meetings of township electors.

N.D.A.G. 2009-O-16  September 9, 2009, to Oriska City Commission
Notice of a regular meeting must contain topics to be considered, if practicable. “If practicable” means that if the governing body expects to discuss a topic when the notice is prepared, it is required to be included in the notice. Even if topic is routine, if the governing body expects to address at the meeting, it should include the topic on the notice.
<table>
<thead>
<tr>
<th>Date</th>
<th>Ref.</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>August 21, 2009</td>
<td>N.D.A.G. 2009-O-15</td>
<td>Description in notice about executive session to discuss negotiations was inadequate and failed to substantially comply with notice requirements.</td>
</tr>
<tr>
<td>July 30, 2009</td>
<td>N.D.A.G. 2009-O-13</td>
<td>Basic purpose of the requirement to post a meeting notice at the location of the meeting on the day of the meeting is so the public can easily identify where the meeting is being held. Individual notice of meetings is required upon request of an individual. Public entities should provide notice in whatever way agreed upon by the person and the public entity or in a manner that is practical. Law requires substantial compliance with notice requirements which may be provided due to case specific factors even if personal notice was not given as requested.</td>
</tr>
<tr>
<td>July 17, 2009</td>
<td>N.D.A.G. 2009-O-12</td>
<td>A committee with delegated authority to perform a function on behalf of a governing body is subject to the state’s open meetings law.</td>
</tr>
<tr>
<td>July 2, 2009</td>
<td>N.D.A.G. 2009-O-10</td>
<td>Fireworks Committee did not violate notice of meeting requirements of N.D.C.C. § 44-04-20 when they did not notify an individual who had not requested personal notice of the meetings.</td>
</tr>
<tr>
<td>April 23, 2009</td>
<td>N.D.A.G. 2009-O-06</td>
<td>Notice posted in a teacher's lounge doesn’t give the public a reasonable chance to see it.</td>
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<tr>
<td>March 6, 2008</td>
<td>N.D.A.G. 2009-O-04</td>
<td>Request for personal notice</td>
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<tr>
<td>February 23, 2009</td>
<td>N.D.A.G. 2009-O-03</td>
<td>The phrase “other business” cannot be used on a notice for a special meeting.</td>
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<tr>
<td>December 12, 2008</td>
<td>N.D.A.G. 2008-O-29</td>
<td>Notice must be provided by e-mail if requested regardless if the notice is posted on a website.</td>
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<tr>
<td>September 19, 2008</td>
<td>N.D.A.G. 2008-O-23</td>
<td>The items on an agenda should be described in a way that reasonably explains to the public what will be discussed at the meeting.</td>
</tr>
<tr>
<td>June 23, 2008</td>
<td>N.D.A.G. 2008-O-13</td>
<td>Even meetings where a quorum of a public entity is only gathering information and not taking action must be preceded by sufficient public notice.</td>
</tr>
<tr>
<td>May 2, 2008</td>
<td>N.D.A.G. 2008-O-10</td>
<td>A governing body must provide notice when a quorum attends a lunch presentation regarding public business that is hosted by a private entity.</td>
</tr>
<tr>
<td>February 4, 2008</td>
<td>N.D.A.G. 2008-O-02</td>
<td>No public notice of executive session</td>
</tr>
</tbody>
</table>
N.D.A.G. 2007-O-13 October 8, 2007, to Grand Forks School Board – Notice must be given in advance of all meetings of committees created by governing bodies and must also be provided to anyone requesting individual notice.

Individual notice of meetings is required upon request of an individual. Such request is good for one year.

N.D.A.G. 2007-O-10 June 26, 2007 to Kathryn City Council
A governing body must provide notice of its meetings to anyone who requests it, even in cases where meetings are held at the same time and in the same place every month.

N.D.A.G. 2007-O-08 June 8, 2007, to Ward County Commission
The name of the public entity holding the meeting must be on the notice.

A public entity must provide notice of special or emergency meetings to the official newspaper.

There is no minimum mandatory notice requirement.

There is no requirement to publish notices of regular meetings in the newspapers.

If it is not reasonably possible to give advance notice of a special meeting, notice must be provided immediately following the meeting.

N.D.A.G. 2006-O-10 June 7, 2006, to Cavalier County Weed Board
Substantial compliance of notice requirements.

N.D.A.G. 2006-O-09 May 15, 2006, to City of Grand Forks
A meeting notice must contain the name of the governing body that is meeting.

N.D.A.G. 2006-O-07 May 1, 2006, to Nome City Council
Posting an annual schedule of meetings is not sufficient notice of each meeting.

Public notice must specifically state the location of the meeting.

N.D.A.G. 2006-O-05 February 28, 2006, to North Dakota Firefighter’s Association
When a board does not hold regularly scheduled meetings, its meetings are treated as special meetings.

A public entity must provide notice of committee meetings.

N.D.A.G. 2005-O-20 December 5, 2005, to Minto Special Assessment Commission
Notice of Special Meeting posted after meeting.

N.D.A.G. 2005-O-18 November 8, 2005, to Grand Forks City Council
Notice must correctly identify the general subject matter of an executive session.
N.D.A.G. 2005-O-17 November 8, 2005, to Cavalier County Weed Board
Location of a meeting is a material element of the notice.

N.D.A.G. 2005-O-10 June 9, 2005 to Wilton Rural Ambulance District
A public entity serving two counties should file notices with the county
auditor of each participating county.

N.D.A.G. 2005-O-08 May 13, 2005, to Napoleon City Council
Notice must be provided to public at the same time as the governing
body’s members.

N.D.A.G. 2005-O-07 May 12, 2005, to Rolla City Council
Notice must be actually filed with the city auditor.

N.D.A.G. 2005-O-04 February 9, 2005, to Cavalier City Council
Notice must contain the location even when location is set by city
ordinance.

N.D.A.G. 2005-O-02 January 12, 2005, to Cass County Historical Society
An executive committee authorized by the board must give notice of
meetings.

N.D.A.G. 2005-O-01 January 10, 2005, to City of Napoleon
Notice of regular meeting must contain any topics expected when it is
prepared.

Special meeting notice must contain topics.

Notice of special meeting must be posted in advance.

Special meeting notice must have location and executive session.

Notice must include all topics expected to be discussed at a regular
meeting at the time the notice is prepared.

General description of executive session not in notice.

N.D.A.G. 2004-O-10 May 3, 2004, to Stutsman County Correctional Center
Location of the meeting is a material element of the notice.

Public notice must be given to public at same time as to the members.

N.D.A.G. 2004-O-08 April 6, 2004, to McIntosh County Commissioners
Informal discussion with state’s attorney a meeting subject to notice.

Training session should be noticed as meeting.

N.D.A.G. 2003-O-22 December 1, 2003, to Walsh County Commission
Citation to N.D.C.C. § 44-04-19.1 fails to describe the subject matter of an
executive session.

N.D.A.G. 2003-O-20 November 13, 2003, to Towner County Commission
Topics must be included in special meeting notice.
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<th>Notice or Comment</th>
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<tbody>
<tr>
<td>November 12, 2003</td>
<td>Northwood Park Board</td>
<td>Giving notice in alternative places, like television, does not replace the statutory notice requirements.</td>
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<tr>
<td>October 22, 2003</td>
<td>Workforce Safety and Insurance Board</td>
<td>Notice to official newspaper.</td>
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<tr>
<td>October 22, 2003</td>
<td>Minto City Council</td>
<td>Committees subject to notice requirements.</td>
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<tr>
<td>June 5 2003</td>
<td>Kindred School District No. 2</td>
<td>Notice of an agenda change before a special meeting.</td>
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<tr>
<td>December 18, 2002</td>
<td>State Board of Higher Education</td>
<td>Notice not required to be published.</td>
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<td>November 29, 2002</td>
<td>Larimore City Council</td>
<td>Special meeting notices must list specific issues to be discussed at meeting.</td>
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<tr>
<td>October 18, 2002</td>
<td>McKenzie School Board</td>
<td>Public must be able to determine the topic of an executive session in a notice of a special meeting that will include an executive session.</td>
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<tr>
<td>August 20, 2001</td>
<td>Karl Hoppe</td>
<td>Official city newspaper.</td>
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<tr>
<td>August 6, 2001</td>
<td>Steven McCullough</td>
<td>Failure to prepare written notice.</td>
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<tr>
<td>June 7, 2001</td>
<td>D. Guy McDonald</td>
<td>Announcement of meeting date at previous meeting was not sufficient notice.</td>
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<tr>
<td>July 19, 2000</td>
<td>Howard Swanson</td>
<td>Reference in notice to executive sessions.</td>
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<tr>
<td>January 31, 2000</td>
<td>Duane Schurman</td>
<td>Notice to interested persons is not a substitute for public notice.</td>
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<tr>
<td>December 7, 1999</td>
<td>Duane Schurman</td>
<td>Timing of notice.</td>
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<td>September 9, 1999</td>
<td>Cameron Sillers</td>
<td>Discussion of items not included in notice.</td>
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<td>June 14, 1999</td>
<td>Ed Malazdrewicz</td>
<td>Notice to individual is not required unless requested.</td>
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<tr>
<td>September 22, 1998</td>
<td>Wes Tossett and Gary Puppe</td>
<td>Topics to be discussed.</td>
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<tr>
<td>June 11, 1998</td>
<td>Edward Urness</td>
<td>Mandatory minimum notice period.</td>
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<tr>
<td>June 8, 1998</td>
<td>Duane Mullenberg and Fabian Noack</td>
<td>Central filing; notice to interested members of public.</td>
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</table>
OPEN MEETINGS, IN GENERAL

N.D.A.G. 2021-O-06  July 8, 2021, to North Prairie Regional Water District
The public entity properly discussed an employee’s job performance and compensation in an open meeting.

N.D.A.G. 2021-O-01  February 24, 2021, to County of Steele
The governing body may limit access to the building a meeting is held in as long as information is provided to the public for how to access the meeting.

N.D.A.G. 2020-O-11  December 21, 2020, to Fargo Public School Board
Individual members of a governing body may consult with staff members of a public entity without triggering the open meetings law.

N.D.A.G. 2019-O-18  October 17, 2019, to City of Minot
When a governing body meets outside its principal location, factors will be considered on whether the location renders the meeting inaccessible to the public.

N.D.A.G. 2019-O-16  July 19, 2019, to City of Surrey
Under the facts presented, the Committee did not attempt to conduct a meeting that could not be heard by the public.

N.D.A.G. 2016-O-17  August 11, 2016, to Lidgerwood Rural District Ambulance Service Board
Topics that may be considered at a special meeting must be included in the agenda.

N.D.A.G. 2016-O-14  July 26, 2016, to McKenzie County Ambulance Service Board of Directors
If a governing body of a public entity fails to file a schedule outlining its meetings for the coming year, all meetings would then be considered “special meetings” that must be noticed accordingly.

N.D.A.G. 2015-O-09  May 14, 2015, to Benedict City Council
The governing board of a public entity can control the decorum of a meeting and in doing so may adopt reasonable rules and policies to ensure the meeting is conducted in an orderly manner.

N.D.A.G. 2015-O-04  March 20, 2015, to Fargo City Commission
The City Commission violated open meetings law when it engaged in a series of telephone calls and discussions collectively involved a quorum that went beyond merely providing information in a ministerial manner but instead built consensus that resulted in a negotiated separation agreement of a public employee.
N.D.A.G. 2014-O-23  December 26, 2014, to City of Wyndmere
A series of telephone calls collectively involving a quorum of the City Council in which public business is discussed, was a meeting subject to open meetings law.

A public entity cannot “request” for the public to leave the room during an open meeting because this has a chilling effect on a person’s right to attend the meeting.

N.D.A.G. 2014-O-01  January 14, 2014, to Barnes County Municipal Airport Authority
A brief reference to a topic outside the scope of an agenda for a special meeting did not violate open meetings law because the governing body, in recognizing the potential violation, immediately abandoned the issue and moved on to discuss topics directly related to the posted agenda items.

N.D.A.G. 2013-O-05  April 16, 2013, to State Parole Board
A governing body may not deny access to a meeting based upon space limitations unless it has first attempted to make reasonable accommodations. In unique set of circumstances, security concerns due to construction of larger room were balanced with the public's right to attend the public meeting.

It was not a violation to exclude inmate from parts of parole hearing because an incarcerated person is not free to attend public meetings and must follow the rules and guidelines set forth by the Department of Corrections.

N.D.A.G. 2012-O-03  February 24, 2012, to NDSU Research & Technology Park
Analysis on the choice of location for holding annual meeting and whether the location denied access to the public under N.D.C.C. § 44-04-19.

N.D.A.G. 2012-O-02  February 6, 2012, to Linton School Board
The open meetings law may be violated if a governing body holds one or more meetings attended by less than a quorum of members to discuss public business with the intent of avoiding the open meetings requirements. For a series of conversations to fall under this definition, it is not necessary that the Board intended to violate the law.

N.D.A.G. 2010-O-12  September 24, 2010, to Nome City Council
At a regular meeting, a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken at the meeting. New agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting. From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity.

N.D.A.G. 2010-O-01  February 5, 2010, to Ward County Commission
Statute that authorizes county commissioners “to make all orders respecting property of the county” does not circumvent open meeting law requirements. Even if public is not authorized to attend an executive session or provide input, public still has right to know subject on which the governing body is meeting.
When a portfolio is held by more than one member of a governing body creating a committee, any meeting attended by the members is subject to the state’s open meetings law if the meeting pertains to the business assigned to that portfolio.

A governing body may not deny access based upon space limitations unless it has first attempted to make reasonable accommodations.

The Mandan City Commission has the authority to control the decorum of a public hearing.

A director of a state agency is a single individual and their participation in a meeting or executive session of a national organization does not constitute a “meeting” for purposes of the open meetings law. State law also excludes “meetings of any national . . . association” in the definition of “meeting”.

Denial of access to a public meeting can be either explicit or constructive.

Meetings between two members of a governing body that did not comprise a quorum or a committee are not subject to the open meetings law.

Open meetings law does not apply to exclusive functions of the court.

A school assembly is a meeting of the school board when a quorum of the board is present.

Member of public may videotape meeting.

People attending a meeting should be able to see how members vote.

Informal meeting of commission with state’s attorney is a meeting.

Meeting of private hospital open regarding public funds.

Social gatherings are not meetings if no public business is discussed.

Individual committee members going in to sign something at office not a meeting.

Committees subject to open meetings.
<table>
<thead>
<tr>
<th>Case Reference</th>
<th>Date</th>
<th>Recipient</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.D.A.G. 2003-O-12</td>
<td>September 8, 2003, to Fargo City Commission</td>
<td>Governing body may discuss an item of public business at regular meeting.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2003-O-08</td>
<td>July 22, 2003, to Dakota Center for Independent Living</td>
<td>Honor requests for notice of meetings for reasonable length of time.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2003-O-07</td>
<td>June 5, 2003, to Kindred School District No. 2</td>
<td>Public has right of access to open meeting, but no right to participate.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2003-O-03</td>
<td>February 21, 2003, to Minto City Council</td>
<td>No legal requirement to announce when the open meeting will reconvene after the completion of an executive session.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2001-O-14</td>
<td>October 4, 2001, to Steven McCullough</td>
<td>Open meetings law does not prohibit public entity from transacting business in writing.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 2001-O-13</td>
<td>September 27, 2001, to Karl Hoppe</td>
<td>Meeting that cannot be heard.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. 96-F-09</td>
<td>April 4, 1996, to Fabian Noack</td>
<td>Meetings of mayor and department heads; recording of open meetings.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. Letter</td>
<td>September 19, 1989, to Rod Larson</td>
<td>Supported by public funds and procedures for conducting a meeting.</td>
<td></td>
</tr>
<tr>
<td>N.D.A.G. Letter</td>
<td>March 29, 1985, to Gail Hagerty</td>
<td>Meetings involving one member of governing body.</td>
<td></td>
</tr>
</tbody>
</table>
N.D.A.G. Letter
March 31, 1978, to Burness Reed
Open meetings law is violated when someone is refused access to a meeting.

N.D.A.G. Letter
October 12, 1977, to Dale Moench
State licensing boards.

N.D.A.G. Letter
July 19, 1977, to Dewel Viker, Jr.
Attorney-client privilege.

N.D.A.G. Letter
March 5, 1976, to Myron Atkinson
All gatherings of a quorum are meetings.

PUBLIC BUSINESS

N.D.A.G. 2017-O-08
October 27, 2017, to North Dakota Industrial Commission
It must be the public entity’s “public business” considered or discussed in order for open meetings law to be triggered.

N.D.A.G. 2016-O-16
July 27, 2016, to City of Bisbee
Personnel issues, including termination of public employees, are considered public business because they relate to the performance of a governmental function and the use of public funds.

N.D.A.G. 2013-O-07
May 3, 2013, to State Board of Higher Education
E-mails that delve into the substance of the governing bodies’ issues, including a member sharing an opinion, thought, or position, goes beyond merely setting an agenda item or providing ministerial information, and is considered a discussion of public business.

N.D.A.G. 2010-O-06
May 17, 2010, to Kindred City Council
Quorum of Council members present in auditor’s office to pick up binders and did not discuss public business and therefore no meeting occurred.

N.D.A.G. 2009-O-17
September 11, 2009, to McClusky City Council
Definition of “public business” includes when a governing body meets and public business is performed, even though the members do not discuss the public business.

N.D.A.G. 2009-O-11
July 14, 2009, to Garrison School Board
Pre-meeting discussion about correct citation for an executive session under North Dakota statute, without discussion on the executive session itself, was not public business. Other topics discussed before meeting on various subjects were also not public business.

N.D.A.G. 2008-O-22
September 9, 2008, to Workforce Safety and Insurance
Public business doesn’t include discussion about drafting the agenda for the next meeting unless the substance of the items is discussed.

N.D.A.G. 2008-O-11
June 6, 2008, to Dickinson City Commission and South Heart City Council
The presentation given at the luncheon related to “public business” because it contained information directly related to the possible infrastructure and workforce needs of both Dickinson and South Heart.

N.D.A.G. 2008-O-10
May 2, 2008, to Stark County Commission and Stark County Zoning Board
Attending a presentation related to an upcoming zoning issue that will come before the governing body is “public business.”
N.D.A.G. 2007-O-08  June 8, 2007, to Ward County Commission
Information provided by commissioners regarding a bond issue is public business even if the information is provided at a privately funded forum.

N.D.A.G. 2005-O-15  September 19, 2005, to Bismarck City Commission
Even though meeting related to public business, there was no quorum of a governing body.

N.D.A.G. 2004-O-08  April 6, 2004, to McIntosh County Commission
All matters relating to performance of governmental functions or use of public funds.

Risk management training.

Social gatherings are not meetings.

Communications between board members and supervision of staff.

N.D.A.G. 98-O-16  July 2, 1998, to Jeff Schneider
Discussion of board members actions.

PUBLIC ENTITY

N.D.A.G. 2013-O-16  November 8, 2013, to Jamestown/Stutsman County Development Corporation
In a previous Attorney General opinion, JSDC was not considered an agent of a public entity, for tax exemption purposes, due in large part to a lack of contract or any other agreement creating or connecting JSDC to the City of Jamestown or Stutsman County. Reliance on this past opinion at this time was error because the previous opinion did not utilize the open record and meeting test to ascertain whether JSDC was an agent of a public entity and since that opinion, JSDC has entered into contractual agreements and resolutions with the political subdivisions. Because of these agreements and contracts, under the open records law test, JSDC is an agent of Jamestown and Stutsman County performing the governmental function of promoting economic development.

N.D.A.G. 2013-O-03  March 13, 2013, to Metro Diversion Board of Authority
A joint enterprise created by a joint powers agreement of several political subdivisions whereby the subdivisions delegate their performance of a governmental function is an “agency” of those subdivisions and a “public entity” subject to the open record and meeting laws.

A township is a political subdivision and is therefore a “public entity” subject to the open records and meetings law.

N.D.A.G. 2011-O-03  January 26, 2011, to Towner County Ambulance Service Board
Rural ambulance service districts and the boards that serve them are public entities because the districts are created by statute to exercise public authority or perform a governmental function.
<table>
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<tr>
<th>Date</th>
<th>N.D.A.G.</th>
<th>Recipient Details</th>
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</table>
| November 12, 2010 | N.D.A.G. 2010-O-14 | November 12, 2010, to Mercer County Ambulance Board  
Rural ambulance service districts and the boards that serve them are public entities because the districts are created by statute to exercise public authority or perform a governmental function. |
North Dakota Emergency Medical Services Association is a public entity subject to open meetings law because it is acting as an agent to the Department of Health for the purpose of providing the governmental functions of training and testing to emergency medical service providers coupled with the fact that the Department supports the Association on indistinct terms of contract. |
| April 23, 2009 | N.D.A.G. 2009-O-06 | April 23, 2009, to Lidgerwood School Board  
A sports co-op committee is a public entity in its own right and must notice meetings. |
| December 12, 2008 | N.D.A.G. 2008-O-29 | December 12, 2008, to North Dakota High School Activities Association  
Performs a governmental function and is supported by public funds. |
The crisis shelter is a public entity because it is supported in whole or in part by public funds. |
Entity created by Legislature and governed by statute. |
Appropriation to carry out a governmental function. |
If an entity is supported in part by public funds, it is a public entity. |
| November 22, 2005 | N.D.A.G. 2005-O-19 | November 22, 2005, to Supreme Court Gender Fairness Implementation Committee  
Supreme Court is not a public entity subject to the open meetings law. |
Historical society supported by public funds and recognized by state law is a public entity. |
Chamber of not public entity. |
Joint enterprise created by joint powers agreement. |
Private, nonprofit entity may be public entity. |
Nonprofit a public entity because it is recognized in state law and is supported by state funds. |
Senior citizen’s center is a public entity. |
Minot Area Chamber of Commerce Task Force is a public entity. |
<table>
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<tr>
<th>Date</th>
<th>Subject</th>
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</table>
| N.D.A.G. 2002-O-02 | February 4, 2002, to Birch Burdick and Garylle Stewart  
Joint dispatch center. |
Wheat commission nominating committee. |
| N.D.A.G. 2001-O-11 | September 13, 2001, to Greg Selbo  
Economic development corporation is agent of public entity – nine factors. |
| N.D.A.G. 98-O-23 | November 9, 1998, to Howard Swanson  
Recognized by resolution to jointly perform a public function. |
Entity recognized by statute. |
Joint enterprise of counties. |
"Resolution, ordinance, rule, and bylaw" refer to legislative enactments of a  
public entity. |
| N.D.A.G. Letter | August 2, 1991, to Ken Solberg  
Government self-insurance pool is an agency of its members and is  
supported by public funds. |
| N.D.A.G. 90-04 | January 23, 1990, to John Olson  
Meetings of state bar board are open; but see Admission to Practice R. 9. |
Entities created through governmental processes. |
| N.D.A.G. Letter | July 24, 1979, to Wayne Stenehjem  
Judicial nominating committee is a public entity. |
| N.D.A.G. Letter | October 12, 1977, to Dale Moench  
State licensing boards. |

**SCHOOLS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
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</table>
| N.D.A.G. 2012-O-06 | May 18, 2010, to Mandan School Board  
School Board attending Finance Committee meeting and two Board  
members were asked to appear on a radio show. |
| N.D.A.G. 2012-O-02 | February 6, 2012, to Linton School Board  
Board president’s series of telephone calls to each board member was  
"meeting" that required notice. |
Meeting occurred when Board members were called, one by one, to  
discuss resignation letter and Board failed to properly notice meeting. |
| N.D.A.G. 2010-O-11 | September 24, 2010, to Grand Forks School Board  
School Board held executive session to discuss superintendent’s raise and  
contract was unauthorized. |
School board must file notice of its special meetings with county auditor  
and newspaper. |
Executive session related to compensation for school district’s certified staff and administrators was not properly noticed.

N.D.A.G. 2009-O-06 April 23, 2009, to Lidgerwood School Board
School sports co-op committees are subject to the open meetings law.

The school district knew it was going to recommend staff changes at the next board meeting, but listed the agenda item as “Work session – Public form” which did not give the public notice that staff changes were imminent.

A school district must file notice of its meetings with the county auditor.

N.D.A.G. 2005-O-21 December 8, 2005, to Harvey School Board
School board voted on motion in executive session that should have been in open session.

Quorum of school board attends school assembly.

Executive session must be taped.

Topics at regular school board meeting.

School board finance committee.

Executive session for collaborative bargaining negotiations.

Notice requirements.


Notice of special meetings to interview and select superintendent.

N.D.A.G. 2000-O-09 July 17, 2000, to Ellen Elder
Discussion of salary increases.

N.D.A.G. 2000-O-04 March 15, 2000, to Larry Gegelman
Discussion of FERPA records.

N.D.A.G. 2000-O-01 January 24, 2000, to Donna Black Cloud
Discussion of vacant superintendent’s position and chain of authority.

N.D.A.G. 99-L-112 November 18, 1999, to Larry Robinson
Vote on disapproval of publication of minutes.

N.D.A.G. 94-F-28 September 2, 1994, to Bill Oban
Executive session to discuss educational records under FERPA.

N.D.A.G. 82-63 August 20, 1982, to Joe Crawford
Executive session for nonrenewal of teacher.
<table>
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<tr>
<th>Citation</th>
<th>Date</th>
<th>Recipient</th>
<th>Event Description</th>
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**TOWNSHIPS**

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<tr>
<th>Citation</th>
<th>Date</th>
<th>Recipient</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>N.D.A.G. 2011-O-04</td>
<td>February 7, 2011</td>
<td>to McKenzie Township Board of Supervisors and McKenzie Township Zoning Commission</td>
<td>Township is a political subdivision and is therefore a “public entity” subject to the open records and meetings law. The board of township supervisors is the governing body of a township. A township zoning commission may be created by a board of township supervisors to allow a township to exercise authority, and it also is a governing body of the township because it exercises authority delegated to it by the board of township supervisors.</td>
</tr>
<tr>
<td>N.D.A.G. 2009-O-18</td>
<td>October 9, 2009</td>
<td>to Ray Township Board of Supervisors</td>
<td>Statutes may require meeting notices be published for township electors and this notice is in addition to notice requirements of open meetings law.</td>
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**VOTING**

<table>
<thead>
<tr>
<th>Citation</th>
<th>Date</th>
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<tbody>
<tr>
<td>N.D.A.G. 2018-O-16</td>
<td>October 11, 2018</td>
<td>to Williston Public School District # 1</td>
<td>Reaching a “consensus” on who would be offered an employment position and the baseline negotiation salary and benefits package was a final decision required to be voted upon during open session.</td>
</tr>
<tr>
<td>N.D.A.G. 2018-O-14</td>
<td>July 19, 2018</td>
<td>to City of Lincoln</td>
<td>Unilateral decisions related to public business that involve the use of public funds are considered “final actions” and therefore a public vote must be taken.</td>
</tr>
<tr>
<td>N.D.A.G. 2018-O-10</td>
<td>May 17, 2018</td>
<td>to Wildrose City Council</td>
<td>A member of the public should be able to determine how an individual member of a governing body voted on all nonprocedural matters by reading the minutes.</td>
</tr>
<tr>
<td>N.D.A.G. 2018-O-08</td>
<td>May 17, 2018</td>
<td>to West Fargo School Board</td>
<td>“Reaching a consensus” is the same as taking a “vote” which was considered “final action” that must take place during an open meeting.</td>
</tr>
<tr>
<td>N.D.A.G. 2016-L-01</td>
<td>July 26, 2016</td>
<td>to Senator Ray Holmberg</td>
<td>N.D.C.C. § 44-04-21(1) requiring a recorded roll call vote for any nonprocedural matters during a public meeting, is applicable only to a governing body, or committee thereof, of a public entity.</td>
</tr>
</tbody>
</table>
N.D.A.G. 2015-O-15  October 12, 2015, to Morton County Commission
“Final action” does not include guidance given to an attorney on how to proceed in ongoing negotiations with opposing parties.

N.D.A.G. 2014-O-08  August 8, 2014, to Crosby City Council
All “final action” concerning topics discussed and considered during an executive session unless otherwise provided by law must be taken during a meeting open to the public and includes a motion to table an issue to gather more information.

N.D.A.G. 2013-O-16  November 8, 2013, to Jamestown/Stutsman County Development Corporation
Final action is defined as a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy. Final action may not be taken during executive session.

N.D.A.G. 2013-O-02  January 10, 2013, to Fargo City Commission
Generally, any final action concerning the topics discussed or considered during an executive session must be taken during open portions of the meeting. However, a vote need not be held on all matters brought before a public entity. The Commission did not need to vote to retain a policy already in place, and guidance provided by an attorney regarding negotiation is not considered “final action.”

Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the open meetings law must be open, public votes, and all nonprocedural votes must be recorded roll call votes. School Board denied voting with paper ballots so N.D.C.C. § 44-04-21 did not apply.

N.D.A.G. 2009-O-20  November 13, 2009, to Tioga Airport Authority
When a vote is required to hold an executive session, this vote must be made public and merely having members nod their heads is insufficient.

N.D.A.G. 2009-O-09  July 1, 2009, to Mandan Board of Park Commissioners
Because executive session held for negotiation preparation, Board’s final action not required to be in the open portion of the meeting. However, a motion was made during open portion of meeting which revealed the Board’s actions and thus no final action was taken in executive session.

N.D.A.G. 2005-O-21  December 8, 2005, to Harvey School Board
Final action does not include guidance given by members of the governing body to negotiator in executive session.

Roll call votes must be taken for all nonprocedural matters, even if results are unanimous.

N.D.A.G. 2005-O-07  May 12, 2005, to Rolla City Council
A decision to make a recommendation to the full council pertained to the merits and should have been by roll call vote.

N.D.A.G. 2005-O-02  January 12, 2005, to Cass County Historical Society
Roll call votes must be taken on all substantive matters.

N.D.A.G. 2005-O-01  January 10, 2005, to City of Napoleon
Not all matters brought before a public entity must be voted on.
<table>
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<tr>
<th>Document Type</th>
<th>Date</th>
<th>Recipient</th>
<th>Main Point</th>
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<tbody>
<tr>
<td>N.D.A.G. 2004-O-24</td>
<td>November 4, 2004</td>
<td>Southwest Multi-County Correction Center</td>
<td>Vote taken during executive session should have been in open session.</td>
</tr>
<tr>
<td>N.D.A.G. 2004-O-17</td>
<td>July 16, 2004</td>
<td>Pembina County Fair Board</td>
<td>“Motion carries” is not synonymous with unanimous.</td>
</tr>
<tr>
<td>N.D.A.G. 2001-O-17</td>
<td>December 24, 2001</td>
<td>Ronald Reichert</td>
<td>Motion to convene in executive session is a nonprocedural vote requiring a</td>
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<td>recorded roll-call.</td>
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