

**OPEN RECORDS AND MEETINGS OPINION
2019-O-17**

DATE ISSUED: August 14, 2019

ISSUED TO: Fargo Park District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Archie Ingersoll asking whether the Fargo Park District's Board of Commissioners violated N.D.C.C. § 44-04-20 by failing to adequately notice topics to be discussed at a special meeting.

FACTS PRESENTED

The Fargo Park District's Board of Commissioners held a special meeting on July 2, 2019.¹ The notice only listed one agenda topic: "HR/Staff Review."² According to the Commission, the original purpose of the meeting was to review the staff survey regarding Executive Director Joel Vettel's job performance.³ Prior to the meeting, Mr. Vettel made a verbal offer to resign and asked the Commission to consider a severance package.⁴

During the meeting, the Commission ultimately accepted the resignation and approved a severance package.⁵ The Commission then approved the appointment of an interim executive director.⁶

¹ Minutes, Fargo Park Dist. (July 2, 2019).

² Agenda, Fargo Park Dist. (July 2, 2019).

³ Letter from Gregory B. Selbo, Att'y at Law, to Att'y Gen.'s Office (July 30, 2019); see *also* Minutes, Fargo Park Dist. (July 2, 2019).

⁴ Letter from Gregory B. Selbo, Att'y at Law, to Att'y Gen.'s Office (July 30, 2019); see *also* Minutes, Fargo Park Dist. (July 2, 2019).

⁵ Letter from Gregory B. Selbo, Att'y at Law, to Att'y Gen.'s Office (July 30, 2019); see *also* Minutes, Fargo Park Dist. (July 2, 2019).

⁶ Minutes, Fargo Park Dist. (July 2, 2019).

ISSUE

Whether the Fargo Park District's July 2, 2019, special meeting agenda adequately provided notice of topics to be discussed in compliance with N.D.C.C. § 44-04-20.

ANALYSIS

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity in substantial compliance with N.D.C.C. § 44-04-20.⁷ Notice of public meetings must include the date, time, and location of the meeting, an agenda with topics to be considered, and notice of "general subject matter of any executive session expected to be held during the meeting."⁸ "The purpose of an agenda is to provide sufficient information to interested members of the public concerning the governing body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate."⁹ The importance of identifying what will take place at a meeting is greater for special meetings because they are unpredictable and often scheduled on short notice.¹⁰ Consequently, the law requires a level of specificity in 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.¹¹

General terms or phrases that could have numerous meanings are not adequate for a special meeting notice because they lack the specificity required to give the public meaningful notice of what will be discussed during a special meeting.¹² This office, in past opinions, determined the following phrases in special meeting agendas lacked the level of specificity required of a special meeting notice: "pending law enforcement investigation,"¹³ "quitclaim action,"¹⁴ "conducting an advisory visit,"¹⁵ "discuss other North Dakota higher education issues,"¹⁶ "special policy meeting,"¹⁷ "end of year

⁷ N.D.C.C. §§ 44-04-19, 44-04-20.

⁸ N.D.C.C. § 44-04-20(2).

⁹ N.D.A.G. 2018-O-28; N.D.A.G. 2014-O-13; N.D.A.G. 2014-O-01.

¹⁰ N.D.A.G. 2018-O-28; N.D.A.G. 2011-O-15.

¹¹ N.D.C.C. § 44-04-20(6); N.D.A.G. 2018-O-28; N.D.A.G. 2018-O-07; N.D.A.G. 2014-O-13; N.D.A.G. 2010-O-11; N.D.A.G. 2003-O-20.

¹² N.D.A.G. 2018-O-28; N.D.A.G. 2014-O-13; N.D.A.G. 2013-O-06; N.D.A.G. 2013-O-01; N.D.A.G. 2009-O-23.

¹³ N.D.A.G. 2018-O-28.

¹⁴ N.D.A.G. 2015-O-13.

¹⁵ N.D.A.G. 2014-O-13.

¹⁶ N.D.A.G. 2013-O-06.

¹⁷ N.D.A.G. 2013-O-01.

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recap,”¹⁸ “other business,”¹⁹ “new business,”²⁰ “work session - public forum,”²¹ and “collaborative bargaining.”²²

Prior to the July 2, 2019, special meeting, the Commission knew it would be discussing the staff reviews of Mr. Vettel’s job performance.²³ The vague topic “HR/Staff Review” could have multiple meanings and does not sufficiently describe the specific topic the Commission clearly knew it would be discussing at the special meeting. Furthermore, even if the original purpose of the meeting was to review Mr. Vettel’s job performance,²⁴ what was actually discussed was the resignation of Mr. Vettel, notice of which was received by the Commission prior to the meeting, as well as the hiring of an interim executive director.²⁵ The topic “HR/Staff Review” does not sufficiently describe the topics that were actually discussed at the special meeting.

It is therefore my opinion that the reference to “HR/Staff Review” was insufficient to adequately inform the public of the topics which were intended to be discussed at the meeting and therefore lacked the level of specificity required for a special meeting notice.

CONCLUSION

The Fargo Park District’s July 2, 2019, agenda lacked the level of specificity required of a special meeting notice in violation of N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

The Fargo Park District Board of Commissioners must review its July 2, 2019, special meeting minutes and add in further details of what was specifically discussed during the meeting. The updated meeting minutes must be provided to Archie Ingersoll, and anyone else requesting them, free of charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action

¹⁸ N.D.A.G. 2010-O-11.

¹⁹ N.D.A.G. 2009-O-04.

²⁰ *Id.*

²¹ N.D.A.G. 2008-O-23.

²² N.D.A.G. 2004-O-13.

²³ Letter from Gregory B. Selbo, Att’y at Law, to Att’y Gen.’s Office (July 30, 2019).

²⁴ *Id.*; see also, Minutes, Fargo Park Dist. (July 2, 2019).

²⁵ Letter from Gregory B. Selbo, Att’y at Law, to Att’y Gen.’s Office (July 30, 2019).

under N.D.C.C. § 44-04-21.2.²⁶ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁷

Wayne Stenehjem
Attorney General

sld
cc: Archie Ingersoll (via email only)

²⁶ N.D.C.C. § 44-04-21.1(2).

²⁷ *Id.*