

OPEN RECORDS AND MEETINGS OPINION  
2020-O-11

DATE ISSUED: December 21, 2020

ISSUED TO: Fargo Public School Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jill Hankey asking whether the Fargo Public School Board violated N.D.C.C. § 44-04-20 by holding a meeting without notice.

FACTS PRESENTED

The Fargo Public School Board has several standing committees. One standing committee is the Planning Committee which meets the last Friday of the month at 7:30 a.m. The members of the Planning Committee for the 2020-21 school year are Jim Johnson, chair; Brian Nelson, Vice chair; Jennifer Benson; Seth Holden; and David Paulson. The standing committees are supported by Fargo Public School cabinet members. One of the cabinet members is Dr. Bob Grosz, associate superintendent for Teaching and Learning. He has been providing information to the Planning Committee, as well as other committees of the district, however, he is not a member of the Planning Committee.

The Planning Committee has been considering potential boundary changes within the school district. The requester alleges that the Planning Committee has been meeting outside of its noticed public meetings. Specifically, the requester alleges that the Planning Committee chair, Jim Johnson, has been meeting with Dr. Grosz.

ISSUE

Whether the Planning Committee held a meeting without proper public notice.

## ANALYSIS

All meetings of a public entity must be open to the public and must be preceded by sufficient public notice.<sup>1</sup>

For a gathering to be considered a “meeting,” two primary elements must be considered: the presence of a quorum and the topic of discussion.<sup>2</sup> A formal or informal gathering constitutes a meeting when a quorum of the members of the governing body is present at the gathering regarding public business.<sup>3</sup> A “quorum” means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.<sup>4</sup> “Meeting” does not include chance or social gatherings where public business is not considered.<sup>5</sup>

Here, the Fargo School District does not deny that Dr. Bob Grosz met with Jim Johnson, chair of the planning committee. The two met on September 1, at 2 p.m. However, in order for the open meetings law to be implicated, all of the elements of a meeting must be present. In this case, there was no quorum of the School Board, Planning Committee, or a subcommittee. Because there was no quorum, Dr. Grosz and Chair Johnson are able to meet and discuss public business without triggering the open meetings law. Dr. Grosz is not a member of the committee. Individual members of governing bodies may consult with staff members of a public entity without triggering the open meetings law.<sup>6</sup>

The question of whether a governing body met secretly to discuss public business is one of fact.<sup>7</sup> Section 44-04-21.1, N.D.C.C., requires this office to base open meeting opinions on the facts given by the public entity. It is my opinion that there was no meeting as defined in N.D.C.C. § 44-04-19 when a member of the Planning Committee met with an employee of the school district, and, therefore, public notice was not required.

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<sup>1</sup> N.D.C.C. § 44-04-19 (meetings); N.D.C.C. § 44-04-20 (notice).

<sup>2</sup> N.D.C.C. § 44-04-17.1(9)(a); N.D.A.G. 2008-O-24; N.D.A.G. 2008-O-10.

<sup>3</sup> N.D.C.C. § 44-04-17.1(9)(a); N.D.A.G. 2007-O-08.

<sup>4</sup> N.D.C.C. § 44-04-17.1(15) (definition of “quorum”).

<sup>5</sup> N.D.C.C. § 44-04-17.1(9)(b)(1); N.D.A.G. 2005-O-07; N.D.A.G. 2004-O-08.

<sup>6</sup> More than one member of a governing body or committee could meet with a staff member if a quorum of the governing body or committee was not met.

<sup>7</sup> N.D.A.G. 2016-O-19.

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CONCLUSION

The meeting between Planning Committee Chair Johnson and district employee Dr. Grosz did not constitute a meeting subject to the open meetings law and was not required to be noticed.

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Attorney General

cc: Jill Hankey (via email only)