

**OPEN RECORDS AND MEETINGS OPINION  
2021-O-03**

DATE ISSUED: May 12, 2021

ISSUED TO: Hope-Page Public School District #85

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Elizabeth Jacobsen asking whether Hope-Page Public School District #85 School Board (School Board) violated N.D.C.C. § 44-04-20 by failing to properly notice meetings.

**FACTS PRESENTED**

The Finley-Sharon-Hope-Page Cooperative (Co-op) committee met on December 17, 2020.<sup>1</sup> Notice of the meeting was posted only on the front door of the Finley-Sharon Public School twenty-four hours prior to the meeting.<sup>2</sup> The Hope-Page School Improvement and Co-curricular (SICC) committee met for a special meeting on January 4, 2021.<sup>3</sup> No notice was prepared or posted anywhere by the School Board for either meeting.<sup>4</sup> The requestor for this opinion alleges that the School Board failed to post notice of these meetings as required by open meetings law.<sup>5</sup>

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<sup>1</sup> Letter from Jason Mewes, President, Sch. Bd., Hope-Page Pub. Sch. Dist., to Att'y Gen.'s Office (Mar. 25, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Email from Elizabeth Jacobsen, to Att'y Gen.'s Office (Mar. 9, 2021).

## ISSUE

Whether the School Board violated N.D.C.C. § 44-04-20 by failing to provide notice of the Co-op meeting on December 17, 2020, and a SICC committee meeting on January 4, 2021.

## ANALYSIS

A public entity must provide public notice of meetings in substantial compliance with N.D.C.C. § 44-04-20. This includes preparing an agenda with the date, time, location, topics to be considered, and notice of any executive session.<sup>6</sup> Section 44-04-20 also includes a requirement that notice be posted at the principal office of the governing body holding the meeting, if one exists, the location of the meeting on the day of the meeting, and with the appropriate county entity, or on its website.<sup>7</sup>

It is the responsibility of the governing body's presiding officer to assure that notice of the meeting's date, time, and location, is given at the same time as the members are notified.<sup>8</sup> As soon as an agenda containing the required information is prepared for and given to members of the governing body, the agenda must be posted at the required locations.<sup>9</sup>

In the event of a special meeting, the person calling the meeting must also notify the public entity's official newspaper, if any, at the same time as the governing body's members are notified.<sup>10</sup> If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located.<sup>11</sup>

When asked about the two meetings, the Board readily acknowledged that no notice was provided for either meeting. However, in the case of the Co-op, the Board is not the entity responsible for providing the notice. This office has stated that co-op boards are subject to the same notice requirements of the open meetings law as other governing bodies.<sup>12</sup> Thus, it is ultimately the responsibility of the Co-op to

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<sup>6</sup> N.D.C.C. § 44-04-20(2).

<sup>7</sup> N.D.C.C. § 44-04-20(4).

<sup>8</sup> N.D.C.C. § 44-04-20(5).

<sup>9</sup> *Id.*

<sup>10</sup> N.D.C.C. § 44-04-20(6).

<sup>11</sup> *Id.*

<sup>12</sup> N.D.A.G. 2005-O-14; N.D.A.G. 98-O-17.

## OPEN RECORDS AND MEETINGS OPINION 2021-O-03

May 12, 2021

Page 3

provide adequate notice of its meetings, not the Board, since the Co-op is a public entity in its own right and has an independent duty to notice their meetings accordingly.<sup>13</sup>

The other meeting of the SICC, however, is a Board committee, so it was its responsibility to notice the January 4, 2021, meeting. Therefore, it is my opinion that the School Board violated the open meetings law when it failed to provide notice of the SICC special committee meeting.

### CONCLUSION

The School Board failed to provide notice in compliance with N.D.C.C. § 44-04-20 of the SICC January 4, 2021, special meeting but did not violate the law with regard to the Co-op meeting because it was not the governing body with the responsibility to provide notice for that entity.

### STEPS NEEDED TO REMEDY VIOLATION

While I recognize and appreciate the steps the School Board has taken to mitigate these violations and to prevent these recurring problems from continuing;<sup>14</sup> I urge the School Board to review their obligations under the open meetings law by utilizing the materials available on the North Dakota Attorney General's website. The School Board must create notices for the January 4, 2021, SICC committee meeting, post them to the main office for one week, and file them with the appropriate county official. The School Board must also review its SICC January 4, 2021, special meeting minutes and ensure they are updated to reflect the detailed recollections of any conversations held during the meeting. The notices must state that minutes of the meeting are available upon request, free of charge. Copies of the notice and minutes must be provided to Ms. Jacobsen, the official newspaper, and anyone else requesting them, free of charge.

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<sup>13</sup> N.D.A.G. 2009-O-06; N.D.A.G. 2005-O-14. Under these facts, I would have found the Co-op in violation of the open meetings law if the requester asked about the Co-op rather than the School Board. A copy of this opinion will be provided to the Co-op so that they are aware of the legal notice requirements.

<sup>14</sup> See Letter from Jason Mewes, President, Sch. Bd., Hope-Page Pub. Sch. Dist., to Att'y Gen.'s Office (Mar. 25, 2021).

OPEN RECORDS AND MEETINGS OPINION 2021-O-03

May 12, 2021

Page 4

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>15</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>16</sup>

Wayne Stenehjem  
Attorney General

cc: Elizabeth Jacobsen (via email only)

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<sup>15</sup> N.D.C.C. § 44-04-21.1(2).

<sup>16</sup> *Id.*