

**OPEN RECORDS AND MEETINGS OPINION
2021-O-06**

DATE ISSUED: July 8, 2021

ISSUED TO: North Prairie Regional Water District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Crystal Hendrickson asking whether North Prairie Regional Water District violated N.D.C.C. § 44-04-20 by discussing public business outside of a properly noticed meeting.

FACTS PRESENTED

The North Prairie Regional Water District (District) met for their regular monthly meeting on January 21, 2021.¹ Directors John Bearman, Wilbert Harsch, Blaine Kotasek, and Justin Hanson were present along with Manager Teresa Sundsbak and Crystal Hendrickson.²

At one point during the meeting, Chairman Bearman asked Teresa Sundsbak to leave, for the purpose of discussing her job performance and compensation.³ Ms. Hendrickson claims that she was also asked to leave along with Ms. Sundsbak.⁴ The District denies this claim and states that no one other than Ms. Sundsbak was asked to leave.⁵ At that time, Ms. Hendrickson followed Ms. Sundsbak out of the room and asked for bylaws which were provided to her.⁶

¹ Minutes, N. Prairie Reg'l Water Dist. (Jan. 21, 2021).

² *Id.*

³ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (Mar. 2, 2021).

⁴ Email from Crystal Hendrickson to Att'y Gen.'s Office (Feb. 23, 2021, 1:56 PM).

⁵ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (Mar. 2, 2021).

⁶ *Id.*

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Ms. Hendrickson states that the meeting was adjourned before Ms. Sundsbak was asked to leave.⁷ The District denies that claim.⁸ The District states in its letter and its minutes that the meeting was adjourned after discussion of Ms. Sundsbak's compensation and a motion by Mr. Kotasek, seconded by Mr. Hanson to give her a \$5,000 bonus.⁹

ISSUE

Whether the North Prairie Regional Water District violated N.D.C.C. § 44-04-20 by discussing a bonus for a public employee outside of a properly noticed meeting.

ANALYSIS

All meetings of a public entity must be open to the public and must be preceded by sufficient public notice.¹⁰

Two primary elements must exist for a gathering to be considered a meeting: the presence of a quorum and the topic of discussion.¹¹ A formal or informal gathering constitutes a meeting when a quorum of the members of the governing body is present at a gathering and public business is transacted.¹²

Here, the District does not deny that they met to discuss public business.¹³ However, according to the District, the public business was discussed during the regular meeting and not after the meeting as asserted by the requester.

The question of whether a governing body met to discuss public business without proper notice is one of fact.¹⁴ 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.¹⁵ It is my opinion

⁷ Email from Crystal Hendrickson to Att'y Gen.'s Office (Feb. 23, 2021, 1:56 PM).

⁸ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (Mar. 2, 2021).

⁹ *Id.*

¹⁰ N.D.C.C. § 44-04-19 (meetings); N.D.C.C. § 44-04-20 (notice).

¹¹ N.D.C.C. § 44-04-17.1(9)(a); N.D.A.G. 2008-O-24; N.D.A.G. 2008-O-10.

¹² N.D.C.C. § 44-04-17.1(9)(a); N.D.A.G. 2007-O-08.

¹³ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (Mar. 2, 2021).

¹⁴ N.D.A.G. 2016-O-19.

¹⁵ N.D.C.C. § 44-04-21.1(1).

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that the discussion of Ms. Sundsbak's performance and compensation were conducted during a properly noticed public meeting, and, therefore, there was no violation of the open meetings law.

CONCLUSION

The public business discussed on January 21, 2021, by North Prairie Regional Water District was part of a properly noticed public meeting and therefore did not violate the open meetings law.

Wayne Stenehjem
Attorney General

cc: Crystal Hendrickson (via email only)