

**OPEN RECORDS AND MEETINGS OPINION  
2022-O-06**

DATE ISSUED: May 19, 2022

ISSUED TO: Williston Parks and Recreation District Board

**CITIZEN'S REQUEST FOR OPINION**

Jamie Kelly, editor of the Williston Herald, and Thomas Kalil, on behalf of Thomas Simon of Williston Trending News Radio, requested opinions under N.D.C.C. § 44-04-21.1, asking whether the Williston Parks and Recreation District Board violated N.D.C.C. § 44-04-20 by improperly noticing an executive session. Thomas Kalil also asked whether Williston Parks and Recreation District Board violated N.D.C.C. § 44-04-20 by not providing specific notice of a special meeting to his client.

**FACTS PRESENTED**

The Williston Parks and Recreation District (WPRD) Board held a special meeting on April 27, 2021.<sup>1</sup> The notice listed one agenda item: "WPRD Long Term Funding."<sup>2</sup> During the special meeting, the Board entered an executive session to discuss future funding for WPRD.<sup>3</sup> The executive session lasted approximately two hours.<sup>4</sup> After returning to the open portion of the meeting, a motion was made, and passed by a vote of 3-2, to "choose option A, a one cent sales tax increase" and to bring that option to the Williston City Commissioners for approval and use of the city's home rule charter.<sup>5</sup>

**ISSUES**

1. Whether the Williston Parks and Recreation District Board's April 27, 2021, special meeting was noticed in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Williston Parks and Recreation District Board violated N.D.C.C. § 44-04-20 by not providing specific notice pursuant to N.D.C.C. §§ 44-04-20(5) or 44-04-20(6).

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<sup>1</sup> Letter from H. Malcolm Pippin, Att'y at Law, to Att'y Gen.'s Office (Jun. 7, 2021).

<sup>2</sup> Notice, Bd., Williston Parks and Rec. Dist. (Apr. 27, 2021).

<sup>3</sup> Minutes, Bd., Williston Parks and Rec. Dist. (Apr. 27, 2021).

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

<sup>5</sup>*Id.*

## ANALYSIS

### ISSUE 1

Public notice must be given in advance of all meetings of a public entity, including any executive sessions.<sup>6</sup> The notice must include the date, time, and location of the meeting; topics to be considered; and the “general subject matter of any executive session expected to be held during the meeting.”<sup>7</sup> Notice of an executive session is “a material item required by law” in a meeting notice; failing to include an executive session in a meeting notice violates N.D.C.C. § 44-04-20.<sup>8</sup>

The Board’s April 27, 2021, special meeting notice included the date, time, and location of the meeting, and the following agenda: “1. WPRD Long Term Funding.”<sup>9</sup>

North Dakota Century Code § 44-04-20(2) requires meeting notices contain information about “any executive session expected to be held during the meeting.” This office has “consistently recognize[d] that executive sessions must be specifically listed in the agenda for a special meeting and failure to do so violates open meetings law.”<sup>10</sup> The Board’s special meeting notice, which included its agenda, failed to state the discussion was anticipated to be held in executive session; therefore, the WPRD failed to properly notice the April 27, 2021, special meeting.<sup>11</sup>

### ISSUE 2

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.<sup>12</sup> “The governing body’s presiding officer has the responsibility of assuring . . . that this notice is available to anyone requesting such information.”<sup>13</sup> For special meetings, notice must be given to the public entity’s official newspaper and to any representatives of the news media asking to be notified of the special meeting.<sup>14</sup> Requests to receive personal notice of upcoming meetings are “effective for one year unless a different time period is specified.”<sup>15</sup>

Thomas Simon, of Williston Trending Topics News Radio (WTTNR), states that he previously requested notice of WPRD’s special meetings; however, he did not receive specific notice of the April 27, 2021, special meeting until he contacted the Board on May 3, 2021.<sup>16</sup> The WPRD

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<sup>6</sup> N.D.C.C. § 44-04-20(1).

<sup>7</sup> N.D.C.C. § 44-04-20(2); *see also* N.D.A.G. 2018-O-28, N.D.A.G. 2004-O-19.

<sup>8</sup> N.D.A.G. 98-O-01; *see also* N.D.A.G. 2004-O-13.

<sup>9</sup> Notice, Bd., Williston Parks and Rec. Dist. (Apr. 27, 2021).

<sup>10</sup> N.D.A.G. 2018-O-28 (citing N.D.A.G. 2004-O-13; N.D.A.G. 2002-O-11; N.D.A.G. 2001-O-15; N.D.A.G. 2000-O-03; N.D.A.G. 98-O-01).

<sup>11</sup> Neither requester asked if the executive session was properly entered or legally authorized; therefore, those issues are not addressed in this Opinion.

<sup>12</sup> N.D.C.C. §§ 44-04-19, 44-04-20.

<sup>13</sup> N.D.C.C. § 44-04-20(5).

<sup>14</sup> N.D.C.C. § 44-04-20(6).

<sup>15</sup> N.D.C.C. § 44-04-20(5).

<sup>16</sup> Letter from Thomas Kalil, Att’y at Law, to Att’y Gen.’s Office (May 19, 2021), Letter from H. Malcolm Pippin, Att’y at Law, to Att’y Gen.’s Office (Jun. 15, 2021).

executive director “cannot locate anything to show that Tom Simon requested meeting notifications prior to [his] May 3, 2021, request.”<sup>17</sup>

At this time, the Board cannot establish that WTTNR requested specific notice of special meetings prior to May 3, 2021.<sup>18</sup> I am required by law to base my opinion on the facts given by the public entity.<sup>19</sup> Accordingly, I do not find a violation of the open meetings law here; however, the Board should remain mindful of its obligations under N.D.C.C. § 44-04-20(5) regarding specific notice requirements.

### CONCLUSION

1. The Williston Parks and Recreation District Board failed to properly notice its April 27, 2021, special meeting, because the notice did not indicate an anticipated executive session.
2. The Williston Parks and Recreation District Board was not aware that WTTNR previously requested notice of its April 27, 2021, special meeting; therefore, I find no violation of N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATION

The April 27, 2021, special meeting notice must be redrafted to indicate an executive session was held, and to describe the subject matter and purpose of the executive session. The notice must be filed with the city auditor, or the designee of the city, or posted on the Board’s website, and posted at the Board’s main office for one week. The redrafted notice, minutes, any notes, recordings or any other memorialization of the April 27, 2021, special meeting also must be provided, upon request, to Thomas Simon and Williston Trending News Radio, the city’s official newspaper, 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 under N.D.C.C. § 44-04-21.2.<sup>20</sup> It also may result in personal liability for the person or persons responsible for the noncompliance.<sup>21</sup>

Drew H. Wrigley  
Attorney General

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cc: Jamie Kelly (via email only)  
Thomas E. Kalil (via email only)

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<sup>17</sup> E-mail from Malcom Pippin, Att’y at Law, to Att’y Gen.’s Office (Mar. 2, 2022).

<sup>18</sup> *Id.*

<sup>19</sup> N.D.C.C. § 44-04-21.1(1).

<sup>20</sup> N.D.C.C. § 44-04-21.1(2).

<sup>21</sup> *Id.*