

OPEN RECORDS AND MEETINGS OPINION
2022-O-07

DATE ISSUED: July 1, 2022

ISSUED TO: Lake Region District Health Board

CITIZEN'S REQUEST FOR OPINION

Eric Arndt, with KZZY Radio, requested an opinion under N.D.C.C. § 44-04-21.1 from this office asking whether the Lake Region District Health Board violated N.D.C.C. § 44-04-20 by failing to properly notice a special meeting of a committee.

FACTS PRESENTED

On March 1, 2022, the Lake Region District Health Board (Board) created a committee to conduct interviews for the Lake Region District Health Unit Administrator position. All five people appointed to the committee were Board members.

The committee held a special meeting on March 31, 2022, at 9:00 a.m to discuss whether an applicant for the administrator position could continue to be a member of the Ramsey County Commission while serving as administrator of the Lake Region District Health Unit.¹ A notice for the meeting was posted on the Lake Region District Health Unit's Facebook page and website.²

ISSUE

Whether the Board properly noticed the March 31, 2022, special committee meeting.

ANALYSIS

“Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.”³ A meeting is defined as “a formal or informal gathering or a work session, whether in person or through any electronic means” such as telephone or videoconference, of “[a] quorum of the members of the governing body of a public entity regarding public business.”⁴ A quorum means “one-half or more of the members of the governing body, or any

¹ Letter from Allen R. McKay, Admin'r, Lake Region Health Dist., to Att'y Gen.'s Office (May 13, 2022).

²*Id.*

³ N.D.C.C. § 44-04-19.

⁴ N.D.C.C. § 44-04-17.1(9)(a).

smaller number if sufficient for a governing body to transact business on behalf of the public entity.”⁵ Governing body means “the multimember body responsible for making a collective decision on behalf of a public entity.”⁶ The definition of a "governing body" includes “any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.”⁷ Under this definition, “any group of persons” delegated authority to perform any function on behalf of a governing body, is subject to the state’s open meetings law.⁸ Examples of delegated functions include fact gathering, reporting, recommending, or taking action.⁹

A governing body does not need to make a formal motion to create a committee.¹⁰ Rather, if the governing body of a public entity consents or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed.¹¹

Notice must be given to the public in advance of all meetings of a public entity.¹² “When a quorum of the committee gathers to perform the function delegated to them, it is holding a ‘meeting’ that must be noticed in compliance with N.D.C.C. § 44-04-20”¹³ Meeting notices must include the date, time, and location of the meeting and must list the topics to be considered.¹⁴ Further, “[i]f the meeting is held through any electronic means, the information necessary to join or view the meeting electronically must be included in the notice”¹⁵

The notice must be posted at the principal office of the governing body holding the meeting and, on the day the public entity meets, at the location of the meeting, and must be filed with the appropriate office or posted on the public entity's website.¹⁶ For special meetings, the notice must be provided to the official newspaper and to any representatives of the news media who

⁵ N.D.C.C. § 44-04-17.1(15).

⁶ N.D.C.C. § 44-04-17.1(6).

⁷ *Id.*

⁸ N.D.A.G. 2021-O-07; N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05; N.D.A.G. 2013-O-12; N.D.A.G. 2009-O-12; N.D.A.G. 2009-O-05; N.D.A.G. 2007-O-13; N.D.A.G. 2006-O-03.

⁹ N.D.A.G. 2021-O-07; N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05; N.D.A.G. 2013-O-12; N.D.A.G. 2009-O-12; N.D.A.G. 2009-O-05; N.D.A.G. 2007-O-13; N.D.A.G. 2006-O-03.

¹⁰ N.D.A.G. 2021-O-07; N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05.

¹¹ N.D.A.G. 2021-O-07; N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05; *see also* N.D.A.G. 2013-O-12.

¹² N.D.C.C. § 44-04-20(1); *see also* N.D.A.G. 2022-O-03; N.D.A.G. 2020-O-01; N.D.A.G. 2016-O-02.

¹³ N.D.A.G. 2021-O-07, citing N.D.A.G. 2016-O-15.

¹⁴ N.D.C.C. § 44-04-20(2).

¹⁵ N.D.C.C. § 44-04-19(4).

¹⁶ N.D.C.C. § 44-04-20(4).

requested to be notified of the special meetings.¹⁷ Finally, notice must be given, for all meetings, to anyone who asked to receive notice of any upcoming meetings.¹⁸

At its March 1, 2022, meeting, the Board clearly decided its members, Elonda Nord, Dr. Derek Wayman, Glenda Collier, Doris Griffin, and Mike Steffan, would be a committee.¹⁹ The committee met, only by phone, on March 31, 2022, at 9:00 a.m.²⁰ Notice of the special meeting was posted electronically on Facebook at 8:29 a.m. and then on the Lake Region District Health Unit's website.²¹ The meeting notice included the date and time of the meeting and stated the meeting was to be held "Regarding Administrator Position @ Lake Region District Health Office."²²

The Board did not post the meeting notice at the principal office of the governing body holding the meeting or, on the day of the meeting, at the location of the meeting.²³ The notice did not include the information necessary for the public to join the call. The Board did not notify the newspaper of the March 31, 2022, special committee meeting.²⁴ Accordingly, the Board violated North Dakota open meetings laws for having failed to properly notice a meeting.

CONCLUSION

The Board violated N.D.C.C. § 44-04-20 when it failed to properly post and include the necessary information in the March 31, 2022, special committee meeting notice and failed to notify the newspaper of the special committee meeting.

¹⁷ N.D.C.C. § 44-04-20(6).

¹⁸ N.D.C.C. § 44-04-20(5).

¹⁹ Minutes, Special Meeting, Lake Region Dist. Health Unit (Mar. 1, 2022).

²⁰ Letter from Allen R. McKay, Admin'r, Lake Region Health Dist., to Att'y Gen.'s Office (May 13, 2022); e-mail from Allen McKay, Admin'r, Lake Region Health Dist., to Att'y Gen.'s Office (May 23, 2022).

²¹ Letter from Allen R. McKay, Admin'r, Lake Region Health Dist., to Att'y Gen.'s Office (May 13, 2022).

²² *Id.*

²³ N.D.C.C. § 44-04-20(4).

²⁴ Letter from Allen R. McKay, Admin'r, Lake Region Health Dist., to Att'y Gen.'s Office (May 13, 2022). In its response, with regards to newspaper notification, "they are unable to print last minute notices." *Id.* I want to specifically note that there is no generally applicable legal requirement for public entities to cause the newspaper to print meeting notices. Section 44-04-20(6), N.D.C.C., only requires the public entity to notify the newspaper of special meetings. This can happen on short notice.

STEPS NEEDED TO REMEDY VIOLATION

The Board must provide copies of the March 31, 2022, special meeting minutes to Mr. Arndt, and anyone else requesting them, free of charge.

While I have reason to expect the Lake Region District Health Board will remedy this situation, I note that failure to take the corrective measures described in this opinion within seven days of its date 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. § 44-04-21.2.²⁵ It also may result in personal liability for the person or persons responsible for the noncompliance.²⁶

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cc: Eric Arndt (via email only)

²⁵ N.D.C.C. § 44-04-21.1(2).

²⁶ *Id.*