

**OPEN RECORDS AND MEETINGS OPINION
2002-O-02**

DATE ISSUED: February 4, 2002

ISSUED TO: Birch Burdick, Cass County States Attorney
Garylle Stewart, Attorney, City of Fargo

CITIZEN'S REQUEST FOR OPINION

On January 11, 2001, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Steven Johnson on behalf of the Fargo Forum asking whether the Valley Regional Dispatch Center Board violated N.D.C.C. § 44-04-19 by denying a person's request to attend a meeting of the Board.

FACTS PRESENTED

The city of Fargo, Cass County North Dakota, the City of Moorhead, and Clay County Minnesota signed a joint powers agreement for the joint administration of a dispatch center. The agreement establishes a seven-member "Valley Regional Dispatch Center Board" (Board) responsible for administering the dispatch center. The four parties formed the agreement "through action of their respective governing bodies." The agreement was signed by the mayor of Fargo and the chairman of the Cass County Board of County Commissioners.

On January 9, 2002, the Board held a meeting. In response to the request for this opinion, this office contacted the Fargo Chief of Police and confirmed that a reporter for the Fargo Forum was not allowed to attend the Board meeting. The chief of police also indicated that, to the best of his knowledge, no part of the discussion at the meeting was authorized to be held in an executive session. The meeting was not recorded.

ISSUE

Whether the Valley Regional Dispatch Center Board violated N.D.C.C. § 44-04-19 by denying a person's request to attend a meeting of the Board.

ANALYSIS

The open meetings law, N.D.C.C. § 44-04-19, requires that all "meetings" of a "public entity" be open to the public unless otherwise specifically provided by law. The definition of "public entity" includes any agency of a political subdivision.

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N.D.C.C. § 44-04-17.1(12)(b). A joint enterprise created by a joint powers agreement of several political subdivisions whereby the subdivisions delegate their performance of a governmental function to the joint enterprise is an “agency” of those subdivisions and, therefore, is a “public entity” subject to the open records and meetings laws. N.D.A.G. 98-O-04. Operation of the dispatch center is a governmental function. Therefore, it is my opinion that the dispatch center created in the joint powers agreement is a “public entity” and required to comply with N.D.C.C. § 44-04-19.

The Board, as the governing body of the dispatch center, may not refuse to allow members of the public to attend its meetings unless a specific law authorizes an executive session. If an executive session is authorized, the procedures in N.D.C.C. § 44-04-19.2 must be followed. In this case, the Board did not close a portion of its meeting based on an applicable exception to N.D.C.C. § 44-04-19. Instead, the Board simply refused to allow the person to attend its entire meeting. It is my opinion this refusal, lacking any reference to an applicable open meetings exception, was a violation of N.D.C.C. § 44-04-19.

CONCLUSION

It is my opinion the Valley Regional Dispatch Center Board violated N.D.C.C. § 44-04-19 by denying a person’s request to attend a meeting of the Board.

STEPS NEEDED TO REMEDY VIOLATION

The Board must hold a meeting, preceded by proper public notice under N.D.C.C. § 44-04-20, at which it recreates the discussion that occurred during its January 9 meeting.

Failure to issue within seven days of the date this opinion a written public notice under N.D.C.C. § 44-04-20 of a meeting at which the Board will recreate its discussion on January 9 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. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

Wayne Stenehjem
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