

**OPEN RECORDS AND MEETINGS OPINION
2003-O-20**

DATE ISSUED: November 12, 2003

ISSUED TO: Towner County Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Vaughn C. Klier asking whether the Towner County Commission violated N.D.C.C. § 44-04-20 by holding a special meeting that was improperly noticed.

FACTS PRESENTED

At approximately 9:00 a.m. on August 4, 2003, Darwin Baerwald, Chairman of the Towner County Commission, asked Towner County Auditor Verna M. Martz to schedule a special meeting of the Commission on August 5. The meeting was called to discuss a newspaper article written by Sheriff Vaughn C. Klier about disbursement of United States Fish and Wildlife Service money. He also instructed her to call the State's Attorney to see if an executive session was appropriate.

The Auditor called the remaining county commissioners to see if they would be available for a meeting the next morning and left a message for the State's Attorney. The State's Attorney called the Auditor back at approximately 11:45 a.m. and told her that an executive session was not appropriate. At approximately 1:00 p.m. the Auditor posted the notice of the special meeting on the front door of the courthouse. The notice stated:

Towner County Commissioners will meet in special session at 7:00 AM- Tuesday
August 5, 2003 in the Commissioners Room, Courthouse, Cando ND 58324

According to the Auditor, she forgot to fax the notice to the local newspaper at the same time she posted the notice. She was working late that evening and faxed the notice to the local newspaper at approximately 10:30 p.m.

ISSUES

1. Whether the Towner County Commission's notice of the August 5, 2003, special meeting violated N.D.C.C. § 44-04-20(6) by not listing the topics to be discussed at the meeting.
2. Whether the Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to notify the Commission's official newspaper of a special meeting at the same time notice was given to the Commission members.

ANALYSES

Issue One

All meetings of a public entity must be open to the public except as specifically provided by law. N.D.C.C. § 44-04-19. Public notice of all meetings of a public entity must be given unless otherwise provided by law. N.D.C.C. § 44-04-20(1). The time, place, date and topics to be considered at a special or emergency meeting must be stated in the meeting notice. N.D.C.C. §44-04-20(6). Topics that may be considered at an emergency or special meeting are limited to those included in the notice. *Id.* In prior opinions, this office opined that a special meeting notice stating "any other issues that may need council attention will be discussed" is insufficient because it failed to specifically identify the topics to be discussed at the meeting. N.D.A.G. 2002-O-11. See also N.D.A.G. 2001-O-07 (special meeting notice was insufficient because it did not contain the location or the topics of the meeting).

In this instance, the notice did not include the topics to be discussed. By failing to include the topics to be discussed, members of the public were prevented from obtaining proper advance notice of the special meeting. It is my opinion that the Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to list in its notice the topics to be discussed at a special meeting.

Issue Two

Notice must be posted at the principal office of the governing body and at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4). In the case of a county commission, the notice must also be filed with the county auditor. *Id.* In the event of special or emergency meetings, the public entity must give notice to its official newspaper, if any, and to representatives of the news media who have requested to be notified of special or emergency meetings at the same time it notifies the governing body's members. N.D.C.C. § 44-04-20(6).

OPEN RECORDS AND MEETINGS OPINION 2003-O-20

November 12, 2003

Page 3

The requestor alleged that the notice was posted at the courthouse and faxed to the newspaper after normal business hours in an attempt to keep the meeting closed to the press and the public. When reviewing open meeting issues, state law requires this office to base opinions on the facts as presented by the public entity. N.D.C.C. § 44-04-21.1(1). In this instance, the Auditor stated that the notice was posted at the courthouse at approximately 1:00 p.m. She says she forgot to fax the notice to the newspaper due to her hectic schedule. As soon as she remembered, she faxed the notice at approximately 10:30 p.m. on Monday. She also stated that she faxed the notice as a courtesy because the paper is published weekly on Saturday.

In a recent opinion this office explained that the purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can cover the meeting if it desires. N.D.A.G. 2003-O-13. Even though it does not appear that the Auditor intentionally failed to fax the notice to the newspaper, the law nonetheless states that the notice must be provided to the media at the same time as the governing body's members are notified. N.D.C.C. § 44-04-20(6). See N.D.A.G. 2003-O-13. In this case, notice was provided to the newspaper long after notice was given to the commissioners. Therefore, it is my opinion that the Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to notify the official newspaper about a special meeting at the same time as the Commission members were notified.

CONCLUSIONS

1. It is my opinion that the Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to list in its notice the topics to be discussed at a special meeting.
2. It is my opinion that the Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to notify the official newspaper about a special meeting at the same time as the Commission members were notified.

STEPS NEEDED TO REMEDY VIOLATION

A notice of the August 5, 2003, meeting that includes the topics discussed needs to be prepared and filed with the county auditor and posted at the county's main office. N.D.C.C. § 44-04-20(4). The notice must also be provided to the county's official newspaper and any person who had previously requested to receive notice. N.D.C.C. § 44-04-20(5), (6). The notice must contain the date, time, and location of the meeting and the topics considered at the meeting. N.D.C.C. § 44-04-20(2). The notice must also specify that

OPEN RECORDS AND MEETINGS OPINION 2003-O-20

November 12, 2003

Page 4

minutes are available from the county auditor to any member of the public who wants a copy 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. 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
Attorney General

Assisted by: Mary Kae Kelsch
Assistant Attorney General

vkk