

**OPEN RECORDS AND MEETINGS OPINION
2004-O-09**

DATE ISSUED: April 12, 2004

ISSUED TO: Halliday Public School District No. 19

CITIZEN'S REQUEST FOR OPINION

This office received a timely request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Ron Borth asking whether the Halliday Public School District (School District) violated N.D.C.C. § 44-04-20 by failing to sufficiently notice a special school board meeting.

FACTS PRESENTED

On January 24, 2004, Mr. Borth requested that all regular and special Halliday School District Board of Education meeting notices and agendas be mailed to him prior to any meetings. The School District admits it received a request from Mr. Borth to receive notice of school board meetings.

At approximately 3:12 p.m. on Friday, February 27, 2004, just as school was dismissed, a packet of information regarding a special meeting, to be held March 2, 2004, was hand-delivered to four students to take home to their parents or grandparents who are members of the Halliday School Board. One member of the Board – by prearrangement – picked up his packet of information at the home of the superintendent of schools on Saturday morning. In the packet was a newsletter called the “Friday Flicker,” prepared by the superintendent of schools specifically for school board members. The newsletter contained notice of the school board’s special meeting and an agenda listing the topics to be discussed at the special meeting.

Although the superintendent delivered copies of information regarding the special board meeting to students to carry home to four of the board members, he did not deliver a copy of these documents to the School District business manager’s desk until after she had left work at approximately 3:30 p.m. on Friday, February 27, 2004. Therefore, the business manager of the School District did not receive a copy of the agenda until she returned to work Monday morning, March 1, 2004. At approximately 9:30 a.m., March 1, 2004, the business manager mailed a copy of the agenda to Mr. Borth and posted a copy of the agenda at the school. Notice of the special meeting was faxed to the School District’s

official newspaper on March 1, 2004. Although Mr. Borth independently became aware of the school board's special meeting, he did not receive his copy of the notice and agenda in the mail until 11 a.m., March 2, 2004, the day of the meeting. The School District did not provide notice of its special meeting to the county auditor.

ISSUE

Whether notice of the School District's March 2, 2004, special meeting complied with N.D.C.C. § 44-04-20.

ANALYSIS

Public notice must be provided in advance of all meetings governed by the open meetings law unless otherwise provided by law. N.D.C.C. § 44-04-20(1). The notice must be posted at the public entity's main office, if any, and filed, in the case of a school district, with the county auditor. N.D.C.C. § 44-04-20(4). On the day of the meeting, the notice must be posted at the location of the meeting, if different from the public entity's main office. Id. In addition, for special or emergency meetings, the presiding officer or designee must notify the public entity's official newspaper and any other members of the media who had requested it. The governing body's presiding officer is responsible for assuring that "public notice is given at the same time [the] governing body's members are notified, and that this notice is available to anyone requesting such information." N.D.C.C. § 44-04-20(5) (emphasis added).

Mr. Borth alleges that the School District violated N.D.C.C. § 44-04-20 because it did not provide him with notice at the same time it provided notice to the School Board members and because it did not file a copy of the notice with the county auditor. Although it was not raised by Mr. Borth, the School District did not provide notice of the special meeting to its official newspaper nor did it post the notice at its main office until March 1, 2004.

Emergency and special meetings are usually called on short notice. In this case, notice was delivered to four board members Friday afternoon and to one member early Saturday morning for a meeting to be convened on the following Tuesday. In N.D.A.G. 2003-O-20, this office determined that when commissioners were notified of a special meeting Monday morning but notice was not faxed to a newspaper until 10:30 p.m. that day, notice was not given to the media at the same time it was given to members of the governing body, and therefore the public entity violated N.D.C.C. § 44-04-20(6). If a public entity finds it necessary to hold an emergency or special meeting, the entity must utilize reasonable

means to assure that the public notice, and the notice to anyone requesting this information, is, in fact, reasonably designed to reach the public and those who have requested this information at the same time it is communicated to members of the governing body. While the information regarding the meeting was left on the School District business manager's desk after she had left work at 3:30 p.m. on Friday, the president of the school board remains responsible for assuring that public notice is given at the same time the governing body's members are notified. N.D.C.C. § 44-04-20(5); N.D.A.G. 98-O-13 (although providing notice of a public entity's meeting can properly be delegated to an employee of the public entity, the public entity and its presiding officer remain ultimately responsible for ensuring that sufficient notice is provided under N.D.C.C. § 44-04-20). The fact that the business manager was not available does not excuse the failure to provide notice to the public at the same time the governing body's members are notified.

The School District mailed notice of the meeting to Mr. Borth on March 1. He received the notice on March 2. Notice was faxed to the newspaper and posted at the School District's office on March 1. As noted earlier, N.D.C.C. § 44-04-20(4)(5) also requires notice to be filed with the county auditor at the same time the governing body's members are notified. Not only did the School District fail to file a copy of the notice with the county auditor at the same time it provided notice to the school board members, it failed to file altogether. Thus, it is my opinion the School District violated N.D.C.C. § 44-04-20(4), (5) and (6).

CONCLUSION

The School District violated N.D.C.C. § 44-04-20(5) and (6) because notice was not given to Mr. Borth, the official newspaper, and the county auditor, nor was it posted at the School District's main office at the same time notice was provided to members of the school board. The School District also violated N.D.C.C. § 44-04-20(4) because it did not file notice of the meeting with the county auditor.

STEPS NEEDED TO REMEDY VIOLATIONS

Mr. Borth independently learned of the special meeting, received notice of the School District's March 2, 2004, meeting prior to the meeting, and attended the meeting. In addition, the official newspaper received notice of the meeting and the notice was posted at the School District's main office on March 1. Therefore, even though the notice was not in compliance with N.D.C.C. § 44-04-20, no further action is necessary or possible to remedy this violation. Although the School District failed to file a copy of the March 2,

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2004, meeting notice with the county auditor prior to the meeting, the School District subsequently filed a copy of the notice with the auditor. Therefore, no additional action is required to remedy this violation.

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