

**OPEN RECORDS AND MEETINGS OPINION
2005-O-17**

DATE ISSUED: November 8, 2005
ISSUED TO: Cavalier County Weed Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Tom Valentine asking whether the Cavalier County Weed Board ("Board") violated N.D.C.C. § 44-04-20 by failing to provide him with a notice of a Board meeting after he made a request to be notified, and by failing to give proper public notice of Board meetings.

FACTS PRESENTED

Mr. Valentine alleges that the Board does not hold regularly scheduled meetings and does not prepare and post an agenda for its meetings. Mr. Valentine also alleges that the Board failed to give him notice of a meeting held on July 28, 2005, and that the Board may have failed to give proper public notice of its June 15, and July 28, 2005, meetings.

The Board admits that it did not prepare, post, or file a notice for its June 15, 2005, meeting. With respect to its July 28 meeting, the Board states that a notice was prepared, posted at the Board office and outside the Board's meeting room on the day of the meeting, and filed with the county auditor. The Board admits that Mr. Valentine requested personal notice of Board meetings.¹ The Board states that Mr. Valentine agreed to be notified by telephone, and to be notified of only the time and location of the meetings.²

The county weed officer, Ms. Teresa Hommes, states that she does not recall the exact date she called Mr. Valentine to notify him of the July 28 meeting, but states that she did call him sometime during the previous week. She also stated that it was her standard

¹ Mr. Valentine received notice and attended the June 15 meeting of the Weed Board.

² Mr. Valentine maintained a residence in Wales, North Dakota, and a second residence in Fargo, North Dakota. At the time of the July 28 meeting, he had a telephone at the Wales residence, and a cell phone that rolled over to a phone at his Fargo residence if the cell phone was not answered.

practice to contact Mr. Valentine first, before she called other Board members. Her practice was to call Mr. Valentine's number in Wales, and, if she did not reach him at that number, to call his cell phone. It was the weed officer's practice to leave a brief voicemail message if Mr. Valentine or someone else did not answer the telephone. She said she followed this practice for the July 28 meeting. In accordance with the agreement between Mr. Valentine and the Board, the weed officer's message stated only the date and time of the meeting. The Board regularly holds its meetings at the county courthouse. She further stated that this procedure for notifying Mr. Valentine by telephone had been in place for several months prior to the July 28 Board meeting. Mr. Valentine stated he never received notice of the July 28 meeting.

ISSUES

1. Whether the Board violated N.D.C.C. § 44-04-20 by failing to prepare a proper notice for its June 15 and July 28, 2005, meetings.
2. Whether the Board violated N.D.C.C. § 44-04-20 by failing to give individual notice of a meeting to Mr. Valentine after he made a request to receive all such notices.

ANALYSES

Issue One

Each board of county commissioners must appoint a county weed board.³ A county weed board is a public entity subject to the open meetings laws.⁴

A county weed board is required to hold at least one annual meeting and to "fix the time and place of regular meetings."⁵ When a county-level governing body establishes a schedule for its regular meetings, it is required to file a copy of the schedule with the county auditor.⁶ The Board does not hold regularly scheduled meetings. When a board does not hold regularly scheduled meetings, the board should treat its meetings as emergency or special meetings and provide notice accordingly.⁷

³ N.D.C.C. § 63-01.1-04(2).

⁴ N.D.C.C. § 44-04-17.1(12) ("public entity" includes a board of a political subdivision).

⁵ N.D.C.C. § 63-01.1-04.1(4).

⁶ N.D.C.C. § 44-04-20(3).

⁷ See, e.g., N.D.A.G. 2005-O-10 (monthly meeting of ambulance board treated as a special meeting because board does not file an annual schedule of regular meetings with the county auditor.); N.D.A.G. 2005-O-07 (special meeting of a committee that did

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Unless otherwise provided by law, written public notice must be given in advance of all meetings of a public entity.⁸ The notice for a regular, special, or emergency meeting must include the date, time, and location of the meeting, and all topics the governing body expects to consider. This list of topics is also referred to as the agenda.⁹ “Topics that may be considered at an emergency or special meeting are limited to those included in the notice.”¹⁰ The notice must be posted at the public entity's main office, if any; filed, in the case of a county public entity, with the county auditor; and given to anyone requesting this information.¹¹ On the day of the meeting, the notice must be posted at the location of the meeting.¹² For emergency or special meetings, the county's official newspaper must be notified, as well as any representatives of the news media who have requested notice.¹³

As stated in the Facts Presented, the Board did not prepare a notice or agenda for its June 15 meeting. Consequently, a notice was not filed with the county auditor, not posted at the main office or outside the meeting room on the day of the meeting, and not given to the county newspaper. Therefore, it is my opinion that the Board violated N.D.C.C. § 44-04-20 by failing to meet any of the notice requirements for this meeting. Also, because this was a special meeting, the Board could only consider topics included in the notice. It is my further opinion that the Board violated N.D.C.C. § 44-04-20 by considering topics not included in its notice, because a notice was never prepared.

With respect to the Board's July 28 meeting, a notice was posted at the office of the weed control officer at the time members were notified of the meeting. It was also posted outside the meeting room on the meeting day. In addition, a copy of the notice was filed with the county auditor. The notice contained the date, time, and a list of the topics, but did not include the location of the meeting. The location of a meeting is a material element of the notice.¹⁴ A notice is invalid if the “notice is not provided in substantial compliance with [N.D.C.C. § 44-04-20].”¹⁵ A notice without the location of a

not hold regularly scheduled meetings, but met on an as needed basis); N.D.A.G. Letter to Haner (Nov. 1, 1999) (an emergency or special meeting is one that is held on a day different from the regular meeting day).

⁸ N.D.C.C. § 44-04-20(1); N.D.A.G. 2004-O-20.

⁹ See N.D.C.C. § 44-04-20(2).

¹⁰ N.D.C.C. § 44-04-20(6).

¹¹ N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2005-O-14; N.D.A.G. 2004-O-09.

¹² N.D.C.C. § 44-04-20(4).

¹³ N.D.C.C. § 44-04-20(6).

¹⁴ N.D.A.G. 2005-O-08.

¹⁵ N.D.C.C. § 44-04-20(9).

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meeting does not substantially comply with the requirements of N.D.C.C. § 44-04-20. Therefore, it is my opinion the Board violated N.D.C.C. § 44-04-20 by failing to include the location of the meeting in the July 28 meeting notice. Also, because this was a special meeting, the Board could only consider topics included in the notice. The topics must be specific.¹⁶ One of the agenda items in the Board's notice is "Old Business?". Since any number of unspecified matters could be discussed under this agenda item, the agenda item lacks the specificity required for a special meeting.¹⁷ The Board also discussed progress made on spraying for weeds, a topic not on the agenda. Because topics that may be considered at special meetings are limited to those included in the notice, it is my opinion the Board violated N.D.C.C. § 44-04-20(6).

In addition, the notice given to the newspaper must contain the topics to be considered at the special meeting.¹⁸ The notice the Board gave to the newspaper contained only the time, date, and location of the meeting. It is therefore my further opinion that the Board violated N.D.C.C. § 44-04-20(6) because the notice given to the newspaper did not contain the topics to be considered.

Issue Two

In addition to the public notice that must be made in connection with each meeting of a public entity, a governing body must also give notice of its meetings to anyone requesting this information.¹⁹ The request for notice is effective for one year unless a different time period is specified.²⁰

In this case, although Mr. Valentine claims that he never received a call and had no messages on his answering machine, the Board states that the weed officer called Mr. Valentine sometime during the week of July 18-22 to inform him about the July 28 meeting and left a message. As stated in the Facts Presented, the weed officer stated that it was her practice to call Mr. Valentine's number in Wales, and then, if she did not reach him at that number, to call his cell phone. It was the weed officer's practice to leave a brief voicemail message if Mr. Valentine or someone else did not answer the telephone. In accordance with Mr. Valentine's agreement, the weed officer's message states only the date and time of the meeting, which is regularly held at the county courthouse. She further stated that she followed this procedure to notify Mr. Valentine by telephone of the July 28 Weed Board meeting.

¹⁶ N.D.A.G. 2002-O-11.

¹⁷ See N.D.A.G. 2002-O-11.

¹⁸ N.D.C.C. § 44-04-20(6).

¹⁹ N.D.C.C. § 44-04-20(5); N.D.A.G. 2004-O-09.

²⁰ Id.

The Attorney General must base the opinion on the facts given by the public entity.²¹ Thus, for the purposes of this opinion, I must assume that the Board notified Mr. Valentine of the July 28 meeting by leaving a voicemail message in accordance with the arrangement agreed to between Mr. Valentine and the Board. Therefore, it is my opinion that the Board satisfied the requirements of N.D.C.C. § 44-04-20.²²

CONCLUSIONS

1. The Board violated N.D.C.C. § 44-04-20 with regard to its June 15, 2005, special meeting, by failing to prepare, post, give to the county newspaper, and file with the county auditor a proper notice and by considering topics not included in a notice. The Board violated N.D.C.C. § 44-04-20 with regard to its July 28, 2005, special meeting by failing to include the location of the meeting in the notice, for including a general unspecified topic in its notice, for considering a topic not specifically identified in the notice, and by giving the newspaper an incomplete notice of the meeting that did not contain a description of the topics to be considered.
2. The Board did not violate N.D.C.C. § 44-04-20 when it gave notice of a meeting to an individual by telephone, even though the individual did not receive the notice.

STEPS NEEDED TO REMEDY VIOLATION

The Board must create a notice for its meeting of June 15, 2005, and prepare a revised notice of its meeting of July 28, 2005, post the notices at its offices for one week, file the notices with the county auditor, and provide copies of the notice to the official county newspaper. The notice must contain the time, date, place, and topics considered at each meeting. The notices must state that minutes of the meeting are available upon request free of charge. The Board also must send a copy of the minutes of these meetings to the requester, 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

²¹ N.D.C.C. § 44-04-21.1(1); N.D.A.G. 2000-O-08.

²² Id.

under N.D.C.C. § 44-04-21.2.²³ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁴

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²³ N.D.C.C. §44-04-21.1(2).

²⁴ Id.