

**OPEN RECORDS AND MEETINGS OPINION
2006-O-10**

DATE ISSUED: June 7, 2006

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 properly post the notice of a meeting at the location of the meeting¹ and by failing to give him notice of a Board meeting.

FACTS PRESENTED

By letter dated December 28, 2005, Mr. Valentine requested the Board to notify him of meetings by e-mail. The Board held a meeting on April 5, 2006. Mr. Valentine alleges he did not receive notice of the April 5 meeting. He also alleges that the notice of the meeting was posted only 15 minutes before the meeting.

In response, the Board stated that Board chairman Mark Schneider sent the notice of the April 5 meeting to Mr. Valentine at the e-mail address he provided. The Board further stated that the notice was posted on the door to the meeting room the day before the meeting and on the day of the meeting. The courthouse opens at 8 a.m. The doors to the meeting room open outward into the hallway. When the door to the meeting room was opened shortly after 8:30 a.m. on April 5, the notice, which had been taped to the outside of the door, faced the wall and was blocked from public view. The Board stated that it typically moves the notice to the other side of the door once the door is opened, but on April 5 the notice was inadvertently not moved until shortly before the

¹ Mr. Valentine also alleged he did not obtain access to certain records he requested on December 28, 2005, and that the Board did not provide proper notice for a meeting held on November 2, 2005. The request for an opinion on these matters is not timely and they will not be addressed. N.D.C.C. § 44-04-21.1(1) (the request for an opinion under the open records and open meetings law must be made within 30 days of the alleged violation, except that a request based on an allegation that a meeting occurred without proper notice must be made within 90 days of the alleged violation). Mr. Valentine also asserted the Board members denied they were aware of an Attorney General's opinion issued to the Board in November 2005. This is not an open records or open meetings issue.

meeting started. The meeting started at 9 a.m. Mr. Valentine indicated the notice was moved about 15 minutes before the meeting started. Consequently, for about 15 minutes the notice was out of sight.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by failing to provide notice of a meeting to a person who had requested notice and by improperly posting a notice of a meeting at the location of the meeting.

ANALYSES

A county weed board is a public entity subject to the open meetings law.² Accordingly, a county weed board is required to give proper notice of any regular or special meeting of its governing body. Among other things, the notice of a meeting must be posted at the location of the meeting on the day of the meeting.³ A public entity is also required to provide a copy of the notice to any person requesting it.⁴

In this case, the only deficiency alleged by Mr. Valentine with regard to posting the notice is that, although the notice was posted at the location of the meeting on the date of the meeting, it was behind the door for 15 minutes. Therefore, the notice became blocked from public view. At approximately 8:45 a.m. the notice was switched and taped on the side of the door viewable by the public.

This office has previously determined that a public entity substantially complied with the notice requirements when it provided all the notice required by law except for posting the notice at the location of the meeting.⁵ If the failure to post the notice is not a violation of N.D.C.C. § 44-04-20, the lesser act of failing to have the notice in sight of the public for 15 minutes is also not a violation.

Mr. Valentine also alleges the Board violated the law by not sending him notice of the April 5 Board meeting. The chairman of the Board stated that he sent an e-mail message to Mr. Valentine that contained a notice of the meeting. The Attorney General's opinion must be based on the facts provided by the public entity.⁶ Therefore, I must assume the Board provided notice of the April 5 meeting to Mr. Valentine.

² N.D.C.C. § 44-04-17.1(12) ("public entity" includes a board of a political subdivision).

³ N.D.C.C. § 44-04-20(4).

⁴ N.D.C.C. § 44-04-20(5). Unless otherwise specified, notice must be provided to the requester for a period of one year. Id.

⁵ N.D.A.G. 2002-O-10; N.D.A.G. 98-O-09.

⁶ N.D.C.C. § 44-04-21.1(1).

Accordingly, the Board did not violate N.D.C.C. § 44-04-20(5) by failing to provide notice to Mr. Valentine.

CONCLUSION

The Board did not violate N.D.C.C. § 44-04-20(4) where the notice was not visible to the public for 15 minutes, and did not violate N.D.C.C. § 44-04-20(5) by failing to provide notice of a meeting to Mr. Valentine.

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