

**OPEN RECORDS AND MEETINGS OPINION
2007-O-13**

DATE ISSUED: October 8, 2007

ISSUED TO: Grand Forks School Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Dakota Huseby asking whether the Grand Forks School Board violated N.D.C.C. § 44-04-20 by failing to give notice of meetings held by a committee formed to select an interim superintendent.

FACTS PRESENTED

In February 2007, Dakota Huseby emailed Grand Forks Public Schools and requested notice of "any and all committee or emergency meetings in addition to regular meetings of the GF School Board/GFAFB Board and all subcommittees. . ." ¹

At its April 23, 2007, meeting, the Grand Forks School Board (Board) approved a motion to "allow the president and vice president of the board to begin looking for an interim superintendent . . . and to look at potential contracts for [the] interim superintendent and bring those recommendations back to the full board."² Board President Mike St. Onge and Vice President DeAnna Carlson-Zink met on April 27, May 7, and May 11 to carry out this duty delegated to them by the Board. No notice was provided for these meetings.

During the "Committee Reports" segment of the Board's May 14, 2007, meeting, Mr. St. Onge reported that he and Ms. Carlson-Zink reviewed recommendations concerning an interim superintendent and asked Mr. Ron Gruwell to accept the position for the 2007-2008 school year.³ The Board approved the appointment of Mr. Gruwell and directed Mr. St. Onge and Ms. Carlson-Zink to "proceed with negotiating a compensation package to report back to the board."⁴ To accomplish this duty delegated to them by the Board, Mr. St. Onge and Ms. Carlson-Zink met on May 14

¹ Email from Dakota Huseby to Cindy Johnson, Office of the Superintendent, Grand Forks and Grand Forks Air Force Base Public Schools sent between February 16 and February 19, 2007.

² Meeting minutes of the Grand Forks School Board, April 23, 2007.

³ Meeting minutes of the Grand Forks School Board, May 14, 2007.

⁴ Id.

after the Board meeting, May 15, and May 29. No notice was provided for these meetings.

At its June 4, 2007, meeting the Board approved the contract for the interim superintendent. It was only at this meeting that some Board members questioned whether the meetings held by Mr. St. Onge and Ms. Carlson-Zink were subject to the open meetings law.

Ms. Huseby was not provided notice of the meetings held by Mr. St. Onge and Ms. Carlson-Zink.

ISSUE

Whether the Grand Forks School Board violated N.D.C.C. § 44-04-20 by failing to give notice of meetings held by a committee between April 27 and May 29.

ANALYSIS

The “governing body” of a public school district, i.e., the school board, is subject to the open meetings laws.⁵ A “governing body” also includes “any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.”⁶ Under this definition, a committee delegated authority to perform any function, including fact gathering, reporting, or recommending action, as well as taking action, on behalf of a governing body is subject to the state’s open meetings law.⁷ Thus, committees of a school board are subject to the open meetings laws, including the same meeting notice requirements as the school board.⁸

Generally, public notice must be given in advance of all meetings of a public entity.⁹ For all meetings, school boards are required to file the notice with the county auditor, post the notice at the main office of the school board, and post the notice at the location of the meeting on the day of the meeting.¹⁰ Notice must also be provided to anyone requesting such information.¹¹ In the case of special meetings, notice must also be provided to the official newspaper of the public entity.¹²

⁵ See N.D.C.C. §§ 44-04-19, 44-04-17.1(6), (8), (12), and N.D.A.G. 97-O-02.

⁶ N.D.C.C. § 44-04-17.1(6) (emphasis added).

⁷ N.D.A.G. 2003-O-13.

⁸ N.D.A.G. 2003-O-13.

⁹ N.D.C.C. § 44-04-20(1).

¹⁰ N.D.C.C. § 44-04-20(4).

¹¹ N.D.C.C. § 44-04-20(5).

¹² N.D.C.C. § 44-04-20(6).

The Board does not deny that it failed to provide notice of the meetings Mr. St. Onge and Ms. Carlson-Zink held to carry out the duties delegated to them by the Board. In response to questions from this office, the Board's attorney explained that Mr. St. Onge and Ms. Carlson-Zink "thought of themselves as performing executive duties of the board; they did not think of themselves as a committee."

Executives of a governing body are not exempt from the open meetings laws. If two executives of a governing body are delegated a duty, the resulting committee of two is subject to the open meetings law and notice requirements when it meets to carry out those duties.¹³

Even though Mr. St. Onge reported the committee's progress during the "Committees" segment of the May 14 Board meeting, the question of whether the notice requirements of the open meetings law applied did not arise until the June 4 board meeting. By that time, the work of Mr. St. Onge and Ms. Carlson-Zink was complete and the contract for the interim superintendent was approved.¹⁴ By neglecting to follow the open meetings law, the Board's committee was able to find an interim superintendent and negotiate his contract without public scrutiny. The Board effectively cut Ms. Huseby, and any other person, out of the process that, by law, should have been open.

After being advised by its legal counsel that the committee meetings likely should have been noticed and open to the public, the Board created a "Summary of actions of President St. Onge and Vice President Carlson-Zink for finding an interim superintendent and establishing a compensation package to be reviewed by the school board." While this is an attempt to remedy the situation, it is a poor substitute for actually attending the committee meetings and viewing the deliberative process in person.

CONCLUSION

It is my opinion that the Grand Forks School Board violated N.D.C.C. § 44-04-20 when it failed to provide notice, including specific notice to Ms. Huseby, of several meetings held by its committee made up of Board President St. Onge and Vice President Carlson-Zink.

¹³ See N.D.C.C. § 44-04-17.1(6) (definition of governing body); N.D.A.G. 2006-O-02 (meetings of the 'Executive Board' were subject to the open meetings law when the subject matter of the meetings fell within the authority delegated to that committee).

¹⁴ See Meeting minutes of the Grand Forks School Board, June 4, 2007.

STEPS NEEDED TO REMEDY VIOLATION

As stated in the opinion, the Board has attempted to remedy the situation by compiling a brief summary of the meetings held between Mr. St. Onge and Ms. Carlson-Zink. This summary, however, is not sufficiently detailed.

The Board's committee must prepare detailed minutes that meet the requirements of N.D.C.C. § 44-04-21, indicating what transpired at its meetings on April 27, May 7, May 11, May 14, May 15, and May 29, 2007. Along with other detailed information, the minutes must include the credentials or qualifications the committee considered important for a prospective interim superintendent to have, the persons considered for the position, and how the conclusion was reached that Mr. Gruwell was the best candidate. The detailed minutes must also reflect how the committee settled upon the recommended salary of \$175,000 for the interim year.

The Board's committee must prepare a notice that all of these meetings occurred and that detailed minutes of the meetings are available at no cost. This notice must be posted at the Board's main office and filed with the county auditor. The Board must also provide free copies of the detailed minutes to Dakota Huseby.

The Board must, in the future provide proper notice in advance of all of its committee meetings, in accordance with N.D.C.C. § 44-04-20.

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. § 44-04-21.2.¹⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁶

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¹⁵ N.D.C.C. §44-04-21.1(2).

¹⁶ Id.