

**OPEN RECORDS AND MEETINGS OPINION
2008-O-23**

DATE ISSUED: September 19, 2008

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 Cami Uhrich asking whether the Grand Forks School Board ("Board") violated N.D.C.C. § 44-04-20 by discussing and acting on an agenda topic that was not specifically listed in the Board's April 28, 2008, meeting agenda.

FACTS PRESENTED

On January 28, 2008, the Grand Forks and Grand Forks Air Force Base Public Schools held a public forum pursuant to N.D.C.C. § 15.1-07-26. The law mandates that every even-numbered year a school district invite the public to participate in a planning process to address the effects that demographics might have on the district in the ensuing three-year and five-year periods.¹ Specifically, the forum is designed to address potential effects on:

- a. Academic and extracurricular programs;
- b. Instructional and administrative staffing;
- c. Facility needs and utilization; and
- d. District tax levies.²

The two school boards took part in the public forum and one of the main discussion points was how to manage declining enrollment within the Grand Forks School District ("School District"). Forum participants were asked specific questions, and the answers were collected in two "results" documents.

During its April 15, 2008, meeting, Board member Mike St. Onge reminded the Board members that the next meeting, on April 28, would include a "work session" regarding the January 28, 2008, public forum.

¹ N.D.C.C. § 15.1-07-26(1).

² Id.

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The Board's meeting agendas are drafted by the superintendent's administrative assistant and reviewed and finalized by the superintendent of the School District. The April 28, 2008, meeting notice was drafted by 4:00 p.m. on Wednesday, April 23, 2008, and the notice/agenda and supporting documents were sent to Board members on Thursday, April 24, 2008.

The agenda for the April 28, 2008, Board meeting listed the following items:

- I. Call to Order
- II. Preview of Agenda and Announcements
- III. Approval of Minutes
- IV. Delegations, Petitions, & Communications
- V. Special Reports & Recommendations
 - A. Superintendent's Recommendations for Discussion
 1. Student Activity Pass
 2. School Board Self-Evaluation
 - B. Superintendent's Recommendations for Action
 1. Consideration of Consent Agenda
 - C. Other Reports & Recommendations
 1. Committee Reports
 2. News Items & Updates
 3. Board Requests for Future Consideration
- VI. Work Session
 - A. Public Forum
- VII. Adjournment³

During the "Work Session - Public Forum" portion of the April 28, 2008, meeting, Mr. Jody Thompson, the Grand Forks Assistant Superintendent, reported on projected enrollment statistics for Wilder and Winship schools for 2008-09 and expansion capabilities at the Winship, Wilder, and Phoenix schools.⁴ Assistant Superintendent Thompson then "recommended changing the administrative assignment as a cost-saving measure at Wilder and Winship by reassigning Gail Kalenze to principal of both schools and reassigning Pamela Carlson."⁵ The Board voted to approve the reassignment.⁶

The requester alleges that the meeting notice was defective because it failed to include the possible transfer of principals in the agenda.

³ See April 28, 2008, Grand Forks School Board Agenda (emphasis added).

⁴ April 28, 2008, Grand Forks School Board Minutes.

⁵ Id.

⁶ Id.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by failing to properly notice its April 28, 2008, meeting.

ANALYSIS

“Unless otherwise provided by law, public notice must be given in advance” of every meeting of a governing body of a public entity.⁷ Notice of meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.⁸ Notice of a regular meeting “must contain the date, time, and location of the meeting and, if practicable, the topics to be considered.”⁹ This office has previously interpreted the language “if practicable, the topics to be considered” to require the governing body to include in its notice a list of all topics the governing body expects to discuss at the time the notice is prepared.¹⁰ Although notice preparation is commonly delegated to an employee of a public entity, the governing body, or school board, in this instance, is still responsible for ensuring that sufficient notice is provided under N.D.C.C. § 44-04-20.¹¹

Generally, a regular meeting need not be restricted to the agenda topics included in the notice.¹² In 1999, this office explained that “from the time a regular meeting is convened until the meeting is adjourned, a governing body of a public entity is free to discuss any item of public business regarding that entity.”¹³ Thus, in the case of regular meetings, generally the notice does not preclude a governing body from discussing issues that arise after the notice is posted.

The broad flexibility for regular meeting agendas, however, does not relieve governing bodies of the obligation in N.D.C.C. § 44-04-20 to include in the notice the topics it knows ahead of time it will consider during the meeting.¹⁴ In this instance, the School District administration admits that at the time the agenda was drafted, it planned on recommending Gail Kalenze be reassigned as principal at both Wilder and Winship schools and Pamela Carlson, current principal at Wilder, be reassigned to another

⁷ N.D.C.C. § 44-04-20(1).

⁸ N.D.C.C. § 44-04-20(9).

⁹ N.D.C.C. § 44-04-20(2) (emphasis added).

¹⁰ N.D.C.C. § 44-04-20(2); N.D.A.G. 2006-O-07; N.D.A.G. 2006-O-05; N.D.A.G. 2003-O-12.

¹¹ N.D.C.C. § 44-04-20(5). See N.D.A.G. 98-O-13 and N.D.A.G. 2004-O-09.

¹² See N.D.A.G. 99-O-08.

¹³ Id.

¹⁴ N.D.A.G. 99-O-08 (failing to include a topic in a meeting notice that a governing body plans ahead of time to discuss violates the open meetings law).

school in the district.¹⁵ The administration planned to make this recommendation during the “Work Session” portion of the April 28 meeting, although the Board had no prior knowledge of the administration’s planned recommendation.¹⁶

The School District administration argues that it did give notice of the possible staffing transfer in the April 28 meeting notice with the agenda item “Work Session - Public Forum.” It explains that staffing levels and realignment are typical adjustments used to deal with declining enrollments and declining enrollment was the main discussion point of the January 2008 public forum.

Although previous opinions do not speak to the degree of specificity needed for the notice of a regular meeting, I have said that the purpose of providing advance notice of topics to be discussed at a meeting is to provide “information to interested members of the public concerning the governing body’s anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate.”¹⁷

Here, the phrase “Work Session - Public Forum” is very general and could have numerous meanings. It is unlikely this agenda item would lead a member of the public to conclude a staff change was possible.

This office has always taken the position that the notice must inform the public in a meaningful way what will be discussed at a public meeting. “Work Session - Public Forum” did not give the public meaningful notice that staff changes were possible.¹⁸ Thus, I disagree with the School District that the phrase “Work Session - Public Forum” alerted the public to possible staff changes it anticipated recommending at the April 28, 2008, meeting.

It is therefore my opinion that the notice failed to include a topic that was anticipated at the time it was drafted. Thus, the Board failed to provide notice in substantial compliance with N.D.C.C. § 44-04-20 for its April 28, 2008, meeting.¹⁹

¹⁵ Letter from Grand Forks Assistant Superintendent Jody Thompson to Assistant Attorney General Mary Kae Kelsch (June 11, 2008).

¹⁶ Id.

¹⁷ N.D.A.G. 2006-O-07; N.D.A.G. 2007-O-04.

¹⁸ N.D.A.G. 2003-O-22 (notice for an executive session must “give a general description of the subject matter of the executive session sufficient to provide information about the topic or purpose of the executive session to a member of the public”).

¹⁹ A finding of a violation of the open meetings law does not invalidate the actions taken at the meeting. Thus, the actions of the Board at the April 28, 2008, meeting remain in effect.

CONCLUSION

At the time the agenda for the April 28 meeting was drafted, the School District knew it was going to recommend a specific staff change. Thus, it was practicable to include that recommendation on the notice and agenda for the meeting. The agenda item "Work Session - Public Forum" did not sufficiently describe the staff change contemplated and was, therefore, not in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

In the future, the Board must include in its regular meeting notices a list of all topics the Board expects to consider at its meetings, and all topics the School District administration expects the Board to consider. The notice must be prepared and provided to members of the Board and anyone else requesting the notice in advance of the meetings.

Wayne Stenehjem
Attorney General