

**OPEN RECORDS AND MEETINGS OPINION
2009-O-13**

DATE ISSUED: July 30, 2009

ISSUED TO: Mandan 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 Susan Beehler asking whether the Mandan School Board (Board) substantially complied with the notice requirements of the open meetings law for its April 18 2009, meeting.

FACTS PRESENTED

On April 15, 2009, Susan Beehler e-mailed Board President Kirsten Baesler requesting notification of all Board meetings by e-mail or text message. President Baesler did not know the legal responsibility of the Board regarding personal notice of meetings so she consulted with legal counsel about the Board's legal requirements. After being advised that Ms. Beehler could ask for personal notice of Board meetings, President Baesler e-mailed Ms. Beehler on April 17, 2009, and informed her that the Mandan School District would notify her of all its meetings. Her e-mail to Ms. Beehler included an Internet link to a page on the website of the Mandan School District (District) that contained a schedule of all Board meetings.

After informing Ms. Beehler that the District would provide her with personal notice of Board meetings, President Baesler e-mailed the business office with instructions to provide Ms. Beehler with notice of all Board meetings.¹ Due to her work schedule, President Baesler was only able to e-mail the instructions to the business office after 5 p.m. on Friday, April 17. Thus, the Mandan School District business office was closed for the day and the e-mail was not received before the retreat was held the next morning at 7 a.m., Saturday, April 18.

Although the notice of the April 18 retreat was not provided by e-mail or text message to Ms. Beehler it was filed with the Morton County Auditor, the Mandan City Administrator's office, posted at the district's business office, posted on the Community

¹ Traditionally the business manager of the Mandan School District posts the notices for all school board meetings.

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Center electronic sign, posted on the Mandan School Board website, and published in the Mandan News. The notice in the April 17, 2009, Mandan News stated the following:

The Mandan school Board will be having their spring working retreat on Saturday, April 18th 2009 at 7 a.m. at Cloverdale Food Company in the Conference Room at 3015 34th St. NW, Mandan, ND.

The notice was not posted at the Cloverdale building on the day of the meeting. From 6:30 a.m. to 8:30 a.m. an individual was sitting at the door to let people into the building and direct them to the meeting room. However, from 8:30 a.m. until the meeting ended at 10 a.m., the door was locked and unattended.

Ms. Beehler asserts that the Board failed to provide public notice of its April 18, 2009, retreat and that the Board failed to give her personal notice of the retreat as she had requested.

ISSUES

1. Whether the April 18, 2009, Mandan School Board retreat was preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Board violated N.D.C.C. § 44-04-20(5) by failing to give personal notice of a meeting to an individual who requested to receive notice.

ANALYSIS

Issue One:

All meetings of the board of a public school district are required to be open to the public and preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.² The definition of "meeting" is not limited to gatherings at which formal action is taken on an item of public business and includes "work sessions."³ Thus, a retreat is a "meeting" for which notice is required under N.D.C.C. § 44-04-20.⁴

Notice must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting.⁵ In the case

² N.D.C.C. §§ 44-04-19 and 44-04-20; N.D.A.G. 2001-O-05.

³ N.D.C.C. § 44-04-17.1(8); N.D.A.G. 2001-O-05.

⁴ N.D.A.G. 2001-O-05.

⁵ N.D.C.C. § 44-04-20(4).

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of a school board, notice must be filed in the county auditor's office and if the meeting is a special meeting, notice must be provided to the public entity's official newspaper.⁶

Here, the Board posted the notice at its office, filed it with the county auditor, and provided notice to the Mandan News. In addition to the notice required by law, the Board also provided notice by filing the meeting notice with the city of Mandan, posting notice on the electronic community sign, and actually publishing the notice in the Mandan News.⁷ The notice, however, was not posted at the location of the meeting on the day of the meeting.⁸

As I recently explained in an opinion to the Mandan Board of Park Commissioners, the basic purpose of the requirement to post a meeting notice at the location of the meeting on the day of the meeting is so the public can easily identify where the meeting is being held.⁹ Here, not only was the retreat located in a different meeting room than usual, but in a completely different building. Helping the public find this particular meeting was important in light of the unusual location. Ms. Beehler correctly points out that after 8:30 a.m., when the person sitting at the door of the building left, the public would have no indication where, or if, the meeting was being held. It is my opinion that posting the notice at the location of the meeting was essential in order for the public to know where the Board was meeting, and by failing to post notice at the meeting location, notice was not posted in substantial compliance with N.D.C.C. § 44-04-20.

Issue Two:

The law provides that the meeting notice of a governing body's meeting must be provided to the public at the same time as the members of the governing body are noticed and that the notice is available to anyone requesting such information.¹⁰ The law is silent as to the method of notice but past opinions from this office indicate that public entities provide notice in whatever way is agreed upon by the person and the public entity or in a manner that is practical.¹¹

Although the actual notice of the agenda was not provided to Ms. Beehler, she found out about the retreat from the newspaper and followed up by confirming the time and

⁶ N.D.C.C. § 44-04-20(4),(6).

⁷ See N.D.A.G. 2007-O-02 (there is no requirement to publish notices of meetings in the newspaper).

⁸ N.D.C.C. § 44-04-20(4).

⁹ N.D.A.G. 2009-O-09.

¹⁰ N.D.C.C. § 44-04-20(5).

¹¹ N.D.A.G. 2009-O-04.

place of the retreat with Superintendent Wilfred Volesky.¹² President Baesler also provided her an e-mail that contained an Internet link to the school district's website and a message that the link would lead her to a schedule of the Board's meetings, including the retreat.

In a recent opinion, I found that notice was provided in substantial compliance with N.D.C.C. § 44-04-20 when a similar timing issue resulted in personal notice arriving a day after a meeting.¹³ Here, the manner by which Ms. Beehler found out about the meeting may not have been perfectly coordinated by the Board and school district, but the end result was that she was provided with the relevant information by both the Superintendent and the Board President that enabled her to attend the meeting. Thus, even though the personal notice was not exactly as Ms. Beehler requested, it is my opinion that the notice was provided to her in substantial compliance with N.D.C.C. § 44-04-20.

CONCLUSIONS

1. The Board violated N.D.C.C. § 44-04-20 by not posting notice of the meeting at the location of the meeting on the day of the meeting.
2. The Board provided notice to Ms. Beehler in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

Other than failing to post the meeting notice for the April 18 school board retreat on the door of the meeting location, the Board properly posted the meeting notice. Therefore, no additional notice is necessary to remedy the violation.

Wayne Stenehjem
Attorney General

mkk/vkk

¹² Superintendent Volesky was unaware that Ms. Beehler had requested personal notice of all meetings because the request was made to President Baesler.

¹³ N.D.A.G. 2009-O-04.