

**OPEN RECORDS AND MEETINGS OPINION
2009-O-15**

DATE ISSUED: August 21, 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 violated the open meetings law by failing to describe the general subject matter of an executive session in the notice for the May 28, 2009, special meeting.

FACTS PRESENTED

The Mandan School Board ("Board") held a special meeting on May 28, 2009. Item II of the agenda for the meeting provided:

- II. Move to Executive Session to Discuss Negotiations per NDCC 44-04-19.2¹

At the beginning of the meeting, the school board president stated that the Board would convene in executive session to discuss negotiation strategies concerning compensation for the school district's certified staff and administrators and cited N.D.C.C. § 44-04-19.2 as authority for the executive session. Upon approval of a motion to that effect, the Board met in executive session. Susan Beehler alleges that the agenda did not sufficiently describe the topics to be discussed in the executive session.²

ISSUE

Whether the notice of the Board's May 28, 2009, special meeting described the general subject matter of the executive session in substantial compliance with N.D.C.C. § 44-04-20.

¹ Mandan Public School District: Special School Board Meeting Agenda (May 28, 2009).

² Ms. Beehler does not allege that the announcement of the executive session did not sufficiently describe the topics to be discussed during the closed portion of the meeting.

ANALYSIS

Unless otherwise provided by law, all meetings subject to N.D.C.C. § 44-04-19 must be preceded by written public notice.³ The notice must include all topics the governing body expects to consider at the time the notice is prepared.⁴ In addition, a meeting notice must contain the general subject matter of any executive session expected to be held during the meeting.⁵ The description of the “general subject matter” must be “sufficient to provide information about the topic or purpose of the executive session to a member of the public.”⁶

In this case, the notice stated in relevant part:

Executive Session to Discuss Negotiations per NDCC 44-04-19.2.

The notice does not provide any information about the topic or purpose of the negotiations to a member of the public.⁷ In 2004, this office issued an opinion to the Richland Public School District regarding an executive session that was noticed in the agenda only as “Collaborative Bargaining.”⁸ This office explained that “[b]ecause the public would not necessarily understand that the bargaining related to teacher salaries, the notice failed to give a general description of the subject matter of the executive session sufficient to provide information about the topic or purpose of the session to a member of the public.”⁹ Likewise here, the description in the notice failed to explain that the negotiation was related to compensation for the school district’s certified staff and administrators.

It is therefore my opinion that the Board’s notice failed to substantially comply with N.D.C.C. § 44-04-20(2) by not identifying the general subject matter of the executive session.

CONCLUSION

The notice for the May 28, 2009, special meeting of the Mandan School Board did not describe the general subject matter to be discussed during an executive session and

³ N.D.C.C. § 44-04-20.

⁴ N.D.C.C. § 44-04-20(2).

⁵ Id.

⁶ N.D.A.G. 2005-O-18; N.D.A.G. 2004-O-19; N.D.A.G. 2003-O-22; see also N.D.A.G. 2005-O-04.

⁷ N.D.A.G. 2003-O-22.

⁸ N.D.A.G. 2004-O-13.

⁹ Id.

thus failed to substantially comply with the notice requirements of N.D.C.C. § 44-04-20(2).

STEPS NEEDED TO REMEDY VIOLATION

The Mandan School Board must revise the May 28, 2009, meeting notice and include a description of the executive session that provides the general subject matter of the executive session.¹⁰ The notice must be posted at the school district office for one week and a copy should be provided to Ms. Beehler at no cost.

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. § 44-04-21.2.¹¹ It may also result in personal liability for the person or persons responsible for the noncompliance.¹²

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¹⁰ Prior to entering the executive session, the Board provided the public with the reasons it was closing the meeting pursuant to N.D.C.C. § 44-04-19.2(2)(b). If the Board had provided the same description in the notice, it would have met the “general subject matter” requirements.

¹¹ N.D.C.C. § 44-04-21.1(2).

¹² Id.