

**OPEN RECORDS AND MEETINGS OPINION  
2009-O-18**

DATE ISSUED:      October 9, 2009

ISSUED TO:        Rye Township Board of Supervisors

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Daryl Bragg asking whether the Rye Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to notice a meeting.

**FACTS PRESENTED**

On June 15, 2009, the Rye Township Board of Supervisors ("Board") held a township supervisor meeting. The meeting notice was published in the classified section of the Grand Forks Herald on June 4 and June 13. Notice was not posted at the location of the meeting or filed with the county auditor. Township supervisors Terry Stromsodt and Jeff Clemetson, along with the clerk, met at the North Side Café in Grand Forks, where they voted on a tax exemption recommendation to the county.<sup>1</sup> Mr. Bragg alleges that the June 15, 2009, meeting was not properly noticed and that Supervisor Meagher, a Board supervisor, was not notified of the meeting.<sup>2</sup>

**ISSUE**

Whether the notice of the June 15, 2009, Board of Township Supervisors meeting was provided in substantial compliance with N.D.C.C. § 44-04-20.

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<sup>1</sup> Chairman Stromsodt attended the June 16 Grand Forks County commission meeting and passed along the Board's recommendation.

<sup>2</sup> In his request for this opinion, Mr. Bragg alleges that Mr. Meagher was not provided with notice of the June 15 meeting. However, the other two supervisors and the township clerk state that Mr. Meagher was present when the date, time, and place of the June 15 meeting was set. Whether notice of the meeting was in fact given to Mr. Meagher is a question of fact that is beyond my authority to resolve. See N.D.C.C. § 54-12-01(6); N.D.A.G. 2004-L-49. Moreover, in issuing an opinion under the open meetings law I am obligated to accept the facts as stated by the public entity. N.D.C.C. § 44-04-21.1. Consequently, for the purposes of this opinion I must assume that Mr. Meagher received notice of the June 15 township supervisors meeting.

## ANALYSIS

A township is a political subdivision and is therefore a “public entity” subject to the open records and meeting laws.<sup>3</sup> Meetings of the governing body of a public entity are required to be open to the public unless otherwise provided by law.<sup>4</sup> Unless otherwise provided by law, written public notice, containing the date, time, agenda, and location of the meeting must be provided at the same time the members of the governing body are provided notice of the meeting and this notice is available to anyone requesting such information.<sup>5</sup>

Meeting notices of the Board must be filed with the county auditor, posted at the public entity’s office if there is one,<sup>6</sup> and posted at the location of the meeting on the day of the meeting.<sup>7</sup> Additionally, if the meeting is a special meeting, notice must be provided to the official newspaper, but is not required to be published.<sup>8</sup>

Meeting notices only have to be published if a statute specifically requires publication. For example, the notice for annual or special meetings of township electors is required to be published in the legal newspaper published in the township or, if none exists, in the county’s official newspaper.<sup>9</sup> This requirement only applies to meetings of township electors and is in addition to the notice requirements in N.D.C.C. § 44-04-20.

Here, no notice of the June 15, 2009, Board meeting was provided other than the publication in the Grand Forks Herald.<sup>10</sup> The Board believed that by publishing the notice it had provided adequate notice of the meeting. It did not understand that publication of the notice was only required for meetings of the township electors and that it also had to follow N.D.C.C. § 44-04-20.

Clearly, by publishing the notice in the paper, the Board was not attempting to keep the June 15 meeting secret. However, publishing the notice does not take the place of filing the notice with the county auditor and posting the notice at the location of the meeting

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<sup>3</sup> N.D.C.C. § 44-04-17.1(10), (12)(b) (definition of “political subdivision” includes any . . . township); N.D.A.G. 98-O-09.

<sup>4</sup> N.D.C.C. § 44-04-19.

<sup>5</sup> N.D.C.C. § 44-04-20(2), (5).

<sup>6</sup> Townships typically do not have offices so this requirement would not apply.

<sup>7</sup> N.D.C.C. § 44-04-20(4).

<sup>8</sup> N.D.C.C. § 44-04-20(6); N.D.A.G. 2009-O-03; N.D.A.G. 2007-O-02; N.D.A.G. 2003-O-13.

<sup>9</sup> N.D.C.C. §§ 58-04-01, 58-04-03, and 58-04-04. See also N.D.A.G. 98-O-09.

<sup>10</sup> According to the township clerk, notice was published in the classified section of the Grand Forks Herald on June 4 and June 13, 2009.

on the day of the meeting.<sup>11</sup> Thus, it is my opinion that the Board failed to provide notice of its June 15, 2009, meeting in substantial compliance with N.D.C.C. § 44-04-20.

### CONCLUSION

Notice of the June 15, 2009, meeting was not filed in substantial compliance with N.D.C.C. § 44-04-20 because the notice was not filed with the county auditor or posted at the location of the meeting on the day of the meeting.

### STEPS NEEDED TO REMEDY VIOLATION

A meeting notice containing the time, date, location, and topic of the June 15, 2009, meeting must be drafted and filed with the county auditor. The notice must also explain who to contact in order to obtain a copy of the minutes from that meeting.

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.<sup>12</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>13</sup>

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<sup>11</sup> See N.D.C.C. § 44-04-20. See also, N.D.A.G. 2003-O-19 (placing meeting announcement on local community television not a substitute for the notice requirements found in N.D.C.C. § 44-04-20); see also, N.D.A.G. 2001-O-05 (announcing a meeting date during a previous meeting is not a substitute for posting and filing a notice as required in N.D.C.C. § 44-04-20); N.D.A.G. 2000-O-03 (notifying interested members of the public is not a substitute for complying with N.D.C.C. § 44-04-20).

<sup>12</sup> N.D.C.C. §44-04-21.1(2).

<sup>13</sup> Id.