

**OPEN RECORDS AND MEETINGS OPINION
2010-O-07**

DATE ISSUED: June 2, 2010

ISSUED TO: Leeds 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 Chris Jorgenson asking whether the Leeds School Board violated N.D.C.C. §§ 44-04-20 and 44-04-21.

FACTS PRESENTED

The Leeds School Board (Board) held three special meetings regarding a potential basketball co-operative on January 14, 26, and 27, 2010. The notice for the January 14, 2010, meeting was as follows:

BASKETBALL CO-OP
INFORMATIONAL MEETING
THURSDAY, JANUARY 14, 2010
7:00 P.M.
LEEDS PUBLIC SCHOOL
MULTI-PURPOSE ROOM

The notice was posted at the meeting location, on the bulletin board outside the main school office, and sent home with students. Notice was not filed with the county auditor and was not provided to the official newspaper. Although the Board could not find a copy of the January 26 meeting notice, it explains that it was similar to the January 14 notice and was posted at the same locations as the January 14 meeting.¹ It also was not provided to the official newspaper or filed with the county auditor.

The notice for the special meeting held January 27, 2010, was as follows:

¹ In any opinion issued under N.D.C.C. § 44-04-21.1 the Attorney General shall base the opinion on the facts given by the public entity.

AGENDA – SPECIAL MEETING, January 27, 2010, 7:30 a.m.

1. Call meeting to order
2. Basketball coop
3. Review minutes
4. Adjourn meeting

The notice was posted on the bulletin board outside the main school office and posted outside the meeting location. Additionally, it was posted on the school's website and provided to the county superintendent of schools. Notice was not provided to the official newspaper or filed with the county auditor.

ISSUES

1. Whether notices for the January 14, 26, and 27, 2010, special meetings were provided in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Board described the topics to be considered for the January 14 and 26, 2010, meetings in substantial compliance with N.D.C.C. § 44-04-20.
3. Whether votes were taken at the January 26, 2010, meeting in violation of N.D.C.C. § 44-04-21.

ANALYSES

Issue one

The Board is a public entity.² Public notice of all meetings of a public entity must be given unless otherwise provided by law.³ Any formal or informal gathering . . . whether in person or through electronic means such as telephone or videoconference, of a quorum of the members of a governing body of a public entity regarding public business is a "meeting" that requires notice to the public.⁴ As with a regular meeting, a notice of a special meeting must be posted at the main office of the governing body, at the location of the meeting on the day of the meeting, and, in the case of a school district, filed with the county auditor. In addition, for special or emergency meetings, the presiding officer or designee, must notify the public entity's official newspaper and any other members of the media who have requested it.⁵

² N.D.C.C. § 44-04-17.1(12)(b).

³ N.D.C.C. § 44-04-20(1).

⁴ N.D.C.C. § 44-04-17.1(8)(a) (definition of "meeting").

⁵ N.D.C.C. § 44-04-20(6).

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January 14 and 26, 2010, special meetings

The Board posted the notices on the bulletin board outside the school's office which is next to the meeting location. Notices were also sent home with students. Although it is clear the meetings were not meant to be a secret, the Board disregarded two of the notice requirements found in N.D.C.C. § 44-04-20 by failing to file notice with the county auditor and provide notice to the official county newspaper.

According to the Board, notice of the three meetings was not provided to the official newspaper because the newspaper only comes out weekly. The purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can send a reporter to the meeting if it desires to do so.⁶ Because emergency or special meetings may be called upon short notice, notifying the official newspaper is of particular importance because it compensates for the possibility that the public may not be aware of the special or emergency meeting.⁷

The Board also failed to file the notice with the county auditor. Due to these deficiencies, it is my opinion that the Board did not provide notice of the January 14 and 26 meetings in substantial compliance with N.D.C.C. § 44-04-20.

January 27, 2010, special meeting

Notice was posted on the bulletin board that is outside both the main school office and the meeting site in addition to the school's website. Notice was not provided to the official newspaper and instead of filing the notice with the county auditor, the Board filed notice with the county superintendent of schools (superintendent). The superintendent is located in the same building as the county auditor and both offices post notices on the same central bulletin board in the building. The Board reasons that because the meeting notice would be posted on the same bulletin board, it is more logical to provide notice to the superintendent rather than the county auditor.

The purpose of requiring the notice to be filed with the county auditor is to have a central location for people to find out about all public meetings affecting the county.⁸ Although the Board should start providing notices to the county auditor to technically satisfy the legal notice requirements, in this particular instance, the notice was posted in the same location used by the county auditor for central notification of meetings. Thus, the public was not disadvantaged because the notice was filed with the superintendent as an alternative to the county auditor. However, because the Board also failed to

⁶ N.D.A.G. 2003-O-20. See also N.D.A.G. 2003-O-13.

⁷ N.D.A.G. 2005-O-20; N.D.A.G. 2003-O-07.

⁸ N.D.A.G. 98-O-04. See also N.D.A.G. 2005-O-07.

provide notice to the official newspaper which, as I explained, is of particular importance for special meetings, it is my opinion that the Board did not notice the January 27 special meeting in substantial compliance with N.D.C.C. § 44-04-20.

Issue two

In addition to the date, time, and location of the meeting, a notice of a special meeting must contain the topics to be considered and the governing body may only consider those topics.⁹ The failure to list the topics to be discussed at a special meeting in a notice violates N.D.C.C. § 44-04-20(6) because the public is prevented from obtaining proper advance notice of the special meeting.¹⁰ The requester alleges that the Board violated N.D.C.C. § 44-04-20 by posting notices for the January 14 and 26 special meetings without agendas.

According to the Board, it considered the meetings on January 14 and 26 to be “informational” so it did not include an itemized agenda. However, the meeting notices did state that the meetings were to provide information about a basketball co-op. The topic may not have been described in a formal manner, but it was clearly referenced in the notice. Thus, it is my opinion that the topic of the January 14 and 26 meetings was sufficiently clear so the notices substantially complied with N.D.C.C. § 44-04-20.

Issue three

“Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the [open meetings law] must be open, public votes, and all nonprocedural votes must be recorded roll call votes.”¹¹ The requester alleges that the Board violated N.D.C.C. § 44-04-21 by voting on paper ballots at the January 26 meeting.

The Board denies that it voted by paper ballot at the January 26 meeting and explains that there was a suggestion box at the meeting for parents to voice their opinion about the sports co-op. Because the Board did not vote by paper ballot, N.D.C.C. § 44-04-21 does not apply in this situation. The open meetings law does not prohibit the use of a suggestion box by a governing body although the suggestions would be open records. Thus, it is my opinion that the Board did not violate N.D.C.C. § 44-04-21(1) by using a suggestion box at a meeting.

⁹ N.D.C.C. § 44-04-20(6). N.D.A.G. 2004-O-22. But cf. N.D.C.C. § 44-04-20(2) (a governing body is not limited to the topics listed on the agenda at regular meetings).

¹⁰ N.D.A.G. 2004-O-22. See also N.D.A.G. 2003-O-20.

¹¹ N.D.C.C. § 44-04-21(1).

CONCLUSIONS

1. Notices for the January 14, 26, and 27, 2010, special meetings were not provided in substantial compliance with N.D.C.C. § 44-04-20.
2. The Board described the topics to be considered for the January 14 and 26, 2010, meetings in substantial compliance with N.D.C.C. § 44-04-20.
3. Votes were not taken at the January 26, 2010, meeting in violation of N.D.C.C. § 44-04-21.

STEPS NEEDED TO REMEDY VIOLATION

The Board must start providing notice of all meetings in compliance with N.D.C.C. § 44-04-20. If it has not already done so, it must provide copies of the meeting minutes for the January 14, 26, and 27 special meetings to the official newspaper and the requester at no charge.

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. § 44-04-21.2.¹² It may also result in personal liability for the person or persons responsible for the noncompliance.¹³

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Attorney General

mjm/vkk

¹² N.D.C.C. §44-04-21.1(2).

¹³ Id.