

**OPEN RECORDS AND MEETINGS OPINION  
2011-O-13**

DATE ISSUED: September 23, 2011

ISSUED TO: Surrey Public 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 Senator Oley Larsen asking whether the Surrey Public School Board (Board) violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a special meeting that was not publicly noticed.

**FACTS PRESENTED**

During the May 17, 2011, lunch hour at the Surrey Public School some students initiated a food fight. The timing of this food fight was particularly distressing to the administration because May 17, 2011, was the last day of regularly scheduled classes and semester exams were scheduled for May 18-20. Thus, options for punishing the seniors who participated in the food fight were limited as they were scheduled to graduate on May 22. The administration immediately called the school board president to discuss the situation. At approximately 3:30 pm it was decided to call a special school board meeting to determine an appropriate punishment. Four out of the five Board members attended the meeting held at 5:30 pm in the science classroom at the Surrey Public School.

**ISSUE**

Whether the Surrey School Board's special meeting on May 17, 2011, was noticed in substantial compliance with N.D.C.C. § 44-04-20.

**ANALYSIS**

Public notice of all meetings of a public entity must be given unless otherwise provided by law.<sup>1</sup> 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

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<sup>1</sup> N.D.C.C. § 44-04-20(1).

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governing body of a public entity regarding public business is a “meeting” that requires notice to the public.<sup>2</sup> 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, either filed with the county auditor or posted on the public entity’s website.<sup>3</sup> 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 to be notified.<sup>4</sup>

The president of the school board explains that due to the severity of the issue, posting public notice was overlooked. Minutes of the meeting were taken and reflect that even though no notice was posted, sixteen people from the school’s administration and staff were present along with eight visitors.

Meetings are often called on very short notice, so the fact that this special meeting was organized very quickly to respond to an urgent matter is not obviated as the notice requirements in N.D.C.C. § 44-04-20 allow for notice to be posted quickly.<sup>5</sup> Occasionally there are circumstances where it is not feasible to provide prior notice of a meeting. In those unusual situations, this office has advised to provide notice immediately following the meeting in order to substantially comply with the law.<sup>6</sup> However, in this situation, the Board had several hours between the food fight and the start of the special meeting to post a meeting notice and notify the newspaper.<sup>7</sup> Regardless of the urgency, the presiding officer of the governing body is still responsible for assuring that public notice is given at the same time notice is provided to the governing body’s members.<sup>8</sup> The Board had sufficient time to file a meeting notice. Thus, it is my opinion that the Board violated N.D.C.C. § 44-04-19 when it failed to provide notice of the May 17 special meeting in substantial compliance with N.D.C.C. § 44-04-20.

### CONCLUSION

The Board failed to provide public notice of a special meeting in substantial compliance with N.D.C.C. § 44-04-20.

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<sup>2</sup> N.D.C.C. § 44-04-17.1(9)(a) (definition of “meeting”).

<sup>3</sup> N.D.A.G. 2010-O-07 and N.D.C.C. § 44-04-20(4).

<sup>4</sup> N.D.C.C. § 44-04-20(6).

<sup>5</sup> N.D.A.G. 2009-O-03.

<sup>6</sup> N.D.A.G. 2009-O-04 and N.D.A.G. 2007-O-02.

<sup>7</sup> See N.D.C.C. § 44-04-20(6).

<sup>8</sup> See N.D.C.C. § 44-04-20(5).

### STEPS NEEDED TO REMEDY VIOLATION

The minutes from the meeting must be provided to Senator Larsen and any other citizen who requests them free of 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.<sup>9</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>10</sup>

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<sup>9</sup> N.D.C.C. § 44-04-21.1(2).

<sup>10</sup> Id.