

**OPEN RECORDS AND MEETINGS OPINION
2012-O-05**

DATE ISSUED: March 20, 2012

ISSUED TO: Elma Township

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Dennis Knudson asking whether Elma Township violated N.D.C.C. § 44-04-19 by holding meetings without public notice.

FACTS PRESENTED

The members of the Elma Township Board of Supervisors are Chairman and Road Overseer Dave Kluge, Vice Chairman Aaron Medenwaldt, and Supervisor Gary Schlitz.

In September 2011, two culverts were installed in two separate locations in Elma Township. Only two of the three Township supervisors knew about the work. No public notice was provided of any meetings regarding this work.¹

On November 14, 2011, Supervisor Aaron Medenwaldt called the two other supervisors and told them that he wanted to use a particular contractor for work in the township. He authorized the work because the contractor was about to leave the area. No notice was posted for a meeting in November.

ISSUE

Whether the Elma Township Board of Supervisors provided notice of meetings held in September and November of 2011 in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

A township is a political subdivision and is therefore a "public entity" subject to the open records and meeting laws.² The township board of supervisors is the "governing body"

¹ The chairman also did not receive notice that the meetings took place.

² N.D.C.C. § 44-04-17.1(10), (13)(b) (definition of "political subdivision" includes any . . . township); N.D.A.G. 2009-O-18; N.D.A.G. 98-O-09.

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of the township as that phrase is defined in N.D.C.C. § 44-04-17.1(6).³ Two of the supervisors constitute a quorum for performance of duties of the board.⁴ It is a “meeting” of a governing body when a quorum of a governing body discusses public business.⁵ The definition of “meeting” is not limited to face-to-face gatherings of a quorum of the members of a governing body, thus, a “meeting” could occur via telephone conversations.⁶

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.⁷ Notice of meetings must be posted at the principal office of the governing body, if such exists, and at the location of the meeting on the day of the meeting.⁸ In addition, townships must file meeting notices in the county auditor’s office or post the notice on the township website, if any.⁹ In the event of an emergency or special meeting, in addition to the requirements already listed, notification must also be provided to the public entity’s official newspaper at the same time as the members of the governing body’s members are notified.¹⁰ This notice only has to be published if a statute requires publication.¹¹

According to the Township, Supervisor Medenwaldt and Supervisor Schiltz decided on September 3, 2011, to install culverts. No notice of a meeting was provided. On November 14, 2011, Supervisor Medenwaldt authorized work to be done on behalf of the township and then called each supervisor to inform them of the work he ordered. No public notice was provided regarding the telephone conversations.¹²

As I have explained in past opinions, township governing bodies are subject to the notice requirements in the open meetings law.¹³ Whenever a quorum meets, in person or by telephone, to discuss public business, it is a meeting that must be publicly noticed in advance.¹⁴

³ N.D.A.G. 98-O-09; N.D.C.C. § 58-06-01.

⁴ N.D.C.C. § 58-06-06.

⁵ N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

⁶ N.D.A.G. 2011-O-17; N.D.A.G. 2000-O-08.

⁷ N.D.C.C. § 44-04-20.

⁸ N.D.C.C. § 44-04-20(4).

⁹ *Id.*

¹⁰ N.D.C.C. § 44-04-04(6).

¹¹ N.D.A.G. 2009-O-18. There is no statutory requirement for the board of township supervisors to publish notice of special meetings.

¹² See generally N.D.A.G. 2011-O-17 (intentional telephone calls to a quorum to provide information is a “meeting”).

¹³ N.D.A.G. 2009-O-18.

¹⁴ See N.D.C.C. § 44-04-20; N.D.C.C. § 44-04-17.1(9).

Here, members of the township supervisors failed to take any steps to provide public notice of the special meetings it held in September and November. Thus, it is my opinion that the Elma Township Board of Supervisors failed to provide notice in substantial compliance in violation of the open meetings law.

CONCLUSION

The Elma Township Board of Supervisors failed to provide notice of special meetings in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

The Board of Township Supervisors must hold a special meeting, noticed pursuant to N.D.C.C. § 44-04-20, and recreate the two special meetings held in September and November. Minutes of the recreated special meetings must be drafted. A copy of the minutes must be filed with the county auditor and mailed to the Office of Attorney General.

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. § 44-04-21.2.¹⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁶

Wayne Stenehjem
Attorney General

mkk/vkk

¹⁵ N.D.C.C. § 44-04-21.1(2).

¹⁶ Id.