

**OPEN RECORDS AND MEETINGS OPINION
2014-O-01**

DATE ISSUED: January 14, 2014

ISSUED TO: Barnes County Municipal Airport Authority

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Lori Jury asking whether the Barnes County Municipal Airport Authority violated N.D.C.C. § 44-04-20 by discussing a matter not specifically included on the agenda of a special meeting.

FACTS PRESENTED

The Barnes County Municipal Airport Authority (BCMAA) held a special meeting on October 11, 2013, to discuss the following posted agenda topic: "North valley aircraft building repairs and heating system."¹ During the meeting, the BCMAA discussed two bid proposals to install natural gas boilers in the hangar used by North Valley Aircraft.² Included in the discussions were the cost of the boilers and whether the tenants should share in the investment by raising their rent.³ A motion was made to discuss the rent terms and lease of North Valley Aircraft, but the motion was rescinded after the BCMAA recognized the item was not specifically included on the agenda.⁴ The meeting concluded with the BCMAA approving the low bidder for installation of the boilers.⁵ Ms. Lori Jury asks whether the BCMAA violated N.D.C.C. § 44-04-20 when it discussed

¹ See Letter from BCMAA to Att'y Gen.'s office (Dec. 11, 2013) (on file with author); see also Email from Shawn Anderson to Karen Christenson (Oct. 10, 2013, 3:10 p.m.) (on file with author).

² See Letter from BCMAA to Att'y Gen.'s office (Dec. 11, 2013) (on file with author); see also Minutes, BCMAA Special Meeting (Oct. 11, 2013).

³ Id.

⁴ Id.

⁵ Id.

the rent and lease terms of the North Valley Aircraft tenants without specifically listing these topics on the special meeting agenda.⁶

ISSUE

Whether the BCMAA violated N.D.C.C. § 44-04-20 by discussing a matter not specifically included on the agenda of the October 11, 2013, special meeting.

ANALYSIS

All meetings of a public entity's governing body must be open to the public and preceded by sufficient notice.⁷ An airport authority such as the BCMAA is a "political subdivision" as defined in N.D.C.C. § 44-04-17.1(11) and is therefore a "public entity" subject to open meetings law.⁸

A notice for a special meeting must contain the date, time, location, and topics to be considered.⁹ This list of topics is also referred to as an agenda.¹⁰ "The purpose of an agenda is to provide sufficient information to interested members of the public concerning the governing body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate."¹¹ "Topics that may be considered at an emergency or special meeting are limited to those included in the notice."¹² The word "topic" can be defined as "[a] subject of discussion or conversation."¹³ Notice of meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.¹⁴

⁶ See Letter from Lori Jury to Att'y Gen.'s office (Oct. 21, 2013). Although Ms. Jury includes a number of allegations in her letter to this office, whether the BCMAA violated open meetings law by discussing items not included on the agenda is the only allegation this office can review pursuant to N.D.C.C. § 44-04-21.1.

⁷ N.D.C.C. §§ 44-04-19 and 44-04-20.

⁸ N.D.C.C. § 44-04-17.1(13)(b); see also N.D.A.G. 2009-O-20; N.D.A.G. 2003-O-15.

⁹ N.D.C.C. § 44-04-20(6).

¹⁰ N.D.C.C. § 44-04-20; N.D.A.G. 2011-O-14; N.D.A.G. 2010-O-12; N.D.A.G. 2005-O-17.

¹¹ N.D.A.G. 2011-O-15; N.D.A.G. 2009-O-03; N.D.A.G. 2008-O-23.

¹² N.D.C.C. § 44-04-20; see also N.D.A.G. 2011-O-14; N.D.A.G. 2010-O-12; N.D.A.G. 2005-O-17.

¹³ N.D.A.G. 2011-O-15 (citing The American Heritage Dictionary 1450 (4th coll. ed. 2010)).

¹⁴ N.D.C.C. § 44-04-20(9).

The October 11, 2013, BCMAA meeting was noticed as a special meeting to discuss repairs and the heating system to the hangar leased to the North Valley Aircraft. The discussion on potentially having the tenants help pay for the repairs and heating system by increasing the rent falls within the context of the posted agenda topics.¹⁵ At this point in the meeting, a member of the BCMAA voiced the opinion that several other items in the lease should also be addressed if changes to the rent terms to pay for repairs and the heating system were made.¹⁶ However, recognizing that changing additional terms of the lease unrelated to the boiler and heating costs was outside the scope of the posted agenda topic, the BCMAA immediately ceased this consideration and instead resumed its discussion on the bid proposals for the boilers.¹⁷

I find the brief exchange regarding the terms of the tenant's lease did not violate open meetings law. The BCMAA rectified any potential violation when it acknowledged its brief reference to the need to change additional lease terms if the rent terms were changed would be inappropriate, immediately abandoned the issue, and moved on to discuss items directly related to the posted agenda topics. It is my opinion the BCMAA did not violate open meetings law.

CONCLUSION

It is my opinion a brief reference to the possibility of changing a tenant's lease terms, including increasing the rent to help finance the building repairs and heating system installation, did not violate open meetings law.

Wayne Stenehjem
Attorney General

slv/nrm/vkk

¹⁵ See N.D.A.G. 2011-O-15 (the appointment of a special assistant city attorney to represent the city commission was related to and within the scope of the grievance hearing described in the notice).

¹⁶ See Letter from the BCMAA to Att'y Gen.'s office (Dec. 11, 2013) (on file with author).

¹⁷ Id.