

**OPEN RECORDS AND MEETINGS OPINION
2015-O-02**

February 26, 2015

Mr. Jerol Gohrick
Supervisor Chairman
Lindahl Township
10619 77th St NW
McGregor, ND 58755-9569

Dear Mr. Gohrick:

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Joel and Stephanie Vagts asking whether Lindahl Township violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting without public notice.

FACTS PRESENTED

The Lindahl Township Board of Supervisors (Board) held a meeting on December 8, 2014.¹ Joel and Stephanie Vagts allege the meeting was not made public as it was not preceded by public notice.²

ISSUE

Whether Lindahl Township provided notice of its December 8, 2014, meeting 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 law.³ Meetings of a governing body of a public entity are required

¹ Letter from Paul Erras, President of Lindahl Township Bd., to Att’y Gen.’s office (Feb. 5, 2015).

² Letter from Joel and Stephanie Vagts to Att’y Gen.’s office (Jan. 16, 2015).

³ N.D.C.C. § 44-04-17.1(13)(b); N.D.C.C. § 44-04-17.1(11) (definition of “political subdivision” includes any ... township); see also N.D.A.G. 2012-O-05; N.D.A.G. 2012-O-04; N.D.A.G. 2011-O-16.

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to be open to the public unless otherwise provided by law.⁴ The township board of supervisors is the “governing body” of the township as that phrase is defined in N.D.C.C. § 44-04-17.1(6). Therefore, meetings of the Board are required to be open to the public unless a specific law provides otherwise.⁵ Notice of the meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20, which requires notice to be posted at the public entity’s office,⁶ if there is one, filed with the county auditor or posted on the public entity’s website, and posted at the location of the meeting on the day of the meeting.⁷

The Board confirms it held a regular meeting on December 8, 2014, however it did not post any notice for the meeting.⁸ Although it does not appear the Board was attempting to keep the meeting a secret, providing notice is required before holding a public meeting. Lindahl Township violated open meeting laws when it failed to provide notice in compliance with N.D.C.C. § 44-04-20 for its December 8, 2014, meeting.

CONCLUSION

The Lindahl Township Board of Supervisors failed to provide notice of its December 8, 2014, meeting in substantial compliance with N.D.C.C. § 44-04-20.

⁴ N.D.C.C. § 44-04-19.

⁵ Id.

⁶ Townships typically do not have offices so this requirement would not apply.

⁷ N.D.C.C. § 44-04-20(4). Additionally, under the general open meeting laws, if the meeting is a special meeting, notice must be provided to the official newspaper, but is not required to be published. N.D.C.C. § 44-04-20(6). Meeting notices only have to be published if a statute specifically requires publication. For example, when the township electors meet for either the annual or special meetings as set forth in N.D.C.C. ch. 58-04, notice is required to be published in a legal newspaper published in the township, or, if none exists, in the county’s official newspaper. The requirements to publish the meeting notices for meetings held pursuant to N.D.C.C. ch. 58-04 are in addition to those notice requirements found in the open meeting law. See N.D.A.G. 2011-O-16 (citing N.D.C.C. § 58-04-01 requiring publication ten days prior to annual township meeting, N.D.C.C. § 58-04-03 requiring publication ten days prior to special meeting, and N.D.C.C. § 58-04-19 requiring publication five days prior to township meeting held to organize and elect officers on date other than the annual meeting). Since this was not an annual or special meeting and no election took place, the meeting at issue in this opinion did not require publication.

⁸ Letter from Paul Eraas, President of Lindahl Township Bd., to Att’y Gen.’s office (Feb. 5, 2015) and Email from Jerol Gohrick, Supervisor on Lindahl Township Bd., to Sandra DePountis, Asst. Att’y Gen. (Feb. 9, 2015, 9:47 AM).

STEPS NEEDED TO REMEDY VIOLATION

The minutes from the December 8, 2014, meeting must be provided to Joel and Stephanie Vagts free of charge.

I also urge the Board to review its responsibilities under open record and meeting laws. Manuals, fact sheets, opinions, and other information are available on the Attorney General's website: www.ag.nd.gov.

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. § 44-04-21.2.⁹ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁰

Wayne Stenehjem
Attorney General

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cc: Joel and Stephanie Vagts

⁹ N.D.C.C. § 44-04-21.1(2).

¹⁰ Id.