

**OPEN RECORDS AND MEETINGS OPINION  
2015-O-03**

DATE ISSUED: March 12, 2015

TO: Board of Supervisors, Tioga Township

**CITIZEN'S REQUEST FOR OPINION**

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

**FACTS PRESENTED**

The Tioga Township Board of Supervisors (Board) held a meeting on November 20, 2014.<sup>1</sup> Cody Weflen alleges the meeting was not made public as it was not preceded by public notice.<sup>2</sup>

**ISSUE**

Whether Tioga Township provided notice of its November 20, 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 meetings law.<sup>3</sup> Meetings of a governing body of a public entity are required to be open to the public unless otherwise provided by law.<sup>4</sup> 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

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<sup>1</sup> Letter from Richard Nelson, Chairman of Tioga Township Bd., to Sandra L. DePountis, Asst. Att’y Gen. (Mar. 4, 2015).

<sup>2</sup> Letter from Cody Weflen to Att’y Gen.’s office (Feb. 1, 2015).

<sup>3</sup> 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. 2015-O-02; N.D.A.G. 2012-O-05; N.D.A.G. 2012-O-04; N.D.A.G. 2011-O-16.

<sup>4</sup> N.D.C.C. § 44-04-19.

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the public unless a specific law provides otherwise.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup>

The Board confirms it held a regular meeting on November 20, 2014, however it did not post any notice for the meeting.<sup>8</sup> "Although it does not appear the Board was attempting to keep the meeting a secret, providing notice is required before holding a public meeting."<sup>9</sup> Tioga Township violated the open meetings law when it failed to provide notice in compliance with N.D.C.C. § 44-04-20 for its November 20, 2014, meeting.

### CONCLUSION

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

### STEPS NEEDED TO REMEDY VIOLATION

The minutes from the November 20, 2014, meeting must be provided to Cody Weflen free of charge.

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<sup>5</sup> Id.

<sup>6</sup> Townships typically do not have offices so this requirement would not apply.

<sup>7</sup> N.D.C.C. § 44-04-20(4), (6). 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. 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.

<sup>8</sup> Letter from Richard Nelson, Chairman of Tioga Township Bd., to Sandra L. DePountis Asst. Att'y Gen. (Feb. 5, 2015).

<sup>9</sup> N.D.A.G. 2015-O-02.

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I also urge the Board to review its responsibilities under open records and meetings law. Manuals, fact sheets, opinions, and other information are available on the Attorney General's website: [www.ag.nd.gov](http://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.<sup>10</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>11</sup>

Wayne Stenehjem  
Attorney General

sld  
cc: Cody Weflen

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<sup>10</sup> N.D.C.C. § 44-04-21.1(2).

<sup>11</sup> Id.