

**OPEN RECORDS AND MEETINGS OPINION  
2016-O-15**

DATE ISSUED: July 27, 2016

ISSUED TO: Fargo Park District

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Dave Roepke, news director for *The Forum*, asking whether the Fargo Park District's Board of Commissioners violated N.D.C.C. § 44-04-20 by failing to provide proper notice of selection committee meetings.

**FACTS PRESENTED**

On January 5, 2016, the Fargo Park District's (District) Board of Commissioners (Board)<sup>1</sup> issued a news release regarding a soon to be open executive director position with the District.<sup>2</sup> The news release provided information on the application and hiring process, including naming a "selection committee," composed of two Board members and three local business leaders who would be interviewing candidates and providing a recommendation to the full Board.<sup>3</sup>

The selection committee met on February 15, 2016, to review the applications for the executive director position and eight candidates were ultimately selected to be interviewed.<sup>4</sup>

The committee next met on March 1, 2016, to conduct the eight interviews.<sup>5</sup> The committee narrowed the list of applicants to two individuals.

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<sup>1</sup> The Board has five members.

<sup>2</sup> News Release, *Executive Director position for Fargo Park District posted Tuesday, January 5th* (Jan. 5, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016); Minutes, Selection Comm. (Feb. 15, 2016).

<sup>5</sup> Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016).

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Final interviews were conducted when the committee met on March 14, 2016.<sup>6</sup> The committee then selected candidates it recommended to the full Board for the executive director position.

### ISSUE

Whether the Fargo Park District's Board of Commissioners provided notice of selection committee meetings in substantial compliance with N.D.C.C. § 44-04-20.

### ANALYSIS

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.<sup>7</sup> A "meeting" is defined as a "formal or informal gathering or a work session... of (a) quorum of the members of the governing body of a public entity regarding public business."<sup>8</sup> A "governing body" includes any group of persons, *regardless of membership*, acting collectively pursuant to authority delegated to that group by the governing body.<sup>9</sup> Under this definition, when a governing body delegates authority to two or more people, to perform any function on its behalf, including gathering information, reporting, or recommending or taking action, a "committee" is formed that is subject to open meeting laws.<sup>10</sup> A governing body does not need to make a formal motion to create a committee.<sup>11</sup> Rather, if the governing body of a public entity consents, authorizes, or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed.<sup>12</sup> When a quorum of the committee gathers to perform the function delegated to them, it is holding a "meeting" that must be noticed in compliance with N.D.C.C. § 44-04-20, and minutes must be taken in compliance with N.D.C.C. § 44-04-21.

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.<sup>13</sup> The notice must provide the date, time, and location of the meeting, an agenda of the topics to be considered, and the subject matter of any

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<sup>6</sup> *Id.*; see also Letter from Gregory B. Selbo, to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 19, 2016).

<sup>7</sup> N.D.C.C. § 44-04-19.

<sup>8</sup> N.D.C.C. § 44-04-17.1(9)(a).

<sup>9</sup> N.D.C.C. § 44-04-17.1(6) (emphasis added).

<sup>10</sup> N.D.A.G. 2014-O-05, N.D.A.G. 2009-O-12.

<sup>11</sup> N.D.A.G. 2016-O-05.

<sup>12</sup> *Id.*

<sup>13</sup> N.D.C.C. § 44-04-20(1).

executive session expected to be held.<sup>14</sup> For regularly scheduled meetings, the notice must be posted at the principal office of the governing body, if one exists, at the location of the meeting on the day of the meeting, and, for state level bodies, either filed with the Secretary of State's office or on the public entity's website.<sup>15</sup> For emergency or special meetings, notice must also be given to the public entity's official newspaper,<sup>16</sup> and to any representatives of the news media who requested to be notified of the special meetings.<sup>17</sup> Finally, notice must be given for all regular or special meetings to anyone who requested to receive notice of any upcoming meetings.<sup>18</sup>

### **February 15, 2016, meeting**

No notice was provided for the February 15, 2016, selection committee meeting.<sup>19</sup> The Board did not think the committee was subject to the open meetings law because there was not a quorum of Board members on the committee.<sup>20</sup> As explained in past opinions, a committee subject to open meeting laws can be formed by "any group of persons, regardless of membership."<sup>21</sup> Thus, even though only two Board members served on the committee, the committee was still subject to open meeting laws because a group of people were delegated the public business of interviewing and recommending an

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<sup>14</sup> N.D.C.C. § 44-04-20(2). The law requires a level of specificity from special meeting agendas that is not required for regular meetings because a governing body may only discuss topics during the special meeting that are included in the notice. N.D.C.C. § 44-04-20(6); N.D.A.G. 2016-O-05.

<sup>15</sup> N.D.C.C. § 44-04-20(4).

<sup>16</sup> If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. N.D.C.C. § 44-04-20(6).

<sup>17</sup> N.D.C.C. § 44-04-20(6). Regular meetings are those meetings which the public entity has filed a schedule in January with either the Secretary of State's office or on the public entity's website. N.D.C.C. § 44-04-20(3). Since no such schedule was filed for the selection committee, all meetings of the committee are "special" meetings that must comply with laws governing special meetings. N.D.A.G. 2016-O-05.

<sup>18</sup> N.D.C.C. § 44-04-20(5). A public entity should provide notice in whatever way is agreed upon by the person and the public entity or in a manner that is practical. N.D.A.G. 2016-O-05.

<sup>19</sup> Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016).

<sup>20</sup> *Id.* The Fargo Park District Board of Commissioners has five members. The selection committee has two Board members and three members from local businesses.

<sup>21</sup> N.D.C.C. § 44-04-17.1(6) (definition of "governing body" includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body"), N.D.A.G. 2014-O-05; N.D.A.G. 2010-O-01.

applicant for the executive director position . It was therefore a violation of open meeting laws when no notice was provided for the February 15, 2016, meeting.

### **March 1, 2016, meeting**

After conferring with its attorney, the Board realized the selection committee was subject to open meeting laws, so the committee provided notice prior to the March 1, 2016, meeting.<sup>22</sup> The District issued a "news release" providing the date, time, and location of this meeting, along with information that the committee would be conducting interviews of the first round of eight applicants for the executive director position.<sup>23</sup> This news release was posted on the District's website, at the location of the meeting, emailed to news media outlets including *The Forum*, and emailed to those who signed up to be on the distribution list to receive District news releases.<sup>24</sup> Notice for the March 1, 2016, committee meeting complied with N.D.C.C. § 44-04-20.<sup>25</sup>

### **March 14, 2016, meeting**

The selection committee issued a "news release" for its March 14, 2016, meeting that included the date, time, and location of the meeting, along with information that the committee would be holding its second round of interviews of the two finalists for the executive director position.<sup>26</sup> The news release was posted on the District's website, at the location of the meeting, emailed to the news media outlets, and emailed to those

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<sup>22</sup> Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016).

<sup>23</sup> News Release, *First Round of Interviews Scheduled for Fargo Park District Executive Director Position*, (Feb. 26, 2016).

<sup>24</sup> *Id.*; see also Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016) and attached exhibit 4-A (news release distribution list). A reporter for *The Forum*, Tu-Uyen Tran, contacted the District's Director of Human Resources and was verbally provided the schedule of interviews during a telephone call; however, he never requested to receive personal notice of any upcoming meetings of the selection committee. See Letters from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016, and Apr. 19, 2016). A member of *The Forum* did attend part of this meeting.

<sup>25</sup> Letters from Gregory Selbo to Attorney General's office (Apr. 8, 2016 and Apr. 19, 2016) and attached exhibit 4-A (news release distribution list). Although not subject to this opinion, the committee did not take minutes of the March 1, 2016, meeting. Because this was a meeting subject to open meeting laws, minutes must be taken in compliance with N.D.C.C. § 44-04-21(2).

<sup>26</sup> News Release, *Second Round of Interviews Scheduled for Fargo Park District Executive Director Position* (Mar. 9, 2016).

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individuals on the distribution list.<sup>27</sup> Notice for the March 14, 2016, committee meeting complied with N.D.C.C. § 44-04-20.<sup>28</sup>

### CONCLUSION

The Fargo Park District's Board of Commissioners violated open meeting laws when it failed to provide notice of its selection committee's February 15, 2016, meeting. Notice for the selection committee's March 1 and March 14, 2016, meetings complied with N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATION

The selection committee created minutes for the February 15, 2016, meeting. A copy of the February 15, 2016, minutes must be provided to Mr. Roepke, free of charge. The committee must also create minutes of the March 1 and March 14 meetings, in compliance with N.D.C.C. § 44-04-21(2), and provide the minutes to anyone requesting, 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>29</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>30</sup>

Wayne Stenehjem  
Attorney General

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cc: Dave Roepke (via email only)

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<sup>27</sup> *Id.*; see also Letter from Gregory B. Selbo, Att'y for Fargo Park Dist., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 8, 2016 and Apr. 19, 2016) and attached exhibit 4-A news release distribution list).

<sup>28</sup> Again, no minutes were taken of the March 14, 2016, meeting as required by N.D.C.C. § 44-04-21(2).

<sup>29</sup> N.D.C.C. § 44-04-21.1(2).

<sup>30</sup> *Id.*