

**OPEN RECORDS AND MEETINGS OPINION
2016-O-17**

DATE ISSUED: August 11, 2016

ISSUED TO: Lidgerwood Rural District Ambulance Service Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Candee Werth asking whether the Lidgerwood Rural District Ambulance Service Board violated N.D.C.C. § 44-04-18 by unreasonably delaying access to requested records and N.D.C.C. § 44-04-20 by failing to properly post notice of meetings.

FACTS PRESENTED

The Lidgerwood Rural District Ambulance Service Board (Board) held a quarterly meeting on April 26, 2016.¹ Ms. Candee Werth, former business manager with the Board, requested minutes of this meeting.² Ms. Werth alleges the Board and its committees met after this meeting without properly posting notice.³

The Board held a special meeting on May 25, 2016.⁴ Ms. Werth alleges the Board failed to properly post notice of this meeting and discussed items not on the agenda at the meeting.⁵

¹ Email from Yvonne Nelson to Sandra L. DePountis, Asst. Att'y Gen. (June 1, 2016 9:12 pm); Letters from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016).

² Email from Candee Werth to Att'y Gen.'s office (May 13, 2016, 8:34 am).

³ Id.

⁴ Letters from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016).

⁵ Email from Candee Werth to Att'y Gen.'s office (May 30, 2016, 5:03 pm).

ISSUES

1. Whether the Board violated N.D.C.C. § 44-04-18 by unreasonably delaying access to public records.
2. Whether the Board, or its committees, held meetings without providing notice in substantial compliance with N.D.C.C. § 44-04-20 after its April 26, 2016, quarterly meeting.
3. Whether the Board provided notice of its May 25, 2016, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
4. Whether the Board violated N.D.C.C. § 44-04-20 by discussing matters not included on the notice and agenda for the May 25, 2016, special meeting.

ANALYSIS

Issue One

The open meetings law applies to rural ambulance service districts and the boards that serve them because the districts are created by statute to exercise public authority or perform a governmental function.⁶ They are therefore public entities subject to the state's open records and open meetings law.⁷

"Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours."⁸ When a public entity receives a request for records, it must, within a reasonable time period, either provide the records or explain why the records are not being provided.⁹

Generally, disclosure of working papers and preliminary drafts can be delayed until work is discontinued on the draft or the draft is provided to a member of the governing body.¹⁰ However, the law specifically provides that disclosure of draft minutes may not be conditioned on the approval of the minutes by the governing body.¹¹

⁶ N.D.A.G. 2015-O-12; N.D.A.G. 2013-O-01; N.D.A.G. 2011-O-03; N.D.A.G. 2010-O-14; see also N.D.C.C. ch. 11-28.3.

⁷ See N.D.C.C. § 44-04-17.1(13)(b) (definition of "public entity").

⁸ N.D.C.C. § 44-04-18(1).

⁹ N.D.C.C. § 44-04-18.

¹⁰ N.D.C.C. § 44-04-18(9).

¹¹ N.D.C.C. § 44-04-21(2).

OPEN RECORDS AND MEETINGS OPINION 2016-O-17

August 11, 2016

Page 3

Ms. Werth requested the draft minutes of the April 26, 2016, quarterly meeting on May 2 and 6, 2016.¹² The Board explains that it was without an office business manager to prepare the minutes after Ms. Werth's departure.¹³ It is unclear when exactly the minutes were prepared, but this office received a draft of the meeting minutes on June 1, 2016.¹⁴ The Board only provided the draft meeting minutes to Ms. Werth on either June 7 or 8, 2016, after insistence from this office.¹⁵ It is my opinion that the Board failed to provide the April 26, 2016, draft meeting minutes within a reasonable time.

Issue Two

All meetings of the governing body of a public entity are required to be open to the public unless otherwise specifically provided by law and must be preceded by sufficient public notice in compliance with N.D.C.C. § 44-04-20. A meeting is defined as a "formal or informal gathering ... of [a] quorum of the members of the governing body of a public entity regarding public business."¹⁶ A governing body is the "multimember body responsible for making a collective decision on behalf of a public entity" and includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."¹⁷ Therefore, when a quorum of the Board, or any committee thereof, is present and public business is discussed, a

¹² Email from Candee Werth to Att'y Gen.'s office (May 13, 2016, 8:34 am). Ms. Werth also requested a recording of the meeting. According to the Board, there was no recording of this meeting. See Letter from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016). Opinions must be based on the facts presented by the public entity. N.D.C.C. § 44-04-21.1.

¹³ Email from Yvonne Nelson to Sandra L. DePountis, Asst. Att'y Gen. (June 1, 2016, 9:12 pm); Letter from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016).

¹⁴ Email from Yvonne Nelson to Sandra L. DePountis, Asst. Att'y Gen. (June 1, 2016, 9:12 pm) with attached April 26, 2016, meeting minutes.

¹⁵ Emails from Sandra DePountis, Asst. Att'y Gen., to Yvonne Nelson and DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., (June 2, 2016, 8:20 am; June 6, 2016, 11:39 am); Email from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra DePountis, Asst. Att'y Gen. (June 29, 2016, 7:11pm).

¹⁶ N.D.C.C. § 44-04-17.1(9)(a).

¹⁷ N.D.C.C. § 44-04-17.1(6).

OPEN RECORDS AND MEETINGS OPINION 2016-O-17

August 11, 2016

Page 4

meeting takes place that must be noticed in substantial compliance with N.D.C.C. § 44-04-20.¹⁸

Ms. Werth alleges the Board met after the April 26, 2016, quarterly meeting without providing public notice.¹⁹ Ms. Werth also alleges the Board appointed a building committee that met without public notice.²⁰ In response to this office's inquiries, the Board denies it met without providing notice after the April 26, 2016, meeting or that it appointed a committee.²¹ The question on whether the Board or any committee thereof met without posting notice is one of fact.²² North Dakota law requires open meeting opinions to be based on the facts given by the public entity.²³ It is therefore my opinion that the Board did not meet to discuss public business without providing public notice.

Issue Three

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity in substantial compliance with N.D.C.C. § 44-04-20. For regularly scheduled meetings, the notice must be posted at the principal office of the governing body, if such exists, at the location of the meeting on the day of the meeting, and, for city level bodies, either filed with the city auditor's office or posted on the public entity's website.²⁴ For emergency or special meetings, notice must also be given to the public entity's official newspaper and any representative of the news media who

¹⁸ Ms. Werth also raises allegations against squad meetings. Email from Candee Werth to Att'y Gen.'s office (May 13, 2016, 8:34 am). These are meetings of squad members and ambulance employees and not Board meetings and are therefore not subject to open meetings law. Email from Yvonne Nelson to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016, 9:12 pm); Letters from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra DePountis, Asst. Att'y Gen. (June 10, 2016). Although a Board member may attend the squad meetings, no quorum of the governing body of a public entity is present and it is therefore not a violation of open meetings law to not provide notice of the squad meetings.

¹⁹ Email from Candee Werth to Att'y Gen.'s office (May 13, 2016, 8:34 am).

²⁰ Id.

²¹ Email from Yvonne Nelson to Sandra L. DePountis, Asst. Att'y Gen. (June 1, 2016, 9:12 pm); Letters from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016).

²² N.D.A.G. 2011-O-02; N.D.A.G. 2001-O-18; N.D.A.G. 2001-O-15.

²³ N.D.C.C. § 44-04-21.1(1).

²⁴ N.D.C.C. § 44-04-20(4).

requested to be notified of the special meeting.²⁵ Finally, notice must be given for all regular or special meetings to anyone requesting such information.²⁶

The Board held a special meeting on May 25, 2016. An agenda was prepared that morning for the meeting and was posted at the Board's central office, provided to the city auditor, and posted at the location of the meeting.²⁷ However, the official newspaper was not notified and did not receive the agenda for the special meeting.²⁸ Because emergency or special meetings may be called upon short notice, notifying the official newspaper is of particular importance because it compensates for the possibility that the public may not be aware of the special or emergency meeting.²⁹ It is therefore my opinion that the Board violated N.D.C.C. § 44-04-20 when it failed to notify the newspaper of its May 25, 2016, special meeting.

Issue Four

A notice for a special meeting must contain the date, time, location, and topics to be considered.³⁰ This list of topics is also referred to as an agenda.³¹ "Topics that may be considered at an emergency or special meeting are limited to those included in the notice."³² The word "topic" can be defined as "[a] subject of discussion or conversation."³³

²⁵ N.D.C.C. § 44-04-20(6). 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.

²⁶ N.D.C.C. § 44-04-20(6).

²⁷ Letter from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016). No one requested to receive personal notice of upcoming meetings.

²⁸ Letter from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016). The Board asserts the notice would not have made the publication deadline. The purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can send a reporter to the meeting if it desires to do so. N.D.A.G. 2010-O-07; N.D.A.G. 2003-O-20.

²⁹ N.D.A.G. 2010-O-07; N.D.A.G. 2005-O-20.

³⁰ N.D.C.C. § 44-04-20(2).

³¹ N.D.C.C. § 44-04-20; N.D.A.G. 2014-O-01.

³² N.D.C.C. § 44-04-20(6).

³³ N.D.A.G. 2014-O-01; N.D.A.G. 2011-O-15 (citing The American Heritage Dictionary 1450 (4th coll. ed. 2010)).

OPEN RECORDS AND MEETINGS OPINION 2016-O-17

August 11, 2016

Page 6

The May 25, 2016, special meeting agenda³⁴ included the following:

1. Business manager
2. Air Conditioner and Generator Placement
3. Open House³⁵

During the meeting, the Board reviewed applications and hired a new business manager.³⁶ Next, the Board discussed the overhang and contractor for the air conditioner and generator placement. The Board also discussed dates and advertising for its next open house.

After such discussions, a new member of the Board asked questions regarding how the Board operates including whether there were subcommittees and questions on assessments.³⁷ The Board also addressed an issue brought forth by an individual regarding funds and a new building. Finally, questions were raised regarding a former business manager and possible related investigations. These last discussions were not included as topics to be discussed at the special meeting.³⁸ Accordingly, it is my opinion that the Board violated N.D.C.C. § 44-04-20 by discussing topics at its May 25, 2016, special meeting that were not included in its notice and agenda.

CONCLUSIONS

1. The Board violated N.D.C.C. § 44-04-18 by unreasonably delaying access to draft meeting minutes.
2. The Board did not violate N.D.C.C. § 44-04-20 by holding meetings without public notice.

³⁴ See Agenda, Lidgerwood Rural Dist. Ambl. Bd. (May 25, 2016); see also Letter from DuWayne Irwin, President, Lidgerwood Rural Dist. Ambl. Bd., to Sandra L. DePountis, Asst. Att'y Gen. (June 10, 2016).

³⁵ The requester did not ask about the sufficiency of the content of the notice. However, the Board should make sure that the agenda provides the public with adequate information about the topics to be considered at a special meeting.

³⁶ Minutes, Lidgerwood Rural Dist. Ambl. Bd. (May 25, 2016).

³⁷ Id.

³⁸ I recognize that individuals from the community were the ones who brought forward some of the additional agenda items. The Board must take control of the meeting and remind the public that it cannot discuss topics not included in the special meeting agenda.

OPEN RECORDS AND MEETINGS OPINION 2016-O-17

August 11, 2016

Page 7

3. The Board violated N.D.C.C. § 44-04-20 by failing to provide notice of its May 25, 2016, special meeting to the official newspaper.
4. The Board violated N.D.C.C. § 44-04-20 by discussing topics at its May 25, 2016, special meeting that were not included on the notice and agenda.

STEPS NEEDED TO REMEDY VIOLATIONS

The Board must review its May 25, 2016, special meeting minutes to ensure they reflect the discussion that took place during the meeting and add any information that was omitted. The updated meeting minutes must be provided to Ms. Werth, 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. § 44-04-21.2.³⁹ It may also result in personal liability for the person or persons responsible for the noncompliance.⁴⁰

Wayne Stenehjem
Attorney General

sld

cc: Candee Werth (via email only)

³⁹ N.D.C.C. § 44-04-21.1(2).

⁴⁰ Id.