

**OPEN RECORDS AND MEETINGS OPINION
2018-O-07**

DATE ISSUED: May 17, 2018

ISSUED TO: Beulah School Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jerald Isaak asking whether the Beulah School Board violated N.D.C.C. § 44-04-20 by failing to properly notice a committee meeting.

FACTS PRESENTED

The Personnel, Evaluation & Policy Committee, a committee of the Beulah School Board, held a meeting on February 13, 2018, at 5:30 p.m.¹ The School Board generally holds its meetings in the Board Room of the school, however, this meeting of the Committee was held in the high school staff room.² Mr. Isaak questions whether the meeting complied with open meeting requirements.

ISSUE

Whether the notice and agenda of the Beulah School Board's Personnel, Evaluation & Policy Committee meeting held on February 13, 2018, complied with N.D.C.C. § 44-04-20.

¹ Letter from Stacey McLaughlin, Chairperson, Beulah Bd. Of Educ., to Office of Att'y Gen. (Mar. 19, 2018).

² The School Board explains that the Committee's meeting agenda was created from an old file that referenced the staff room and was not changed prior to the meeting. Therefore, the Chairperson, upon recognizing the location posted on the agenda, directed the Committee to meet in the staff room so as to be in compliance with the location stated in the agenda. The superintendent located Mr. Isaak and escorted him to the staff room, and they arrived at 5:33 p.m., shortly after the meeting started. Letter from Stacey McLaughlin, Chairperson, Beulah Bd. of Educ., to Office of Att'y Gen. (Mar. 19, 2018).

ANALYSIS

School board meetings must be open to the public unless otherwise specifically provided by law.³ 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."⁴ A "governing body" includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.⁵ 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 meetings law.⁶ When a quorum of the committee gathers to perform the function delegated, it is holding a "meeting" that must be noticed in compliance with N.D.C.C. § 44-04-20.⁷

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity, which includes meetings of the full governing body and meetings of any committee thereof.⁸ For regularly scheduled meetings, the notice must be posted at the principal office of the governing body or committee, if one exists, at the location of the meeting on the day of the meeting, given to anyone requesting to receive notice of upcoming meetings, and, for school boards and its committees, either filed with the county auditor or posted on the school's website.⁹ For emergency or special meetings, notice must also be given to the public entity's official newspaper and to any representatives of the news media requesting to be notified of the special meeting.¹⁰

Notice of public meetings must include the date, time, and location of the meeting, an agenda with topics to be considered, and notice of any expected executive session.¹¹ The topics that may be considered at an emergency or special meeting are limited to

³ N.D.C.C. § 44-04-19; N.D.A.G. 2010-O-11; N.D.A.G. 2005-O-21; N.D.A.G. 2000-O-09; N.D.A.G. 2000-O-05.

⁴ N.D.C.C. § 44-04-17.1(9)(a).

⁵ N.D.C.C. § 44-04-17.1(6).

⁶ N.D.A.G. 2016-O-15; N.D.A.G. 2014-O-05; N.D.A.G. 2009-O-12. A governing body does not need to make a formal motion to create a committee. 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. N.D.A.G. 2016-O-15.

⁷ N.D.A.G. 2016-O-15. Minutes must also be taken in compliance with N.D.C.C. § 44-04-21.

⁸ N.D.C.C. § 44-04-20.

⁹ N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2016-O-09.

¹⁰ N.D.C.C. § 44-04-20(6).

¹¹ N.D.C.C. § 44-04-20(2).

those specifically included in the notice.¹² Topics referenced on the agenda for special meetings must be specifically listed and the agenda cannot use catch-all phrases such as “old business” or “new business.”¹³

Regular meetings are those meetings in which the public entity filed a schedule, in the case of a school board or its committee, with the county auditor or posted the schedule on the school’s website.¹⁴ The Personnel, Evaluation & Policy Committee does not file a schedule of upcoming meetings¹⁵ so all meetings of the Committee are considered “special” meetings that must comply with the laws governing special meetings.¹⁶

The Committee posted its agenda at the school, at its principal office, and outside of the Board Room.¹⁷ However, the agenda was not posted on the school’s website or with the county auditor, outside of the staff room, or provided to the newspaper.¹⁸ The agenda also listed “additions to the agenda,” as an agenda item which is similar to the vague phrases of “old business” and “new business” which are not appropriate for a special meeting agenda.¹⁹ It is therefore my opinion that the notice and agenda of the Committee’s February 13, 2018, special meeting failed to comply with the requirements of N.D.C.C. § 44-04-20.

CONCLUSION

The notice and agenda of the Personnel, Evaluation & Policy Committee’s February 13, 2018, special meeting failed to comply with the requirements of N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

The Beulah School Board’s Personnel, Evaluation & Policy Committee should review its February 13, 2018, meeting minutes and update them to be as detailed as possible, adding in any recollection of discussions or comments made during this meeting. A copy of the updated minutes must be provided to Mr. Isaak, and anyone else requesting them, free of charge. I would also urge the School Board and its committees to utilize

¹² N.D.C.C. § 44-04-20(6).

¹³ N.D.A.G. 2009-O-03; N.D.A.G. 2005-O-17.

¹⁴ N.D.C.C. § 44-04-20(3).

¹⁵ Letter from Stacey McLaughlin, Chairperson, Beulah Bd. of Educ., to Office of Att’y Gen. (Mar. 19, 2018).

¹⁶ N.D.A.G. 2016-O-04; N.D.A.G. 2005-O-17; N.D.A.G. 2005-O-10.

¹⁷ Letter from Stacey McLaughlin, Chairperson, Beulah Bd. of Educ., to Office of Att’y Gen. (Mar. 19, 2018).

¹⁸ *Id.*

¹⁹ Agenda, Beulah Pub. Sch. Dist. #27, Policy/Evaluation/Personal (PEP) (Feb. 13 2018).

OPEN RECORDS AND MEETINGS OPINION 2018-O-07

May 17, 2018

Page 4

the resources found on the Office of Attorney General's website regarding its obligations under the open meetings law.

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. § 44-04-21.2.²⁰ It may also result in personal liability for the person or persons responsible for the noncompliance.²¹

Wayne Stenehjem
Attorney General

sld

cc: Jerald Isaak (via email only)

²⁰ N.D.C.C. § 44-04-21.1(2).

²¹ *Id.*