

**OPEN RECORDS AND MEETINGS OPINION
2020-O-04**

DATE ISSUED: May 20, 2020

ISSUED TO: Williams County School Board for District #8

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Leon Walter asking whether Williams County School Board for District #8 violated N.D.C.C. § 44-04-20 by failing to properly notice a special meeting.

FACTS PRESENTED

On March 23, 2020, the Williams County School Board for School District #8 held a special meeting. Notice for the meeting was originally posted by the school's business manager on March 20, 2020, with the following agenda:

1. Call to order
2. Pledge
3. Board recognition of Representative Organization
4. Approve consultant for working committee
5. Approve ad for CMAR for Round Prairie remodel
6. Adjourn¹

The business manager reposted notice on March 22, 2020, with an additional agenda item, "Ray and Associates contract," that was mistakenly left off of the original notice.²

During the meeting, the School Board discussed its contract with Ray and Associates for a superintendent search.³ During this discussion, the Board President commented "[m]y recommendation would be to offer a one-year contract to Mrs. Zietz. But that's just

¹ Email from Sherri L. Heser, Bus. Manager, Williams Cnty. Sch. Dist. #8, and others, with attached meeting agenda (Mar. 20, 2020, 7:54 PM).

² Email from Sherri L. Heser, Bus. Manager, Williams Cnty. Sch. Dist. #8, and others, with attached amended meeting agenda (Mar. 22, 2020, 6:51 PM).

³ Minutes, Williams Cnty. Sch. Bd. (Mar. 23, 2020).

another thought. We can talk about that at a later meeting.”⁴ The School Board ultimately voted to discontinue the contract with Ray and Associates.⁵

ISSUE

Whether the Williams County School Board properly noticed its March 23, 2020, special meeting.

ANALYSIS

Notice of School Board meetings must be posted in substantial compliance with N.D.C.C. § 44-04-20, which requires an agenda listing the date, time, and location of the meeting, a list of topics to be discussed, and any executive session.⁶ A school board’s agenda must be posted at the school’s principal office, either on the school’s website or with the county auditor, at the location of the meeting on the day of the meeting, and given to anyone who has requested to receive personal notice.⁷ For special meetings, the agenda must also be given to the entity’s official newspaper.⁸

The meeting agenda must include all topics the governing body expects to discuss at the time the notice is prepared.⁹ Because special or emergency meetings may be called on very short notice, the topics that may be considered at such meetings are limited to those specifically listed in the notice.¹⁰ Therefore, if a governing body wants to add an agenda item to a special meeting that was not included in the notice, the governing body must amend its agenda and re-post the notice at the locations required by N.D.C.C. § 44-04-20, before the meeting, in order to consider the topic at the meeting.¹¹

⁴ Letter from Dawn Hollingsworth, Pres., Williams Cnty. Sch. Bd., to Att’y Gen.’s Office (received Apr. 13, 2020).

⁵ Minutes, Williams Cnty. Sch. Bd. (Mar. 23, 2020); see also Letter from Dawn Hollingsworth, Pres., Williams Cnty. Sch. Bd., to Att’y Gen.’s Office (received Apr. 13, 2020).

⁶ N.D.C.C. § 44-04-20(1), (2).

⁷ N.D.C.C. § 44-04-20(4), (5); see also N.D.C.C. § 44-04-20(6).

⁸ N.D.C.C. § 44-04-20(6).

⁹ N.D.C.C. § 44-04-20(2); N.D.A.G. 2015-O-13; N.D.A.G. 2005-O-18.

¹⁰ N.D.C.C. § 44-04-20(6). N.D.A.G. 2010-O-05. Therefore, notice of special meetings cannot contain general terms that may have multiple meanings or “catch-all” phrases, such as “new business.” N.D.A.G. 2018-O-07.

¹¹ N.D.A.G. 2010-O-05.

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The School Board properly amended its agenda prior to the special meeting to include the additional topic and posted the amended agenda at the locations required by N.D.C.C. § 44-04-20.¹²

During the special meeting, the School Board discussed the Ray and Associates contract for the superintendent search.¹³ While discussing potentially rescinding the contract, a comment was made to offer a one-year extension to the interim superintendent, as an alternative.¹⁴ The Board ultimately voted to rescind the Ray and Associates contract and did not further discuss or take any action on the interim superintendent's contract.¹⁵

"The purpose of an agenda is to provide sufficient 'information to interested members of the public concerning the governing body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate.'"¹⁶ However, once a topic is clearly identified, the notice does not need to include a detailed itemization of every potential statement or position of the members of the governing body.¹⁷ To do so would be infeasible and speculative. Here, while the School Board was discussing a properly noticed agenda topic, Ray and Associates Contract, the School Board president made a pertinent comment that related to her reasoning for favoring rescission of the contract. It is my opinion that the statement was related and within the scope of the topic listed on the special meeting notice. Therefore, no violation of open meetings law occurred.

¹² Email from Sherri L. Hesper, Bus. Manager, Williams Cnty. Sch. Dist. #8, to Williams Cnty. Sch. Distr. #8 Sch. Bd. and others (Mar. 22, 2020, 6:51 PM); (Amended) Agenda, Williams Cnty. Sch. Bd. (Mar. 23, 2020); Email from Dawn Hollingsworth, Pres., Williams Cnty. Sch. Bd., to Att'y Gen.'s Office (Apr. 27, 2020, 2:17 PM).

¹³ Minutes, Williams Cnty. Sch. Bd. (Mar. 23, 2020); Letter from Dawn Hollingsworth, Pres., Williams Cnty. Sch. Bd., to Att'y Gen.'s Office (received Apr. 13, 2020).

¹⁴ Letter from Dawn Hollingsworth, Pres., Williams Cnty. Sch. Bd., to Att'y Gen.'s Office (received Apr. 13, 2020).

¹⁵ Minutes, Williams Cnty. Sch. Bd. (Mar. 23, 2020).

¹⁶ N.D.A.G. 2011-O-15 *citing* N.D.A.G. 2009-O-03.

¹⁷ See N.D.A.G. 2011-O-15; see *also* N.D.A.G. 2014-O-01 (a brief reference to a topic not specifically included in the agenda, when the governing body immediately ceased its discussion upon recognizing it was not appropriate to discuss at the special meeting, did not violate open meetings law).

CONCLUSION

The Williams County School Board did not violate open meetings law in its discussion regarding an amended agenda item that was posted in compliance with N.D.C.C. § 44-04-20.

Wayne Stenehjem
Attorney General

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cc: Leon Walter (via email only)