

**OPEN RECORDS AND MEETINGS OPINION
2021-O-07**

DATE ISSUED: July 8, 2021

ISSUED TO: North Prairie Regional Water District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Crystal Hendrickson asking whether North Prairie Regional Water District (District) violated N.D.C.C. § 44-04-20 when the District improperly noticed a special meeting and failed to create meeting minutes consistent with N.D.C.C. § 44-04-21.

FACTS PRESENTED

On March 10, 2021, the District nominating committee held a special meeting.¹ The purpose of the nominating committee special meeting was to approve the slate of candidates for directorship.² The minutes of the 2019 nominating committee³ were approved at the March 10, 2021, special meeting.⁴ Notice for the special nominating committee meeting was posted at the main office where the meeting was held and sent to an individual who had requested notice.⁵

¹ Letter from John Bearman, Chairman of N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (received Mar. 18, 2021).

² Minutes, N. Prairie Reg'l Water Dist., Nominating Comm., Special Meeting (Mar. 10, 2021).

³ The requester explained that no nominating committee meeting was held in 2020; therefore, the 2019 minutes were the minutes from the last meeting. E-mail from Crystal Hendrickson, to Att'y Gen.'s Office (Mar. 10, 2021, 2:29 PM).

⁴ Minutes, N. Prairie Reg'l Water Dist., Nominating Comm., Special Meeting (Mar. 10, 2021).

⁵ Letter from John Bearman, Chairman of N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (received Mar. 18, 2021).

The requestor for this opinion alleges that the District failed to post notice of this special meeting on the official website or send the notice to the newspaper.⁶ Ms. Hendrickson also alleges that the 2019 nominating committee meeting minutes, which were approved at the March 10, 2021, nominating committee special meeting, were insufficient because they did not show the meeting date or the times when the meeting was called to order and adjourned.⁷

ISSUE

1. Whether the District violated open meetings laws by failing to properly notice its special nominating committee meeting.
2. Whether the nominating committee minutes complied with N.D.C.C. § 44-04-21(2).

ANALYSIS

Issue 1

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.⁸ A meeting is defined as “a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of [a] quorum of the members of the governing body of a public entity regarding public business.”⁹ A quorum means “one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.”¹⁰ Governing body means “the multimember body responsible for making a collective decision on behalf of a public entity.”¹¹ The definition of a “governing body” includes “any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.”¹² Under this definition, “any group of persons” delegated authority to perform any function on behalf of a governing

⁶ E-mail from Crystal Hendrickson, to Att’y Gen.’s Office (Mar. 10, 2021, 2:29 PM).

⁷ *Id.*

⁸ N.D.C.C. § 44-04-19.

⁹ N.D.C.C. § 44-04-17.1(9)(a).

¹⁰ N.D.C.C. § 44-04-17.1(15).

¹¹ N.D.C.C. § 44-04-17.1(6).

¹² *Id.*

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body, including fact gathering, reporting or recommending action, as well as taking action, is subject to the state's open meetings law.¹³

Further, a governing body does not need to make a formal motion to create a committee.¹⁴ Rather, if the governing body of a public entity consents or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed.¹⁵ "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."¹⁶

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.¹⁷ 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 executive session expected to be held.¹⁸ 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.¹⁹

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 filed with the appropriate office or on the public entity's website.²⁰ For emergency or special meetings, notice must also be given to the public entity's official newspaper,²¹ and to any representatives of the news media who requested to

¹³ N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05; N.D.A.G. 2013-O-12; N.D.A.G. 2009-O-12; N.D.A.G. 2009-O-05; N.D.A.G. 2007-O-13; N.D.A.G. 2006-O-03.

¹⁴ N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05.

¹⁵ N.D.A.G. 2016-O-05; N.D.A.G. 2014-O-05; *see also* N.D.A.G. 2013-O-12.

¹⁶ N.D.A.G. 2016-O-15.

¹⁷ N.D.C.C. § 44-04-20(1); N.D.A.G. 2016-O-15.

¹⁸ N.D.C.C. § 44-04-20(2).

¹⁹ N.D.C.C. § 44-04-20(6); N.D.A.G. 2016-O-05.

²⁰ N.D.C.C. § 44-04-20(4); N.D.A.G. 2016-O-15.

²¹ 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).

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be notified of the special meetings.²² Finally, notice must be given for all regular or special meetings to anyone who asked to receive notice of any upcoming meetings.²³

At its annual meeting, the District Board of Directors called for volunteers for the nominating committee.²⁴ The nominating committee was created by a governing body, and therefore was subject to the open meetings law. The District states that it only posted notice of the meeting at the location of the meeting and did not notify the official newspaper of the special committee meeting. Therefore, the District violated the open meetings law because notice of the nominating committee meeting was not in substantial compliance with N.D.C.C. § 44-04-20.

Issue 2

Minutes, which must be kept of all public meetings, must include, at a minimum:

1. The names of the members attending the meeting;
2. The date and time the meeting was called to order and adjourned;
3. A list of topics discussed regarding public business;
4. A description of each motion made and whether the motion was seconded;
5. The results of every vote taken at the meeting; and
6. The vote of each member on every recorded roll call vote.²⁵

Unless otherwise provided by law, votes of a governing body must be open, public votes, and all “nonprocedural” votes must be recorded roll call votes.²⁶ A member of the public should be able to determine how an individual member voted on all

²² 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 nominating committee, all meetings of the committee are "special" meetings that must comply with laws governing special meetings. N.D.A.G. 2016-O-05.

²³ N.D.C.C. § 44-04-20(5).

²⁴ Transcript, N. Prairie Rural Water Dist. and N. Cent. Reg'l Water Dist., Ann. Meeting (Apr. 30, 2019).

²⁵ N.D.C.C. § 44-04-21(2).

²⁶ N.D.C.C. § 44-04-21(1). “Nonprocedural” includes all votes that pertain to the merits of the matter before the governing body.

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nonprocedural matters by reading the minutes.²⁷ Minutes are not required to be a verbatim report, and it is not necessary for the minutes to reflect the specific discussion or concerns raised by members of the public at the meetings.²⁸ Rather, minutes must include a separate listing of the topics discussed regarding public business by the governing body.²⁹

The Office of Attorney General does not review any alleged inaccuracies in meeting minutes, but will only review the content of the meeting minutes to determine whether they meet the minimum requirements set out above.³⁰ The office also cannot review the sufficiency of minutes until the minutes have been approved by the governing body, because a deficiency in the minutes may still be cured by the body.³¹

The 2019 nominating committee minutes, approved at the March 10, 2021, committee meeting, did not include all of the requirements by law. While the District acknowledged that the minutes did not reflect the date of the meeting,³² the District stated they “know that they need to be dated” and explained it was “an honest mistake by the nominating committee secretary.”³³ However, the minutes provided also did not include sufficient information on final action taken by the committee or results of any roll call votes. Therefore, the minutes approved by the nominating committee on March 10, 2021, did not comply with the requirements of N.D.C.C. § 44-04-21(2).³⁴

²⁷ N.D.A.G. 2005-0-10 (meeting minutes that state “motion carried” were insufficient to determine how each member of the governing body voted on nonprocedural matters and were therefore insufficient to comply with N.D.C.C. § 44-04-21).

²⁸ N.D.A.G. 2016-0-06; N.D.A.G. 2013-0-06; N.D.A.G. 2010-0-06; N.D.A.G. 98-0-14.

²⁹ N.D.A.G. 2018-O-10.

³⁰ N.D.A.G. 2016-0-06; N.D.A.G. 2013-0-06; N.D.A.G. 2004-O-16.

³¹ N.D.A.G. 2001-O-01; N.D.A.G. 98-O-25.

³² Letter from Teresa Sundsbak, Gen. Manager, N. Prairie Reg'l Water Dist., to Att'y Gen.'s Office (Apr. 7, 2021).

³³ *Id.*

³⁴ While the requester specifically asked about the approved 2019 nominating committee minutes, this office also reviewed the draft 2021 nominating committee minutes provided by the District. The 2021 nominating committee minutes do include the date and time of the committee meeting; however, no vote results or roll call votes are included. Every action ends with “motion carried.” These minutes therefore also appear insufficient under N.D.C.C. § 44-04-21(2) and it would also be advisable for the District to update the 2021 nominating committee minutes before approval at the next meeting.

CONCLUSION

1. The District violated open meetings laws when it failed to provide sufficient notice of its nominating committee meeting.
2. The approved nominating committee meeting minutes did not contain the items required by N.D.C.C. § 44-04-21(2).

STEPS NEEDED TO REMEDY VIOLATION

I urge the District to review its obligations under the open meetings law and utilize the materials available on the North Dakota Attorney General's website, particularly the notice requirements of N.D.C.C. § 44-04-20.

Further, the 2019 nominating committee special meeting minutes must be updated and approved at the next meeting with all the items that meet the requirements of N.D.C.C. § 44-04-21. The nominating committee must provide copies of the updated committee minutes to Ms. Hendrickson, the official newspaper, and anyone else who requests them, 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. § 44-04-21.2.³⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.³⁶

Wayne Stenehjem
Attorney General

cc: Crystal Hendrickson (via email only)

³⁵ N.D.C.C. § 44-04-21.1(2).

³⁶ *Id.*