



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPEN RECORDS AND MEETINGS OPINION
2024-O-07

DATE ISSUED: September 11, 2024

ISSUED TO: Stanley Rural Ambulance District

CITIZEN'S REQUEST FOR OPINION

Justin Hagel requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether Stanley Rural Ambulance District violated N.D.C.C. §§ 44-04-20 and 44-04-18 by failing to properly notice a special meeting and responding improperly to a request for records.

FACTS PRESENTED

On April 5, 2022, at 6:30 p.m., the Stanley Rural Ambulance District (District) held a special meeting (Special Meeting A).¹ The purpose of the meeting was to approve election results and appoint new District officers.² At approximately 6:40 p.m., the District president announced a second special meeting (Special Meeting B) would be held in 5 minutes.³ The president posted notice of Special Meeting B on the entrance door of the ambulance building and e-mailed the auditors and the county newspaper prior to the start of the meeting.⁴ At 6:45 p.m. the District conducted Special Meeting B during which they appointed a medical director and reviewed an ambulance service agreement.⁵

The next day, Ambulance Resources, LLC, through its attorney, requested records from the District regarding Special Meeting B.⁶ The District responded to the request on April 14 and April 28, 2022.

¹ Letter from Justin Hagel, Att'y, Vogel Law Firm, to N.D. Att'y Gen. (May 4, 2022). *See also*, Notice, Special Meeting, Stanley Rural Ambulance Serv. Dist. (Apr. 5, 2022, 6:30 PM) and Email from Charlie Sorenson, President, Stanley Rural Ambulance Dist., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (June 4, 2022, 1:53 AM).

² Letter from Justin Hagel, Att'y, Vogel Law Firm, to N.D. Att'y Gen. (May 4, 2022). *See also*, Agenda, Special Meeting, Stanley Rural Ambulance Serv. Dist. (Apr. 5, 2022, 6:30 PM).

³ Letter from Justin Hagel, Att'y, Vogel Law Firm, to N.D. Att'y Gen. (May 4, 2022).

⁴ Email from Charlie Sorenson, President, Stanley Rural Ambulance Dist., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (June 4, 2022, 1:53 AM).

⁵ *Id.*

⁶ Letter from Justin Hagel, Att'y, Vogel Law Firm, to N.D. Att'y Gen. (May 4, 2022).

ISSUES

1. Whether the Stanley Rural Ambulance District properly noticed its Special Meeting B on April 5, 2022, in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Stanley Rural Ambulance District's response to a request for records was in compliance with N.D.C.C. § 44-04-18.

ANALYSIS

Issue 1

The public must be notified of all meetings of a public entity.⁷ Meeting notices must include “the date, time, and location of the meeting, and, if practicable, the topics to be discussed.”⁸ The notice “must be posted at the principal office of the governing body holding the meeting, if [one] exists, and at the location of the meeting on the day of the meeting.”⁹ Meeting notices also must be filed in the appropriate office or, at the time this meeting occurred,¹⁰ posted on the public entity's website.¹¹ For special meetings, notice must be provided to the public entity's official newspaper and to any representatives of the news media asking to be notified of the special meeting.¹²

Opinions issued by this office must be based on the “facts given by the public entity.”¹³ According to the District president, his decision to hold Special Meeting B was made the same day Special Meeting A was held, April 5, 2022. He relays that no other District members were aware of the second special meeting before his announcement.¹⁴ The Special Meeting B notice included the date, time (hand-written), location of the meeting, and an agenda of topics to be considered.¹⁵ He further stated the Special Meeting B notice was posted “on the exterior door of the ambulance building, where the meeting was to be held” and was emailed to the Mountrail

⁷ N.D.C.C. § 44-04-20(1).

⁸ N.D.C.C. § 44-04-20(2); *see also* N.D.A.G. 2021-O-10.

⁹ N.D.C.C. § 44-04-20(4); *see also* N.D.A.G. 2021-O-10, *citing* N.D.A.G. 2018-O-28 and N.D.A.G. 2018-O-04; N.D.A.G. 2022-O-12; N.D.A.G. 2022-O-11.

¹⁰ N.D.C.C. § 44-04-20(3); S.B. 2232, 2023 N.D. Leg. changed the law and now, if a public entity has a website, the notice must be on the website.

¹¹ N.D.C.C. § 44-04-20(4); *see also* N.D.A.G. 2022-O-12, *citing* N.D.A.G. 2021-O-07; N.D.A.G. 2022-O-11.

¹² N.D.C.C. § 44-04-20(6); *see also* N.D.A.G. 2021-O-10, *citing* N.D.C.C. § 44-04-20(6) and N.D.A.G. 2018-O-28; N.D.A.G. 2022-O-12; N.D.A.G. 2022-O-11.

¹³ N.D.C.C. § 44-04-21.1(1); *see also* N.D.A.G. 2022-O-12, N.D.A.G. 2022-O-11; N.D.A.G. 2021-O-10.

¹⁴ Email from Charlie Sorenson, President, Stanley Rural Ambulance Dist., to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (June 4, 2022, 1:53 AM).

¹⁵ Notice, Special Meeting, Stanley Rural Ambulance Dist. (Apr. 5, 2022, 6:45 PM).

County Auditor, Stanley City Auditor, and the Mountrail County Promoter before the second meeting started.¹⁶ Special meetings may be called upon short notice as long as the notice is provided to the public and the media at the same time the governing body's members are notified.¹⁷ Therefore, it is my opinion the District complied with the notice requirements of N.D.C.C. § 44-04-20 and provided proper notice of its April 5, 2022, Special Meeting B.

Issue 2

“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.”¹⁸ “The open records law is limited to records in the possession of a public entity and a public entity is not required to create or compile a record that does not exist.”¹⁹ “Thus, the open records law is limited to records in the possession of a public entity and the public entity generally has no obligation to obtain records it does not have.”²⁰

The District, through its attorney, responded to the request for records on April 14 and April 28, 2022.²¹ On April 14, 2022, the District's attorney provided responsive documents and stated “I am told that there are no other documents that are responsive to this request.”²² The District continued to search for more documents until the April 28, 2022, response wherein the District's attorney confirmed “all my client's responsive documents were produced on April 14th.”²³ This office is required by law to take the “facts given by the public entity.”²⁴ Here, the District provided the responsive records and promptly relayed they had no additional records to provide. Therefore, it is my opinion the District's response was consistent with open records laws.

¹⁶ Email from Charlie Sorenson, President, Stanley Rural Ambulance Dist., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (June 4, 2022, 1:53 AM).

¹⁷ N.D.A.G. 2011-O-01.

¹⁸ N.D.C.C. § 44-04-18; *see also*, N.D.A.G. 2019-O-13; N.D.A.G. 2018-O-27; N.D.A.G. 2014-O-22.

¹⁹ N.D.A.G. 2014-O-22, *citing* N.D.C.C. § 44-04-18(3), N.D.A.G. 2005-O-11; N.D.A.G. 2003-O-09; N.D.A.G. 2003-O-01; *see also* N.D.A.G. 2019-O-13; N.D.A.G. 2018-O-27.

²⁰ N.D.A.G. 2019-O-13, *citing* N.D.C.C. § 44-04-17.1(16); N.D.A.G. 2014-O-22; N.D.A.G. 2010-O-02; N.D.A.G. 2004-O-05.

²¹ Email from Chris Nyhus, Att'y, Nyhus Law Firm, to Jesse Walstad, Att'y, Vogel Law Firm (Apr. 14, 2022, 5:02 PM) and Letter from Chris Nyhus, Att'y, Nyhus Law Firm, to Jesse Walstad, Att'y, Vogel Law Firm (Apr. 28, 2022).

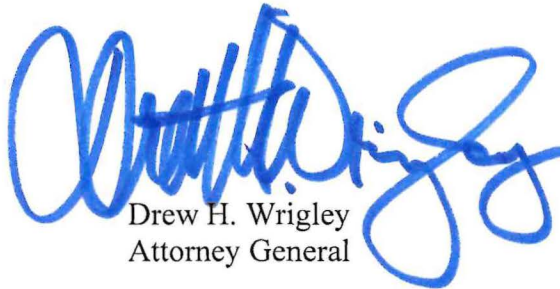
²² Email from Chris Nyhus, Att'y, Nyhus Law Firm, to Jesse Walstad, Att'y, Vogel Law Firm (Apr. 14, 2022, 5:02 PM).

²³ Letter from Chris Nyhus, Att'y, Nyhus Law Firm, to Jesse Walstad, Att'y, Vogel Law Firm (Apr. 28, 2022).

²⁴ N.D.C.C. § 44-04-21.1(1).

CONCLUSIONS

1. The Stanley Rural Ambulance District properly noticed its April 5, 2022, Special Meeting B in substantial compliance with N.D.C.C. § 44-04-20.
2. The Stanley Rural Ambulance District's response to a request for records was in compliance with N.D.C.C. § 44-04-18 because no additional records responsive to the request existed.



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AML/mjh

cc: Jesse Walstad (via e-mail)