



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

www.attorneygeneral.nd.gov

(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

OPEN RECORDS AND MEETINGS OPINION
2024-O-09

DATE ISSUED: September 17, 2024

ISSUED TO: Apple Creek School Board

CITIZEN'S REQUEST FOR OPINION

Jamie Jacobson requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Apple Creek School Board violated N.D.C.C. §§ 44-04-20 and 44-04-19.2 by failing to properly notice a special meeting and failing to properly describe the general subject matter and legal authority before entering an executive session.

FACTS PRESENTED

On August 18, 2022, Ms. Jacobson contacted this office regarding an alleged violation of the Open Meetings Law.¹ On September 30, 2022, this office sent a letter to Coty Sicble, President of the Apple Creek School Board (Board), requesting information about the special meeting held on August 17, 2022, the meeting notice for the meeting, and the procedures used for any executive sessions.² On April 17, 2024, this office sent a follow-up letter to Coty Sicble informing her the office had not received a response from the Board and that failure to respond would result in the opinion being based on the facts received from the requestor.³ To date, this office has not received a response from the Board. The only information this office reviewed was the information contained in Ms. Jacobson's request for an opinion and an emergency meeting announcement and meeting minutes posted on the Apple Creek Elementary School's (School) website.⁴

¹ E-mail from Jamie Jacobson to Off. of Att'y Gen. (Aug. 18, 2022, 3:08 PM).

² Letter from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. to Coty Sicble, President, Apple Creek Sch. Bd. (Sept. 30, 2022).

³ Letter from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. to Coty Sicble, President, Apple Creek Sch. Bd. (Apr. 17, 2024); Email from Melissa J. Hamilton, Paralegal, Off. of Att'y Gen., to Coty Sicble, President, Apple Creek Sch. Bd., (Apr. 17, 2024, 11:26 AM).

⁴ *Emergency School Board Meeting for Principal and Teacher Replacement*, APPLE CREEK ELEM. SCH., <https://applecreekschool.org/emergency-school-board-meeting-for-principal-and-teacher-replacement/> (last visited Sept. 17, 2024); Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022).

According to the requester, the Board posted, in the late afternoon of August 17, 2022, that an emergency meeting would be held later that day at the school, at 5:30 pm.⁵ Per an announcement on the School's website, the purpose of the Board's meeting was to discuss principal and teacher replacements "due to recent resignations" and "to fill the vacancies."⁶ The meeting minutes posted on the School's website indicate the emergency meeting was "to discuss a recent resignation."⁷ At the beginning of the meeting, the public was informed an executive session would be held.⁸ The minutes provide that the Board closed the meeting to go into an executive session under N.D.C.C. § 44-04-19.2.⁹ The first executive session lasted from 5:49 p.m. to 6:18 p.m.¹⁰ After returning to the open portion of the meeting, the Board explained it needed to go back into executive session to visit with a teacher and her union representative.¹¹ The second executive session lasted from 6:23 p.m. to 8:04 p.m.¹² The attendees were allowed back in the room and the Board explained the teacher rescinded her resignation.¹³ Veering from the announcement and purpose of the meeting, the Board asked if there was anything else to add from the public and accepted public comments regarding the hot lunch program and board member biographies for the School's Parent Teacher Organization (PTO) page.¹⁴ Following the comments, the Board adjourned the meeting.¹⁵

ISSUES

1. Whether the Board's August 17, 2022, special meeting notice was in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Board's announcement before proceeding into the executive sessions gave the public sufficient notice of the general subject matter and the legal authority for holding the executive sessions.

⁵ E-mail from Jamie Jacobson to Off. of Att'y Gen. (Aug. 18, 2022, 3:08 PM); Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022).

⁶ *Emergency School Board Meeting for Principal and Teacher Replacement*, APPLE CREEK ELEM. SCH., <https://applecreekschool.org/emergency-school-board-meeting-for-principal-and-teacher-replacement/> (last visited Sept. 29, 2024). Because the Board failed to provide this office with a copy of the notice it used for the special meeting, this office assumes the announcement on the School's website was the notice provided for the meeting.

⁷ Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022).

⁸ E-mail from Jamie Jacobson to Off. of Att'y Gen. (Aug. 18, 2022, 3:08 PM).

⁹ Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ E-mail from Jamie Jacobson to Off. of Att'y Gen. (Aug. 18, 2022, 3:08 PM); Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022).

¹⁴ *Id.*

¹⁵ *Id.*

ANALYSIS

Issue One

Notice of school board meetings “must be posted in substantial compliance with N.D.C.C. § 44-04-20.”¹⁶ 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.¹⁷ Meeting notices must be posted at the principal office of the governing body, if such an office exists, and at the location of the meeting on the day of the meeting.¹⁸ For school boards, notice must also be filed in the office of the county auditor¹⁹ or posted on the public entity’s website at the time of this meeting.²⁰ 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.²¹

The topics that may be considered at an emergency or special meeting are limited to those included in the notice.²² “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.’”²³ “The importance of identifying what will take place at a meeting is greater for special meetings because they are unpredictable and often scheduled on short notice.”²⁴ General terms or phrases that could have numerous meanings are not adequate for a special meeting notice because they lack the specificity required to give the public meaningful notice of what the governing body intends to discuss during a special meeting.²⁵

¹⁶ N.D.A.G. 2020-O-05.

¹⁷ N.D.C.C. § 44-04-20(2).

¹⁸ N.D.C.C. § 44-04-20(4).

¹⁹ N.D.C.C. § 44-04-20(4); N.D.A.G. 2022-O-11 (a school board is considered under “all other bodies” in N.D.C.C. § 44-04-20(4)); *see also* N.D.A.G. 2021-O-10; N.D.A.G. 2020-O-04; N.D.A.G. 2012-O-06.

²⁰ *See* N.D.C.C. § 44-04-20(4). The notice requirement recently changed to require meeting notices be posted on the entity’s website if they have a website. S.B. 2232, 68th N.D. Legis. Assemb., Reg. Sess., 2023 N.D. Laws, ch. 394, § 4. However, at the time of the Board’s special meeting, the website posting requirement was optional.

²¹ N.D.C.C. § 44-04-20(6).

²² *Id.*

²³ N.D.A.G. 2020-O-04 (quoting N.D.A.G. 2011-O-15).

²⁴ N.D.A.G. 2021-O-04 (quoting N.D.A.G. 2019-O-17; N.D.A.G. 2018-O-28; N.D.A.G. 2011-O-15).

²⁵ N.D.A.G. 2019-O-17; N.D.A.G. 2018-O-28; N.D.A.G. 2013-O-01.

While this office must base its opinion on the facts provided by the public entity,²⁶ the Board has failed to provide this office with the necessary information. For purposes of this opinion, this office relies on the facts included in requester's email and the Board's announcement and meeting minutes posted on the School's website.

The Board posted an announcement that an emergency meeting would be held on August 17, 2022, at 5:30 p.m. to discuss "principal and teacher replacements."²⁷ This announcement does not include the location of the special meeting. While the requester states the meeting was at the school, the fact that a meeting regularly occurs at the same place does not excuse the Board's responsibility to include the location on the meeting notice.²⁸ "The location of a meeting is a material element of the notice" and a notice that fails to list the meeting location does not substantially comply with N.D.C.C. § 44-04-20.²⁹ Therefore, if the Board's meeting announcement on the School's website was intended to be the meeting notice, the Board violated N.D.C.C. § 44-04-20 by failing to include the location of the meeting in the meeting announcement.

Additionally, a special meeting notice cannot contain general terms or phrases that could have numerous meanings because they lack the specificity required to give the public meaningful notice of what will be discussed during a special meeting.³⁰ This office has previously concluded that "HR/ Staff Review" was a vague topic agenda item that did not sufficiently describe the specific topic the Commission knew it would be discussing during the special meeting.³¹ In that case, the Commission knew that it would be discussing an executive director's job performance and his

²⁶ N.D.C.C. § 44-04-21.1(1).

²⁷ *Emergency School Board Meeting for Principal and Teacher Replacement*, APPLE CREEK ELEM. SCH., <https://applecreekschool.org/emergency-school-board-meeting-for-principal-and-teacher-replacement/> (last visited Sept. 17, 2024).

²⁸ N.D.A.G. 2005-O-17 (stating the Board's failure to include location of the meeting in the notice was not in substantial compliance with N.D.C.C. § 44-04-20 even when the Board regularly held its meetings at the county courthouse).

²⁹ N.D.A.G. 2005-O-17; N.D.A.G. 2005-O-08; N.D.A.G. 2004-O-19.

³⁰ N.D.A.G. 2021-O-08 n. 11 (stating an agenda item which stated "1. Ordinance Change - 1st Reading" was a vague reference that did not adequately specify the topic that would be considered during the special meeting); N.D.A.G. 2019-O-17; N.D.A.G. 2014-O-13 (general and vague agenda topics that could have numerous meanings are not detailed enough to apprise the public of the topics that would be considered during the special meeting); N.D.A.G. 2013-O-01 (the topic "special policy meeting" on a special meeting agenda was not specific enough to comply with N.D.C.C. § 44-04-20 because the phrase could have several meanings and did not adequately apprise the public of the topics to be discussed); N.D.A.G. 2008-O-23 (the phrase "Work Session – Public Forum" was too general and could have numerous meanings and did not meaningfully inform the public about what would be discussed at the regular meeting); N.D.A.G. 2004-O-13 (agenda item of "Collaborative Bargaining" failed to give a meaningful notice of the subject matter to be considered during the meeting).

³¹ N.D.A.G. 2019-O-17.

resignation, as well as the hiring of an interim executive director.³² Thus, the topic "HR/ Staff Review" did not sufficiently describe the topics that were actually discussed at the Commission's special meeting.³³ Likewise, the agenda here, "principal and teacher replacements," does not sufficiently inform the public of the topics which were intended to be discussed at the special meeting, a teacher's resignation. Accordingly, the Board's announcement lacked the level of specificity required for a special meeting notice.

Moreover, a meeting notice must contain information about "any executive session expected to be held during the meeting."³⁴ This office has "consistently recognized that executive sessions must be specifically listed in the agenda for a special meeting and failure to do so violates open meetings law."³⁵ The Board's announcement for the special meeting failed to specifically mention that the teacher's resignation would be considered in an executive session, as required by N.D.C.C. § 44-04-20(2).

Further, the Board invited and accepted public comments regarding the hot lunch program and board member biographies for the School PTO page. "Topics that may be considered or discussed at an emergency or special meeting are limited to those included in the notice."³⁶ In this instance, these topics were not listed on the Board's meeting announcement and therefore should not be discussed during the special meeting. The Board should discontinue the practice of asking the public if there is other business to discuss during a special meeting unless the topic is specifically included in the special meeting notice.³⁷ Thus, the Board violated N.D.C.C. § 44-04-20(6) by discussing matters that were not properly noticed for the August 17 special meeting.

Lastly, the Board was required to post its notice at its principal office, if such an office exists, and at the location of the meeting on the date of the meeting.³⁸ The Board was also required to file the notice with the county auditor or post the notice on its website.³⁹ Because this was a special

³² *Id.*

³³ *Id.*

³⁴ N.D.C.C. § 44-04-20(2).

³⁵ N.D.A.G. 2022-O-06 (quoting N.D.A.G. 2018-O-28); *see also* N.D.A.G. 2004-O-13; N.D.A.G. 2002-O-11; N.D.A.G. 2001-O-15; N.D.A.G. 2000-O-03; N.D.A.G. 98-O-01.

³⁶ N.D.C.C. § 44-04-20(6).

³⁷ *See* N.D.A.G. 2013-O-06 (explaining that general "catch-all" phrases such as "other business," "additional topics," "any other issues that may need council attention," or "end-of-the-year recap," are not appropriate for special meeting notices because they do not provide the public with advance notice of what the public entity plans to discuss), *citing* N.D.C.C. § 44-04-20(6); N.D.A.G. 2013-O-01; N.D.A.G. 2010-O-11; N.D.A.G. 2009-O-04; N.D.A.G. 2009-O-03; N.D.A.G. 2005-O-17; N.D.A.G. 2002-O-11. *See also* N.D.A.G. 2019-O-17.

³⁸ N.D.C.C. § 44-04-20(4).

³⁹ *Id.* Again, the notice requirement recently changed to require meeting notices be posted on the entity's website if they have a website, however, the website posting requirement was optional at the time of the Board's special meeting.

meeting, the Board should have given the notice to its official newspaper and to any representatives of the news media requesting to be notified of the special meeting.⁴⁰ This office is unable to determine whether the Board complied with these requirements because the Board failed to respond to this office's request for information.

Accordingly, it is my opinion that the Board's meeting announcement did not substantially comply with N.D.C.C. § 44-04-20 because it failed to list the location of the meeting, lacked the level of specificity required for a special meeting notice, failed to mention that the discussion would be considered in an executive session, and the Board discussed matters that were not included in the meeting notice.

Issue Two

School board meetings must be open to the public unless otherwise specifically provided by law.⁴¹ Prior to going into an executive session, the governing body must announce during the open portion of the meeting both the legal authority for the session and the general topics to be discussed or considered.⁴² "To satisfy this requirement, a governing body is not required to reveal closed or confidential information, but must provide sufficient information about the topic and purpose of the executive session to keep the public apprised of the legally sufficient reason for holding the executive session."⁴³ The fact that a governing body is holding an executive session cannot be kept a secret from the public.⁴⁴

The requester alleges the Board failed to follow proper procedure before convening in the executive sessions. The requester states the Board failed to advise the public on the topics to be discussed during the executive sessions.⁴⁵ The minutes posted on the school's website reflect that the Board closed the meeting to go into the first executive session under N.D.C.C. § 44-04-19.2. According to its minutes, the Board failed to announce both the legal authority for the executive session and the topics to be considered during the first session.⁴⁶ Before proceeding into the second

⁴⁰ N.D.C.C. § 44-04-20(6).

⁴¹ 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.

⁴² N.D.C.C. § 44-04-19.2(2)(b).

⁴³ N.D.A.G. 2015-O-13, *citing* N.D.A.G. 2005-O-18; N.D.A.G. 2001-O-17.

⁴⁴ N.D.A.G. 2008-O-02; N.D.A.G. 2000-O-10; N.D.A.G. 99-O-04.

⁴⁵ E-mail from Jamie Jacobson to Off. of Att'y Gen. (Aug. 18, 2022, 3:08 PM). It was not requested and therefore this opinion does not address whether the executive session was authorized by law.

⁴⁶ Bd. Meeting Minutes, Emergency Meeting, Apple Creek Sch. Bd. Dist. (Aug. 17, 2022). *See also* N.D.A.G. 2000-O-01 (a governing body violates N.D.C.C. § 44-04-19.2 when it failed to announce the topics it planned to discuss and the legal authority for its executive session); N.D.A.G. 2022-O-04 (mere citation to N.D.C.C. § 44-04-19.2 in the meeting notice was insufficient to announce both the legal authority for holding an executive session and the topics to

executive session, the Board informed the public it needed to visit with a teacher and her union representative. This general reference was insufficient to identify the legal authority and topics the Board planned to discuss during the executive session.⁴⁷ After the second executive session, the Board announced that the teacher rescinded her resignation. This announcement following the second executive session does not cure the Board's failure to inform the public of the topics prior to entering an executive session.⁴⁸

Accordingly, it is my opinion that the Board violated N.D.C.C. § 44-04-19.2 by failing to announce the legal authority for the executive sessions and the topics to be discussed during the executive sessions.

CONCLUSIONS

1. The Board failed to provide notice of its August 17, 2022, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. The Board violated N.D.C.C. § 44-04-19.2 by failing to announce the legal authority for the executive sessions and topics to be discussed during the executive sessions.

STEPS NEEDED TO REMEDY VIOLATION

The Board should review the resources available on the Attorney General's website regarding properly posting notice of upcoming meetings and must update its practice to be in compliance with the law. The Board must also revise the August 17, 2022, meeting notice to include the location of the meeting, disclose that executive sessions were held, and describe the subject matter to be discussed and the legal authority for the executive sessions. The Board must also amend the meeting minutes to include the topics for the executive sessions and note the specific legal authority for the executive sessions.

Failure to take the corrective measures described in this opinion within seven days of the date of this opinion 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. § 44-04-21.2.⁴⁹ Such

be discussed during the executive session); N.D.A.G. 2003-O-22 (a citation only to N.D.C.C. § 44-04-19.1 failed to describe the subject matter of the executive session).

⁴⁷ N.D.A.G. 2015-O-13 (mere reference to "negotiations" was insufficient to properly identify legal authority of executive session); N.D.A.G. 2013-O-09 (mere reference to "personnel matters" or "background check" was insufficient to properly identify the legal authority for holding the executive session).

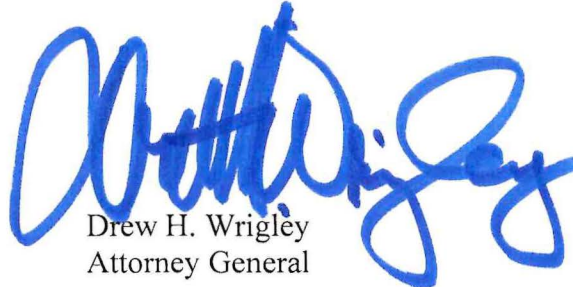
⁴⁸ N.D.A.G. 2000-O-05 (finding an announcement after the executive session is not helpful in reviewing the sufficiency of the announcement a governing body is required to make prior to the executive session).

⁴⁹ N.D.C.C. § 44-04-21.1(2).

September 17, 2024

Page 8

inaction may also result in personal liability for the person or persons responsible for the noncompliance.⁵⁰



Drew H. Wrigley
Attorney General

AR/mjh

cc: Jamie Jacobson

⁵⁰ *Id.*