Summary of Open Meeting Opinions – By Date Issued

Some of the Attorney General opinions listed in this Appendix may have been superseded in whole or in part by subsequent Attorney General opinions, statutory or rule changes, or court decisions.

1945 - 1979

N.D.A.G. 45-68
June 20, 1945

CITIES
MINUTES, PUBLICATION
Publication of a complete record of the proceedings of the city council is for the benefit of the public, to apprise them of the actions of the city council and give them a chance to check on its actions. The city council of any city can be compelled to publish its official proceedings. There is no penalty provided for failure to do so, except the general law that makes an officer subject to removal for failing to perform the duties required by law.

N.D.A.G. 46-62
July 25, 1946

COUNTIES
MINUTES, PUBLICATION
The board of county commissioners is required to publish a full and complete report of its proceedings. N.D.C.C. § 11-11-37. The undoubted purpose of publishing the proceedings of the county commissioners is for the information of the public concerning their activities and the nature of the claims and items paid and the amounts thereof. This information is important to the public, as all of the expenditures of the county commissioners in performance of official duty involve the payment of public money. It not only serves as a means of information, but as a deterrent upon public officials in the management and expense involved in official duties. Therefore, the county commissioners should itemize the expenses of an election in its published report of its proceedings.

N.D.A.G. 51-20
January 15, 1951

CITIES
MINUTES, PUBLICATION
Based on N.D.C.C. § 40-08-12, it is the duty of the city council to publish a complete record of all of its proceedings in its official newspaper. This does not require a verbatim publication of the minutes of the city auditor, but an analysis of the proceedings which adequately informs the public of the city council's action upon each matter is sufficient.

N.D.A.G. 58-186
November 17, 1958

CITIES
MINUTES, PUBLICATION
Section 40-08-12, N.D.C.C., requires that the minutes of regular and special meetings of a city council be published. Failure to publish the minutes may invalidate action taken at the meeting. It is not necessary that the minutes be published verbatim. The publication should consist of an analysis of the proceedings showing the substantive actions of the council.

N.D.A.G. 67-244
January 4, 1967

GOVERNING BODY

The Faculty Senate of the University of North Dakota, when exercising jurisdiction which has been delegated to it by the State Board of Higher Education, assumes the color of a public body and such meetings must be open to the public. Meetings at which the exercise of such jurisdiction does not take place need not be opened to the public since the group, in such instance, has no color of a public body. Meetings of groups connected with public agencies or institutions or groups assuming quasi public functions should, as a matter of policy, be open to the public except in the most unusual of circumstances.

N.D.A.G. 67-193
April 11, 1967

MINUTES, PUBLICATION
SCHOOLS

If the publication of school board proceedings is approved by the electorate of a school district, a verbatim publication of the minutes is not necessary, but rather an analysis of the proceedings showing the substantive actions of the council will suffice. Such publication must include an itemized list of obligations approved for payment regardless of the amount of the obligation. The proceedings of all meetings of the school board, regular or special, general or executive, must be published if any formal action is taken at the meeting, with the exception of the executive meeting authorized by N.D.C.C. § 15-47-382. *But see* N.D.C.C. § 44-04-19.2 final action generally not permitted during executive session

N.D.A.G. 67-196
June 19, 1967

MINUTES, PUBLICATION
SCHOOLS

In those school districts approving the publication of school board minutes, the teachers' salaries cannot be designated under a single heading of "teachers' salaries" in the publication but rather the name of each teacher with that teacher's salary must be itemized in the publication. If the school district publishes the yearly salary of the teacher at the time the contract is signed or at the time the teacher begins his duties, this is sufficient and the monthly salary need not be published each time a check is issued to the teacher. If the salary of any given teacher is altered from that published previously, such facts should be noted in the proceedings of the school board.

N.D.A.G. 69-124
November 28, 1969

COUNTIES
MINUTES, PUBLICATION

Expenditures may not be categorized by grouping of warrant numbers together with the total sum of such vouchers, but expenditures must be itemized in the published proceedings of the board of county commissioners.

N.D.A.G. 72-78
February 23, 1972

COUNTIES
MEETING, DEFINED

County state's attorney's inquests under the existing statutes and in the absence of any regulation promulgated by the Supreme Court are open to the public.

N.D.A.G. Letter March 5, 1976
to Myron Atkinson

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL

All meetings of public bodies must be open to the public unless a specific statutory or constitutional provision exists which specifies that such meetings may be closed. Deliberations, as well as formal actions, are governed by the open meetings law, and the fact that no formal action is taken at a gathering of a public body does not exempt such gathering from the open meetings law if matters of concern to the board in the context of its duties and responsibilities are deliberated at such a gathering. The spirit of the open meetings law requires that members of public governing bodies do not contrive artificial settings whereby the open meetings law may be circumvented. Members of a public board not present at a given meeting have a right to be informed about what transpired at that meeting. An active member is not prohibited from contact with those members present for the express and limited purpose of becoming informed regarding what transpired during his absence. Those matters that are past and presumably concluded are proper matters for briefing and information purposes. Those matters that are presently before the board or which may be before the board in the future should be delayed for any type of discussion until such board meets in formal, open session.

N.D.A.G. Letter
July 19, 1977
to Dewel Viker, Jr.

ATTORNEY CONSULTATION
OPEN MEETINGS, IN GENERAL

A broad exemption to the open meetings law based on attorney-client privilege is not warranted and any exception based on this relationship should be formulated on a case-by-case basis with detailed facts available. Until otherwise indicated by the Legislature or the courts of North Dakota, the position taken by the Minnesota courts as discussed in the opinion should be followed in North Dakota. Should the state's attorney be one of the parties complained of for violating the open meetings law, the district judge could either appoint an attorney to prosecute for the county or require the Attorney General to do so. *See* N.D.C.C. §§ 11-16-06, et. seq., 29-21-36, and 54-12-04.

N.D.A.G. Letter
October 12, 1977
to Dale Moench

OPEN MEETINGS, IN GENERAL
PUBLIC ENTITY

Any board created by statute and administering a public function, including occupational and professional boards, is a governmental body within the meaning of the open meetings law. All meetings of such boards, except those meetings that are excluded from the requirement, should be open meetings in accordance with N.D.C.C. § 44-04-19.

N.D.A.G. Letter
November 15, 1977
to Wayne Stenehjem and Raymond Holmberg

VOTING

While not specifically permitted or prohibited by the open meetings provisions, the use of a secret ballot, except where specifically authorized, is a diminishment of the open meetings provisions and should not be used. There is a substantial possibility the courts would hold that business conducted by secret ballot is contrary to the open meetings law and therefore void. However, it would also appear the person appointed by secret ballot to fill a vacancy would be considered a de facto officer until and unless a direct challenge to that person's right to hold the office were instituted. *But see* N.D.C.C. § 44-04-21.

N.D.A.G. Letter
December 22, 1977
to Thomas Jelliff

VOTING
The Attorney General's Office does not approve the use of secret ballots, unless authorized by statute, for any purpose, including the elimination of candidates for appointment to a vacancy even though the final motion to appoint is made by voice vote.

N.D.A.G. 78-174
March 15 1978

EXECUTIVE SESSION, PERSONNEL MATTERS
SCHOOLS
Based on amendments to N.D.C.C. § 15-47-38 since the North Dakota Supreme Court decision in Grand Forks School District v. Hennessy, 206 N.W.2d 876 N.D. 1973, the decision whether to renew a teacher's contract must be made in an executive session of the school board unless both the school board and the teacher have agreed that the meeting be open to the public. The school board has the right to continue the executive session from day-to-day. If a recess is declared, it must be to a time and date certain and, upon resumption of the meeting, it is again an executive session unless the parties have agreed that it be open. The recess must be in good faith and not for the purpose of making it difficult for the teacher to have his or her witnesses or representatives present. A school board member who is not present for a portion of the meeting is not excused from voting on the question of whether the teacher's contract should not be renewed.

N.D.A.G. Letter
March 31, 1978
to Burness Reed

OPEN MEETINGS, IN GENERAL
A violation of the open meetings law occurs if a board refuses any person or persons access to any meeting. Considering that a representative of the news media was present, there would appear to be no violation of the open meetings law unless some person was refused access to the noon meeting. The fact that the public, generally, did not have knowledge of that meeting does not alter that conclusion unless the noon meeting was called for the express purpose of preventing the public from attending. Whether that was the purpose of the meeting is a question of fact and the Attorney General's office is not a fact-finding office. If this meeting had been closed to the public, i.e., if access had been refused to any person or persons, the fact that no decisions were made at the meeting would be immaterial. It would still be a violation of the open meetings statute.

N.D.A.G. Letter May 3, 1978
to Thomas Clifford

EXECUTIVE SESSION, RECORDS
Section 15-10-172, N.D.C.C., making certain student records confidential, does provide an exception to the open meetings law where confidential records are inherently involved or are being formulated. If the student elects to have a closed meeting, the deliberations of the committee would also be closed although the student and his counsel may be present. If the student waives his or her right to a closed meeting, the student, his or her advisor or attorney, and the public are entitled to be present during the deliberation by the governing body.

N.D.A.G. Letter
July 24, 1979
to Wayne Stenehjem

PUBLIC ENTITY
The Judicial Nominating Committee established by the Governor's executive order is a public body or organization, supported by public funds appropriated by the Legislature to both the executive and judicial branches of state government and it is, therefore, governed by the open meetings law. It follows that the provisions of N.D.C.C. § 44-04-21 apply to the Judicial Nominating Committee with regard to voting by its members.

N.D.A.G. 79-210
November 30, 1979

EXECUTIVE SESSION, RECORDS
Section 12-59-04, N.D.C.C., prohibiting disclosure of certain records, exempts from the open meetings requirement those portions of Parole Board meetings which must by necessity be closed to prevent disclosure of privileged presentence and preparole reports and supervision histories. In determining policies and procedures for the conduct of Parole Board meetings, the board must be keenly aware of the rights of the public.

1980 - 1989

N.D.A.G. 81-10
February 6, 1981

GOVERNING BODY
The North Dakota Supreme Court, in the case Dickinson Education Association v. Dickinson Public School District, 252 N.W.2d 205 N.D. 1977, suggests that an entity created in part by a school board is a public body. Therefore, meetings of an advisory arbitration panel selected by a school board and a teachers' organization pursuant to their agreement to assist in teachers' contract negotiations are governed by the state's open meetings law, i.e., N.D.C.C. §§ 44-04-19 and 44-04-20. Although the news media must make a request for notice of special meetings, the intent of the law is such that consideration should be given to giving news media representatives notice even if they don't request it. *But see* N.D.C.C. § 44-04-20.6 - notice of special and emergency meetings must be provided to any local media which have requested notification

N.D.A.G. 81-39
April 13, 1981

HIGHER EDUCATION
Section 15-10-171, N.D.C.C., allowing for executive sessions of the Board of Higher Education for appointment and removal of certain personnel, does not apply to the Commissioner of Higher Education and non-institutional staff members of the Board of Higher Education.

N.D.A.G. 81-41
April 15, 1981

HIGHER EDUCATION
Under N.D.C.C. § 15-10-17(1), the Board of Higher Education may lawfully meet in executive session to discuss a college president's appointment or removal, but no executive session is authorized by statute to merely engage in a general discussion of a college president's performance.

N.D.A.G. 82-63
August 20, 1982

EXECUTIVE SESSION,
PERSONNEL MATTERS
SCHOOLS
Information discussed at an executive session of a school board for nonrenewal of a teacher held pursuant to N.D.C.C. § 15-47-38(5) is not confidential for the purpose of unemployment compensation eligibility determinations and appeals. An action for slander or libel may not be predicated upon information discussed at an executive session held pursuant to N.D.C.C. § 15-47-38(5) and furnished by a school board to Job Service for the purposes of unemployment compensation eligibility determinations and appeals.

N.D.A.G. Letter
February 29, 1984
to Richard Schnell

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL
As the Legislature has specifically provided for advance notice of telephone conference call meetings pursuant to N.D.C.C. § 44-04-20, it is clear that the Legislature has approved the use of such conference calls as part of open meetings. However, care should be taken to provide public awareness and knowledge of the conversation taking place over the telephone. As such, members of a governing body may participate in the meeting of that particular governing body by telephone so long as a speakerphone or similar device is used at the place of the meeting enabling all persons to listen and hear the statements made by the member participating by telephone conference call. The use of a speakerphone or similar device will also cause compliance with N.D.C.C. § 44-04-21 regarding public voting.

N.D.A.G. Letter
January 28, 1985
to Wayne Jones

NONGOVERNMENTAL ORGANIZATIONS
The Southeast Crime Conference is covered by the open meetings law only if it can be shown that it is an agency supported in whole or in part by public funds or it is an agency which expends public funds. The fact that members of the Conference travel to its meeting while on duty or receive reimbursement for such traveling is not relevant to the question of whether the meeting is an open meeting. Whether a meeting is covered by the open meetings law is not determined by the attendees of that meeting. Instead, scrutiny is made of the entity which is meeting and its authority for existence as well as the funds which support its existence.

N.D.A.G. Letter
March 29, 1985
to Gail Hagerty

GOVERNING BODY
OPEN MEETINGS, IN GENERAL
Generally, a meeting where a member of a public body meets with other individuals who are not members of the public body is not subject to the open meetings law. To extend the open meetings law to such situations would result in a situation where a meeting of any public official who is a member of any public body would be considered an open meeting despite the fact that the meeting is not one of a public or governmental body and does not otherwise satisfy the open meetings law. To extend the open meetings law to such situations would be unjust and absurd. However, where a public body has delegated authority to a committee or an individual to act on behalf of the public body, such resulting meetings are subject to the open meetings law. (*But see* N.D.C.C. § 44-04-17.1(6) (definition of "governing body")

N.D.A.G. Letter
May 17, 1985
to Orville Hagen

EXECUTIVE SESSION, RECORDS
LABOR DEPARTMENT
Section 34-05-03, N.D.C.C., prohibiting disclosure of information concerning the business or affairs of any person, provides an exception to the open meetings law under N.D.C.C. § 44-04-19 and therefore wage claim hearings do not have to be open to the public.

N.D.A.G. Letter
December 24, 1985
to Gail Hagerty

COUNTIES
MINUTES, PUBLICATION
Section 11-11-37, N.D.C.C., requires the board of county commissioners to publish in the official newspaper of the county a "full and complete report of its official proceedings" no later than 30 days after the meeting in which the report is read and approved. A fair statement of that which transpired should be included to give the public its needed information regarding how its business is being conducted. Vouchers should not be lumped together but, instead, should be reported separately. This information places the public on notice regarding the specific manner in which its money is being spent and the opportunity to object if it so desires. The same rationale applies to the noting of roll call votes on particular measures which may occur at the meetings of the board of county commissioners. Unless this information is provided to the public, citizens have no way of knowing how their elected representatives voted on a particular issue unless they were able to personally attend the meetings.

N.D.A.G. Letter
April 23, 1986
to Joseph Lamb

EXECUTIVE SESSION, RECORDS
To reconcile the competing requirements of N.D.C.C. § 6-08.1-01(2) and the open records law, discussions of Bank of North Dakota customer loans and any information regarding the financial status of such customers, at Industrial Commission meetings, should be held in closed session. However, a decision with respect to that loan (e.g., extending credit, denying credit, crippling the loan, etc.) should be made in public. Any loans that will be considered in closed session at an Industrial Commission meeting should be listed as part of the Industrial Commission meeting agenda.

N.D.A.G. Letter
June 30, 1986
to Jack Murphy

NOTICE OF MEETINGS
Notice of a meeting must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, does not affect the validity of the meeting or the actions taken at the meeting. The public body's presiding officer has the responsibility of assuring that full notice is given at the same time as the public body's members are notified and that this notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling the meeting must notify representatives in the news media, if any, located where the meeting is to be held, and which have requested to be so notified, of the time, place, and date of the emergency meeting, and topics to be considered, at the same time as the public body's members are notified.
See N.D.C.C. § 44-04-20.

N.D.A.G. Letter
August 28, 1986
to David Nething

CITIES
OPEN MEETINGS, IN GENERAL
Section 40-08-10, N.D.C.C., provides for the meetings of a city council, but does not discuss the manner in which the meetings are to be held or the various procedural rules which must be adopted. Obviously, the Legislature has left such matters to the discretion of the individual city councils across the state. One statute, N.D.C.C. § 44-04-20, discusses agendas of open meetings of public bodies. That statute indicates that the deviation from an agenda by a governing body is permissible. Where a city has adopted specific rules or has referenced a standard order of rules such as Robert's Rules of Order, with respect to the manner in which its business is to be conducted, business not conducted in compliance with those rules is suspect and may be subject to challenge in terms of its validity. When the state and its statutes are not involved, the Attorney General's office is without sufficient authority to interpret, discuss, or resolve procedural matters involving the city which are governed solely by its own ordinances.

N.D.A.G. Letter
February 12, 1987
to Darrell Farland

OPEN MEETINGS, IN GENERAL
The open meetings law does not discuss the accessibility of the room in which the meeting is being held. The spirit of the open meetings law requires that the room in which the meeting is held be accessible to the general public. To further the spirit of the open meetings law, public entities are encouraged to ensure that their meetings occur in rooms which are generally accessible to the public.

N.D.A.G. Letter
November 20, 1987
to Lawrence DuBois

PUBLIC ENTITY
Entities created through public or governmental process, such as a city's Office of Economic Development, must be considered public or governmental in nature. As such, they are subject to the requirements of the open meetings and open records laws.

N.D.A.G. Letter
January 21, 1988
to Alan Person

EXECUTIVE SESSION, RECORDS
An otherwise open meeting of a public body may become a closed meeting when the body considers information declared by law to be confidential. However, the closed portion of the meeting may continue to occur only so long as the confidential material is being discussed.

N.D.A.G. Letter
March 17, 1989
to Dan Ulmer

GOVERNING BODY
This opinion addresses the applicability of the open meetings law to a committee or "task force" appointed by the Mandan School Board. The applicability of the open meetings law to committees of public bodies depends upon the authority provided to those committees. Where the committee has received a delegation of authority from the parent public body, the committee should be treated as an entity subject to the open meetings law. (*But see* N.D.C.C. § 44-04-17.1(6) definition of "governing body").

N.D.A.G. Letter
August 10, 1989
to Sparb Collins

EXECUTIVE SESSION, PERSONNEL
The Retirement Board associated with the North Dakota Public Employees Retirement System is a state agency and is subject to the open meetings law. Any meeting the Retirement Board holds for the purpose of conducting interviews of candidates for the position of Executive Director must be open to the public. Additionally, the Retirement Board is unable to refuse access to its meetings by other candidates or any other persons unless such refusal occurs because of a lack of physical space in the meeting room.

N.D.A.G. Letter
September 19, 1989
to Rod Larson

NONGOVERNMENTAL ORGANIZATIONS
OPEN MEETINGS, IN GENERAL
If an organization such as the Cass County Historical Society is supported in whole or in part by public funds, it must be open to the public unless a statute specifically provides otherwise. Such an organization may not meet in a session closed to the public unless the Legislature specifically provides otherwise. North Dakota law does not address procedures by which an open meeting is conducted, such as audience participation, recognition by the chairman of the meeting, approval or disapproval of minutes, and the manner in which the agenda is organized. The Legislature has left it to the particular entity to determine its own rules of procedure.

1990 – 1999

N.D.A.G. 90-04
January 23, 1990

PUBLIC ENTITY
Meetings of the State Bar Board are required by the North Dakota open meetings law to be open to the public. (*But see* North Dakota Supreme Court's Admission to Practice Rule 9.)

N.D.A.G. Letter
March 19, 1990
to Janet Wentz

GOVERNING BODY
MEETING, DEFINED
This opinion addresses whether the open meetings and open records laws are applicable to the Minot State University Faculty Senate Executive and the Faculty Senate meetings. The applicability of the open meetings law to committees of public bodies is not expressly discussed by statute or the North Dakota constitution. The majority of courts which have considered this issue have concluded that a committee which does not possess decision-making authority and acts only to furnish information, gather facts, or make recommendations to the governing or decision-making body, is not subject to the open meetings law. On the other hand, a committee which does possess decision-making authority is subject to the open meetings law. If the open meetings law applies, the notice and voting requirements of N.D.C.C. §§ 44-04-20 and 44-04-21 apply. (*But see* N.D.C.C. § 44-04-17.1(6) (definition of "governing body.") The North Dakota Open Records Law is inapplicable to mental or thought processes where no writing has occurred.

N.D.A.G. Letter
April 25, 1990
to Corliss Mushik

OPEN MEETINGS, IN GENERAL

North Dakota law does not establish rules of procedure to be followed at meetings of public bodies. The open meetings law does not address who may speak, what topic may be addressed at a meeting, nor the manner in which those meetings are to be conducted. The general rule appears to be that if a public body has not adopted rules of procedure and no statutory rules of procedure are applicable, then generally accepted rules of parliamentary procedure govern. In determining proper parliamentary procedure, it is possible to resort to Robert's Rules of Order, which is the widely accepted codification of Parliamentary Law. Robert's Rules of Order indicate that, in a situation in which the presiding officer of a public body has not been willing to place an item on the agenda, that item may be raised by a member of the body and discussed at the time of the meeting when new business is discussed.

N.D.A.G. Letter
November 28, 1990
to Jennifer Ring

GOVERNING BODY

Whether the University of North Dakota Student Senate or entities created by the Student Senate (e.g., the Judicial Branch of the Student Senate) are organizations which are supported in whole or in part by public funds or which expend public funds depends, to a large extent, on the factual circumstances involved. The issue of whether the meetings of the Judicial Branch of the Student Senate are open to the public can be resolved by looking to the Student Body Constitution which states that meetings of the Student Senate shall be open.

N.D.A.G. Letter
August 2, 1991
Ken Solberg

NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY

The North Dakota Supreme Court has adopted a broad interpretation of N.D.C.C. § 44-04-19, favoring open meetings of all bodies conducting government business. The North Dakota Insurance Reserve Fund (NDIRF) is the governing authority of a government self-insurance pool. The governing body of a government self-insurance pool supported by public funds and spending public funds performs a government function. Accordingly, NDIRF is subject to the open meetings and open records laws. When information made confidential under N.D.C.C. § 26.1-23.1-06 is discussed at a meeting which would otherwise be open to the public, that portion of the meeting relating to the confidential information may be closed.

N.D.A.G. Letter
September 19, 1991
Michael McIntee

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PERSONNEL

City council meetings involving the discussion of disciplinary action against the city's chief of police must be open to the public. In addition, discussion of disciplinary action that does not constitute "attorney consultation" as defined in N.D.C.C. § 44-04-19.1 must be open to the public.

N.D.A.G. Letter
December 19, 1991
to Paul Govig

ECONOMIC DEVELOPMENT
That portion of a North Dakota Future Fund meeting at which certain commercial or financial information is discussed may be closed. The Future Fund must disclose upon request all information provided in an application for funding which would not give the applicant's competitors an unfair advantage if disclosed. Information in an application which must be reviewed includes the name of the applicant, its officers and directors, its address, and the nature of its business. Discussion concerning whether investment in an applicant conforms to the Future Fund's statutory distribution, fund diversification, and public policy requirements must be held during that portion of the meeting open to the public. Final action on every application accepted by the Future Fund, including approval, rejection, or a decision not to review the application, must be made by motion at a meeting open to the public.
N.D.C.C. § 44-04-18.2. If an application receives approval from the Future Fund, the amount and key provisions of the investment are subject to disclosure. (Section 44-04-18.2, N.D.C.C., has been repealed. *See* N.D.C.C. § 44-04-19.2.)

N.D.A.G. 92-08
April 8, 1992

CITIES
MINUTES, PUBLICATION
Section 40-08-12, N.D.C.C., does not apply to the governing body of a city operating under the modern council system of government, therefore, the governing body of a modern council city is not required to publish a record of its proceedings in its official newspaper. A home rule city may not supersede the requirements of N.D.C.C. § 40-08-12 to publish a record of its proceedings in its official newspaper. (*But see* N.D.C.C. § 40-01-09.1. Section 40-08-12, N.D.C.C., has been repealed.)

N.D.A.G. 94-F-28
September 2, 1994

EXECUTIVE SESSION, RECORDS
SCHOOLS
If a hearing held by a public school board will create or discuss records that are confidential under the federal Family Educational Rights and Privacy Act (FERPA), at 20 U.S.C.A. § 1232g, the hearing must be closed to the public unless the student's parent or guardian consents in writing to the hearing being open. Only as much of the meeting that is related to confidential records can be closed, and the hearing must be open to the public if the confidentiality of the records is waived by the student's parent or guardian.

N.D.A.G. 95-L-253
November 8, 1995

ECONOMIC DEVELOPMENT
Sections §§ 10-30.5-07 and 44-04-18.4, N.D.C.C., create exceptions to the open meetings and open records requirements for the North Dakota Development Fund by providing for the confidentiality of certain information. In addition, certain economic development records are exempt from disclosure under N.D.C.C. § 44-04-18.2. (Section 44-04-18.2, N.D.C.C., has been repealed. *See* amended N.D.C.C. § 44-04-18.4). Absent a statute requiring the records to be open or a statute prohibiting disclosure, the administrator of the agency having custody of the records may exercise discretion in determining whether to disclose an exempt record. Exceptions to the open public meetings and records requirements must be specific and will be narrowly construed. Nevertheless, the term "commercial and financial information" encompasses a broad range of information.

N.D.A.G. 96-F-09
April 4, 1996

GOVERNING BODY
OPEN MEETINGS, IN GENERAL

Meetings between the mayor and city department heads are generally not subject to the open meetings law unless either the mayor or the department heads have been delegated authority by the city council to perform an act on its behalf. However, the presence of a quorum of city council members at a meeting between the mayor and city department heads regarding city council business constitutes a meeting of the city council under the open meetings law, even if the mayor and other council members merely listen and do not interact or participate in the discussion. The public may make audio or video tape recordings of open city council meetings unless the recording activity would unreasonably disrupt the meeting. That members of the city council may be inhibited, intimidated, or uncomfortable is not sufficient disruption to authorize the city council to limit the recording of its meetings. A meeting is not unreasonably disrupted when members of the public or the media unobtrusively make audio or video recordings of the meeting while sitting in their seats or standing at the back or side of the room.

N.D.A.G. 96-F-18
September 13, 1996

NONGOVERNMENTAL ORGANIZATIONS

The International Peace Garden, Inc. (Corporation) is both expending public funds directly appropriated by the State Legislature and supported in whole or in part by public funds, and is therefore subject to the open meetings and records laws. A report on a personnel matter prepared at the direction of the board of directors of the Corporation, whether in the possession of the Corporation or the private investigator who prepared the report, is a record of the Corporation for purposes of the open records law. A meeting of the board of directors of the Corporation to discuss the record, or any other matter, must also be open to the public unless another exception to the open records or meetings laws applies.

N.D.A.G. 97-O-02
December 22, 1997

GOVERNING BODY
PUBLIC ENTITY

The definition of "governing body" includes the multi-member body responsible for making a collective decision on behalf of a public entity as well as any other group acting collectively pursuant to authority delegated to the group by a governing body. For example, the school district board is the multi-member body responsible for making decisions on behalf of the school district. However, a group such as the Superintendent's Cabinet is not a governing body by delegation if the delegation is made by the superintendent rather than a governing body. The terms "resolution, ordinance, rule [or] bylaw" in the definition of "public entity" refer to enactments by the authority responsible for making binding legislative or policy decisions on behalf of the public entity.

N.D.A.G. 98-O-01
January 23, 1998

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS

Only one exception to the open meetings law needs to apply for a portion of the meeting to be properly closed, but the legal authority for the executive session must be announced before the meeting is closed. To qualify as "attorney consultation," a governing body of a public entity must seek or receive its attorney's advice regarding pending or reasonably predictable litigation. Attorney consultation does not include a simple update on the status of litigation unless the update includes the attorney's mental impression, strategy, or advice regarding the litigation. Emergency or special meetings must be limited to the topics included in the notice and provided to the media, whether or not any of the topics will be discussed in an executive session.

N.D.A.G. 98-O-02
January 27, 1998

GOVERNING BODY

The Superintendent's Executive Cabinet is not a governing body by delegation because it received its authority from the superintendent rather than from the school board.

N.D.A.G. 98-O-04
March 3, 1998

MEETING, DEFINED
PUBLIC ENTITY

A joint enterprise of several counties to carry out public business on the counties' behalf, such as the Southwest Multi-County Correction Center, is an agency of those counties and therefore falls under the definition of "public entity." Notice of meetings of the governing body of a multi-county agency must be filed in the auditor's office of each participating county. A discussion between one member of a governing body and the executive director of the entity was not a meeting because the discussion did not involve a quorum of the members of the governing body. The disclosure of draft minutes cannot be delayed until the minutes are approved by the governing body. Draft minutes usually must be prepared and made available before the next regular meeting of the governing body.

N.D.A.G. 98-O-05
March 3, 1998

MEETING, DEFINED

The term "meeting" has four elements: public entity, governing body, public business, and a gathering of a quorum of the members of the governing body. Supervising the employees or other staff of a public entity falls within the public business of the entity, even if delegated to other staff. Social or chance gatherings are not meetings unless public business is considered during the gathering. If public business is considered, the gathering is a meeting even if a meal is served during the meeting. By adopting the quorum rule, the Legislature exempted from the open meetings law most conversations between two or three members of an eight member group, even about public business. However, once those conversations cumulatively involve a quorum (half) of the group's members, it is a meeting. A series of smaller gatherings collectively involving a quorum is a meeting, even if the members did not intend to violate the open meetings law, if the body intentionally met in groups smaller than a quorum and intentionally discussed or received information regarding public business which would have had to occur in an open meeting if any of the smaller gatherings had involved a quorum. Therefore, the series of smaller gatherings held by members of the State Board of Higher Education to discuss a personnel matter was a meeting. The term "meeting" does not include conversations between the presiding officer of a governing body and the other members of the governing body to identify agenda topics for the next meeting, as long as the substance of those topics is not discussed. Similarly, it is not a meeting for a member of a governing body who was absent from a meeting to contact the other members if the conversations are limited to finding out what happened at the meeting. As a general rule, there is no statutory exception to the open meetings law for personnel matters.

N.D.A.G. 98-O-06
April 14, 1998

EXECUTIVE SESSION, RECORDS

A school board may hold an executive session under subsection one of N.D.C.C. § 44-04-19.2 to discuss records which are confidential under the Family Educational Rights and Privacy Act (FERPA), 12 U.S.C. § 1232g, but the discussion during the executive session must be limited to a discussion of the confidential records.

N.D.A.G. 98-F-11
April 30, 1998

COUNTIES
GOVERNING BODY
OPEN MEETINGS, IN GENERAL

The group responsible for filling vacancies on a county commission under N.D.C.C. § 40-02-05 is a governing body and its meetings to interview and discuss the applicants for the vacant position are required to be open to the public. The public's right to attend an open meeting under N.D.C.C. § 44-04-19 does not include the right to participate in that meeting.

N.D.A.G. 98-O-08
May 4, 1998

MEETING, DEFINED
NOTICE OF MEETINGS

Action need not be taken at a gathering for it to be a meeting, nor is it necessary that the gathering be formally convened as a "meeting." All that is required is that the gathering involve a quorum of the members of a governing body of a public entity and pertain to the public business of the governing body, which includes all stages of the decision-making process.

Notice usually must be provided when the members of the governing body are informed of the meeting. If the attendance of a quorum at a meeting of another body is a surprise, the notice should be provided immediately.

N.D.A.G. 98-O-09
May 7, 1998

GOVERNING BODY
MINUTES, CONTENT
NOTICE OF MEETINGS
TOWNSHIPS
VOTING

A township is a "public entity" and the township board of supervisors is the governing body for a township. The group of township electors who attend the annual township meeting also is a governing body. Notices must be provided in substantial compliance with N.D.C.C. § 44-04-20 for meetings of township electors and meetings of township supervisors. When a meeting is postponed or rescheduled, a new notice must be prepared for the rescheduled meeting. Minutes are not sufficient when they fail to mention when the meeting was called to order and adjourned, the motions that were made and seconded, and the vote of each member on all recorded roll call votes. Approving bills and an airport abatement are examples of nonprocedural matters which may only be approved by taking a recorded roll call vote.

N.D.A.G. 98-O-10
May 7, 1998

MEETING, DEFINED
NOTICE OF MEETINGS

The term "meeting" includes the attendance of a quorum of the members of a governing body at a meeting of another group when the group's discussion pertains to the public business of the governing body. A city home rule charter and sales tax are items of city business. Because the attendance of a quorum of the city governing body at a meeting of a community development corporation was a surprise, and providing advance notice of the meeting was not reasonable, the governing body would have been in substantial compliance with
N.D.C.C. § 44-04-20 had it prepared a notice and filed it with the appropriate official the day after the meeting. When advance notice of a meeting is not reasonable, the meeting should be recorded, or at least the minutes should be more detailed and should 1) summarize the information received at the meeting and 2) state each member's position on the topics discussed at the meeting, if expressed.

N.D.A.G. 98-F-12
May 7, 1998

GOVERNING BODY

A director of a state administrative agency, as a single individual, is not a "governing body" for purposes of the open meetings law.

N.D.A.G. 98-O-11
June 8, 1998

MEETING, DEFINED
NOTICE OF MEETINGS

A water resource district is a political subdivision. The board of a water resource district is the governing body of the district. The term "meeting" includes a gathering at which a governing body requests information from its staff for the body's next meeting or discusses the agenda of the next meeting. Official business need not be transacted for a gathering to be a meeting. Central filing of meeting notices with the county auditor is not required if all the information contained in the notice, including agenda information, was included in an annual schedule already on file with the county auditor, but a notice still must be prepared and posted. Notifying interested members of the public is not a substitute for complying with N.D.C.C. § 44-04-20. Draft minutes of an open meeting are open records and must be available for access and copying upon request.

N.D.A.G. 98-F-16
June 8, 1998

MEETING, DEFINED

An on-site investigation by a water resource district board of an area which is the subject of a complaint to the board is a meeting. A series of on-site investigations by individual water resource district board members which collectively involve a quorum is not a meeting if the members are investigating the area on their own initiative, but is a meeting if the separate investigations are an organized effort by the board for its members to obtain information about an item of public business.

N.D.A.G. 98-O-12
June 9, 1998,

ATTORNEY
CONSULTATION
NEGOTIATION STRATEGY SESSIONS

Discussion between a governing body and its attorney regarding a key element in a reasonably predictable civil action was directly related to that action and constituted attorney consultation. Receiving an update by the governing body's attorney on the status of contract negotiations, rather than strategizing or instructing the attorney regarding the negotiation, may not be held in executive session under subsection (7) of N.D.C.C. § 44-04-19.1. There is no specific retention period for recordings of executive sessions. However, the recording should be kept for at least sixty days, and the Office of Attorney General recommends a retention period of six months. (*But see* N.D.C.C. § 44-04-19.2(5).)

N.D.A.G. 98-F-103
June 10, 1998

NONGOVERNMENTAL ORGANIZATIONS

An organization receiving public funds under a contract with a state agency is not supported by public funds under N.D.C.C. § 44-04-17.1, even if the contract is entitled "Grant Agreement," as long as the goods or services provided in exchange for those funds are reasonably identified in the agreement and have a fair market value that is equivalent to the amount of public funds it receives, including a commercially reasonable amount of profit for the contractor.

N.D.A.G. 98-O-13
June 11, 1998

GOVERNING BODY
NOTICE OF MEETINGS

A group of the members of a county commission which was appointed by the chairman of the commission to meet with the North Dakota Insurance Reserve Fund was a governing body by delegation. There is no mandatory minimum notice period under N.D.C.C. § 44-04-20. Providing notice may be delegated by the governing body's presiding officer to another official, but the presiding officer remains responsible for ensuring that sufficient notice is provided. A notice which did not identify the time of a meeting or its location within a certain city, and which was posted after the meeting despite the fact it could reasonably have been provided in advance of the meeting, was not in substantial compliance with this N.D.C.C. § 44-04-20. Providing notice of special or emergency meetings to the county's official newspaper is required, even if the newspaper has not asked to receive the notices.

N.D.A.G. 98-F-22
June 23, 1998

EXECUTIVE SESSION, RECORDS

Administrative hearings by the workers' compensation bureau are generally required to be open to the public, although the medical portion of a hearing may be closed at the request of the claimant. The portion of a hearing during which confidential records are introduced or discussed also must be closed unless the confidentiality is waived.

N.D.A.G. 98-O-14
June 25, 1998

MINUTES, CONTENT

Meeting minutes must contain a list of topics discussed regarding public business. It is not necessary that minutes reflect the specific discussions or concerns raised by members of the public at a meeting, or between a member of the public and a public official who was reporting to the governing body, as long as the minutes include a list of topics discussed.

N.D.A.G. 98-O-16
July 2, 1998

OPEN MEETINGS, IN GENERAL
PUBLIC BUSINESS

The definition of public business includes the performance of governmental functions. Thus, the performance of a member of a governing body in his or her official capacity and the effect of the member's actions on the performance of the public entity's governmental functions are items of public business. If a gathering relates to public business, it is a meeting even if no motions are made and no action is taken. Usually, a complete failure to provide public notice of a meeting is a violation of N.D.C.C. § 44-04-20 rather than the open meetings law. However, taking deliberate action to conceal a meeting from the public is functionally the same as closing the door to
the meeting and is a violation of the open meetings law as well as N.D.C.C. § 44-04-20.

N.D.A.G. 98-O-17
July 10, 1998

OPEN MEETINGS, IN GENERAL
PUBLIC ENTITY

The child support guidelines drafting advisory committee is a public entity because it was recognized by state statute to perform the governmental function of reviewing the child support guidelines and serving as an advisory group for the Department of Human Services. The multi-member body responsible for making a decision on behalf of the child support guidelines drafting advisory committee is the committee itself. The open meetings law is violated when a person attempts to attend a meeting but is unable to do so because the door to the meeting room is locked.

N.D.A.G. 98-F-25
August 11, 1998

COUNTIES
MINUTES, PUBLICATION

A board of county commissioners does not have authority to change or otherwise modify the minutes of a meeting of the board as prepared by the county auditor if the modifications do not correct errors or inaccurate or incomplete information. A court may issue a writ of mandamus if a board of county commissioners fails to read, correct, and approve the minutes of a previous meeting. Publication of minutes that have not been approved by the board of county commissioners does not satisfy the publication requirements of N.D.C.C. § 11-11-37.

N.D.A.G. 98-O-18
August 11, 1998

MEETING, DEFINED
MINUTES, CONTENT

The minutes of a meeting do not have to identify the location of a meeting, although that information must be included in the notice of the meeting. The Office of Attorney General will not review the accuracy of meeting minutes, other than to determine whether the minutes meet the minimum requirements of N.D.C.C. § 44-04-21. The term "meeting" includes the attendance of a quorum of the members of a governing body at a meeting of another group when the group's discussion pertains to the public business of the governing body. Thus, attendance by a quorum of the members of a city council at a meeting of the governing body of a different city to listen to presentations by various bidders constituted a meeting of the city council which was required to be preceded by public notice.

N.D.A.G. 98-L-113
August 25, 1998

COUNTIES

The duty of a county auditor to act as clerk for the board of county commissioners and keep an accurate record of the board's proceedings may be delegated to a deputy auditor, but may not be delegated to a member of the board.

N.D.A.G. 98-O-21
September 22, 1998

NONGOVERNMENTAL
NOTICE OF MEETINGS
ORGANIZATIONS
PUBLIC BUSINESS

A soil conservation district is a political subdivision and therefore is a public entity. A separately incorporated joint enterprise of soil conservation districts to coordinate their activities is an agency of those districts. The North Dakota Association of Soil Conservation Districts is a public entity because it is an agent of its member districts and because it is recognized by state law to perform the governmental function of managing trust lands which are dedicated to the soil conservation programs of the soil conservation districts. Supervising the employees or other staff of a public entity falls within the public business of the entity, even if delegated to other staff. The relationship and communications between members of a governing body of a public entity in their official capacities also falls within the public business of the entity. As a result, a gathering of the governing body of the entity on those subjects was a meeting. All topics anticipated to be discussed at a regular meeting, including executive sessions, must be included in the notice of the meeting. However, changes to the agenda of a regular meeting are not prohibited, even if made during the meeting.

N.D.A.G. 98-O-23
November 9, 1998

NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY

An organization is not supported by public funds if the funds received by the organization were paid in exchange for goods or services having an equivalent fair market value. The definition of public funds includes cash and other assets or property which have a significant economic value, including the co-signature of a public entity on a loan by a non-governmental organization or the free use of public property. However, the definition of public funds does not include funds provided from the federal government directly to a non-governmental organization or de minimis contributions of property or assets such as the occasional use of a public meeting room. An organization which receives Community Development Block Grant funds and a loan from a city job development authority is not supported by public funds for purposes of N.D.C.C. § 44-04-17.1 because the funds are provided under authorized economic development programs. A nonprofit corporation recognized in a resolution of a city housing authority as performing the governmental function of developing a new housing development in collaboration with the housing authority is a public entity.

N.D.A.G. 98-O-25
November 24, 1998

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS

To the extent that minutes are kept of executive sessions, the minutes are not open records because requiring disclosure of the minutes would defeat the legislative purpose of authorizing a closed meeting. The recording of an executive session, and any minutes of the session, continue to be closed records even after the underlying basis for the executive session, such as an attorney consultation regarding pending litigation, no longer applies. The procedural requirements for closing a meeting should not be applied so rigidly that a script needs to be prepared ahead of time in order to comply with those requirements. A meeting is presumed to be legally held and conducted for purposes of N.D.C.C. § 44-04-21.1 when the meeting occurred more than thirty days before an opinion regarding the meeting was requested. An alleged deficiency in the minutes of a meeting cannot be reviewed until after the minutes have been approved by the governing body, because the deficiencies may still be cured by the body prior to adopting the minutes.

N.D.A.G. 99-O-01
February 22, 1999

EXECUTIVE SESSION,
NEGOTIATION STRATEGY SESSIONS
PROCEDURAL REQUIREMENTS

The phrase "executive session" includes both a "confidential meeting" and a "closed meeting" as those terms are defined in N.D.C.C. § 44-04-17.1. A "closed meeting" is a meeting or part of a meeting which may either be open or closed to the public. A governing body may admit anyone to a closed meeting whom the body feels is necessary to carry out or further the purposes of the closed meeting. A meeting may not be closed under subsection 7 of N.D.C.C. § 44-04-19.1 simply because a contract is being discussed; the meeting may be closed only if allowing the other party to the negotiation to listen to the discussion would potentially result in increased costs to the public entity.

N.D.A.G. 99-O-04
April 22, 1999

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

Discussion between a governing body and its attorney is not per se "attorney consultation" for purposes of N.D.C.C. § 44-04-19.1. Attorney consultation does not include a simple update on the status of litigation unless the update includes the attorney's mental impression, strategy, or advice regarding the litigation. The line between a discussion of the status or underlying facts of a pending or reasonably predictable proceeding or litigation and attorney consultation regarding that litigation will frequently be drawn at the point where the public entity's bargaining or litigating position would be adversely affected if the discussion occurred in an open meeting. For example, the attorney consultation exception would not support closing a meeting to meet with the other side to a pending or reasonably predictable litigation or proceeding. Not every remark during an executive session which is irrelevant to the reason for the executive session is a violation of the open meetings law. Before going into executive session, a governing body must announce both the legal authority for the session and the general topics that will be discussed. It is not sufficient that a public entity quote or cite the applicable open meetings exception; the topics must also be announced.

N.D.A.G. 99-O-05
May 5, 1999

GOVERNING BODY
The phrase "governing body" refers to multi-member groups rather than one individual such as the chairman of a county board of commissioners.

N.D.A.G. 99-O-06
June 14, 1999

ATTORNEY CONSULTATION
NOTICE OF MEETINGS
The law requiring public notice of all meetings, N.D.C.C. § 44-04-20, does not require a governing body to provide notice to any individual unless the individual has asked for such notice. A proceeding of a state professional licensing board to suspend a person's license is an "adversarial administrative proceeding" for purposes of receiving "attorney consultation" under N.D.C.C. § 44-04-19.1. Discussion between a state licensing board and its attorney about how to respond to the recommendations of an administrative law judge in a pending adversarial administrative proceeding falls within the definition of attorney consultation.

N.D.A.G. 99-O-07
June 29, 1999

ATTORNEY CONSULTATION
OPEN MEETINGS, IN GENERAL
Discussion between a state licensing board and its attorney to discuss changes to the board's decision in a pending adversarial administrative proceeding following a remand by a district court, and to address a board member's questions about a suggested change, constitutes attorney consultation. It was not a violation of the open meetings law for a professional board to refuse to allow a member of the public to address the board.

N.D.A.G. 99-O-08
September 9, 1999

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
It is a violation of the open meetings law, as well as the public notice requirements in N.D.C.C. § 44-04-20, when a governing body deliberately conceals a meeting from an individual. A person who attends a regular meeting to listen to the governing body's discussion on a particular item or topic of public business, but who leaves the meeting before it adjourns, assumes the risk that the governing body will discuss that item or topic in the person's absence. A governing body does not violate N.D.C.C. § 44-04-20 by discussing a specific topic after the person leaves unless 1) the governing body planned ahead of time to discuss that topic during the regular meeting but did not include the topic in the notice of the meeting, or 2) affirmatively misled or represented to the person that the governing body would not be discussing that topic at the regular meeting.

N.D.A.G. 99-O-09
November 1, 1999

MEETING, DEFINED
A gathering of a quorum of the members of the county commission is not a meeting if the meeting did not pertain to the county's public business.

N.D.A.G. 99-L-112
November 18, 1999

MINUTES, PUBLICATION
SCHOOLS
A vote to disapprove the publication of school board minutes may be taken at a succeeding annual school district election, and not only at the next biennial election.

N.D.A.G. 99-L-115
November 18, 1999

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS

Each member of a governing body of a public entity has an inherent right to attend all meetings of that body, including executive sessions, unless the subject of the executive session is litigation involving that member. The same is true for access to closed or confidential records of the public entity. A member who was absent from an executive session is entitled to listen to the recording of the session, even though the recording is not open to the public. Allowing an absent member to listen to the recording does not make the recording an open record.

N.D.A.G. 99-O-10
December 7, 1999

NOTICE OF MEETINGS

There is no mandatory minimum notice period in N.D.C.C. § 44-04-20, but notice of a meeting must be provided to any member of the public who requests it. The notice must be provided at the same time the members of the governing body are notified of the meeting.

2000

N.D.A.G. 2000-O-01
January 24, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
SCHOOLS

A governing body's failure to announce the topics it plans to discuss during an executive session, and the legal authority for the executive session, is a violation of N.D.C.C. § 44-04-19.2. A school board's discussion of the need to fill a vacant school superintendent's position and the chain of authority within the school district are topics which may not be discussed in an executive session and must instead be discussed in a meeting which is open to the public.

N.D.A.G. 2000-O-02
January 31, 2000

EXECUTIVE SESSION, RECORDS
PROCEDURAL REQUIREMENTS

For an executive session to discuss confidential records, a vote is not required before going into executive session. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session. When a governing body is discussing confidential records in an executive session, a person who is entitled to have access to those records also is entitled to attend the executive session.

N.D.A.G. 2000-O-03
January 31, 2000

ATTORNEY CONSULTATION
NOTICE OF MEETINGS

The authority of a township board to close a meeting for "attorney consultation" may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided. Providing notice of a township board meeting to all interested persons is not a substitute for filing a copy of the notice with the county auditor and complying with the other notice requirements in N.D.C.C. § 44-04-20.

N.D.A.G. 2000-O-04
March 15, 2000

EXECUTIVE SESSION
EXECUTIVE SESSION, RECORDS
PROCEDURAL REQUIREMENTS
SCHOOLS
VOTING

A discussion of records which are confidential under the Family Education Rights and Privacy Act (FERPA) must be held in an executive session. However, this exception to the open meetings law is limited to the discussion of FERPA records and does not include all discussions regarding specific students. Final action by a school board on a topic discussed during an executive session must occur during the open portion of the meeting, unless final action is otherwise required by law to occur during the executive session. However, in voting during an open meeting to take final action, the school board was not required to reveal closed or confidential information. Instead, the board may refer generally to the subject of the motion without identifying the student or the fact that the vote pertains to student discipline.

N.D.A.G. 2000-O-05
April 4, 2000

EXECUTIVE SESSION,
NEGOTIATION STRATEGY SESSIONS
PROCEDURAL REQUIREMENTS

The announcement of an executive session to discuss negotiation strategy was not sufficient when it failed to mention the contracts being discussed and did not occur immediately after a presentation on those contracts during the open portion of the meeting. An executive session is not authorized under this subsection for the purpose of receiving an update or summary from a negotiator on the status of negotiations.

N.D.A.G. 2000-O-06
May 5, 2000

EXECUTIVE SESSION,
EXECUTIVE SESSION, RECORDS
PROCEDURAL REQUIREMENTS

An announcement of an executive session is not sufficient if a person attending the open portion of the meeting could not identify, from the announcement, the legal basis for the board's executive session. The executive session authorized under N.D.C.C. § 15-47-38.2 is limited to a hearing on a school district's reason for proposing dismissal of a superintendent and does not apply to all discussions about a superintendent by a school board or to consideration of complaints against a superintendent. It is not a violation of the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g(b), to discuss in an open meeting the events a school district employee witnessed or experienced as a school employee. Such discussion does not involve the release of education records.

N.D.A.G. 2000-O-07
June 26, 2000

ECONOMIC DEVELOPMENT

The portions of a meeting during which the identity, nature, and prospective location of a business or industry which may locate, relocate, or expand within the state are discussed may be held in executive session. A discussion of trade secrets and commercial and financial information provided by a business which has already located, relocated, or expanded within the state (other than the identity of the business) also may be held in executive session, unless the records have been generated by the public entity itself rather than provided by the business. Final approval of a report of the Stark Development Corporation containing the names of current participants in the PACE (partnership in assisting community expansion) program must occur in an open meeting.

N.D.A.G. 2000-O-08
July 14, 2000

MEETING, DEFINED

For purposes of an opinion issued under N.D.C.C. § 44-04-21.1, this office will not question a school board's assurance that its members did not participate in a series of smaller conversations regarding public business which cumulatively involved a quorum of the governing body.

N.D.A.G. 2000-O-09
July 17, 2000

NEGOTIATION STRATEGY SESSIONS
SCHOOLS

A governing body may not close its evaluation of an employee's job performance as a contract negotiation strategy session simply because the discussion occurs in the context of determining whether to approve a raise or cost of living increase for the employee. A general discussion of the performance of school administrators, rather than a specific discussion of the strengths and weaknesses of the school district's bargaining position with the administrators over a raise and cost of living increase, could not be held in an executive session under N.D.C.C. § 44-04-19.1(7).

N.D.A.G. 2000-O-10
July 19, 2000

EXECUTIVE SESSION,
PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS

In describing the topic of an executive session for attorney consultation, in addition to announcing the legal authority for the session, it is not always necessary for a governing body to identify the specific litigation or adversarial administrative proceeding, as long as other information is provided about the topics considered during the executive session. The purpose of requiring all executive sessions to be recorded is to provide a process for citizens to verify that the discussion during an executive session was limited to the announced topics. The purpose of requiring a public announcement of the legal authority and topics of an executive session is to provide the public with a legally sufficient reason for holding the executive session. In contrast with the detail required in an announcement for an executive session, the notice of a meeting during which an executive session for attorney consultation is held only needs to include a general description of the session. The notice does not have to identify the purpose of the executive session or identify the other party to the litigation or proceeding being discussed.

N.D.A.G. 2000-O-12
October 17, 2000

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
A school board's announcement of an executive session was sufficient when it indicated the executive session was being held under N.D.C.C. § 44-04-19.1 to receive attorney consultation regarding a pending legal action regarding a specific event. An executive session for attorney consultation regarding a pending criminal action is authorized under N.D.C.C. § 44-04-19.1 even if the school district is not a party to the criminal action, because the district had a legal interest in the case. It was the victim of the crime and a potential plaintiff in a civil action to recover damages resulting from the crime. The right of a government entity in North Dakota to confidentiality in its relationship with its attorney is different from the right of private citizens.

2001

N.D.A.G. 2001-O-01
February 13, 2001

ECONOMIC DEVELOPMENT
A city council was authorized to hold an executive session with an economic development official under N.D.C.C. § 44-04-18.4 to discuss the city's assistance in recruiting a business to the area served by the city.

N.D.A.G. 2001-O-03
May 3, 2001

MEETING, DEFINED
Whether a city council met secretly before a regularly scheduled meeting is a question of fact which, in an opinion issued under N.D.C.C. § 44-04-21.1, will be resolved according to the facts alleged by the city council. A pre-meeting discussion involving less than a quorum of the members of the city council is not a "meeting."

N.D.A.G. 2001-O-04
May 16, 2001

GOVERNING BODY
The definition of "governing body" in N.D.C.C. § 44-04-17.1(6) is not limited to a city council itself; it also includes city committees, like a city franchise committee.

N.D.A.G. 2001-O-05
June 7, 2001

MEETING, DEFINED
NOTICE OF MEETINGS
The definition of "meeting" is not limited to formal gatherings of a governing body and includes a school board retreat. Failing to file a notice of the retreat or post a notice of the retreat at the school is not substantial compliance with the notice requirements in N.D.C.C. § 44-04-20, even if the date of the retreat was announced at a previous meeting.

N.D.A.G. 2001-O-07
August 6, 2001

MEETING, DEFINED
NOTICE OF MEETINGS
A city violated N.D.C.C. § 44-04-20 by failing to prepare a written notice of a special meeting. In issuing an opinion under N.D.C.C. § 44-04-21.1, it makes no difference whether a violation was intentional or accidental. A gathering is a "meeting" required to be preceded by public notice even if no final action is taken during the meeting.

N.D.A.G. 2001-O-08
August 20, 2001

NOTICE OF MEETINGS

A city's notice of a meeting did not substantially comply with N.D.C.C. § 44-04-20 because it had neglected to appoint an official city newspaper and could not notify its official newspaper of the meeting.

N.D.A.G. 2001-O-09
August 31, 2001

EXECUTIVE SESSION
EXECUTIVE SESSION, PERSONNEL MATTERS
PROCEDURAL REQUIREMENTS

A school board's announcement of an executive session was deficient when it described the topic of the executive session as "personnel issues" but made no effort to identify the legal authority for the executive session. There is no state law that authorizes a school board to hold an executive session to discuss general personnel issues.

Beginning on August 1, 2001, a knowing violation of the open records or meetings laws is a crime. For violations occurring within the boundaries of an Indian reservation, the federal government has authority to prosecute such violations.

N.D.A.G. 2001-O-11
September 13, 2001

ECONOMIC DEVELOPMENT
NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY

A local economic development corporation is a public entity because it is supported by public funds or it is acting as an agency of government. The total amount of public funds provided to the corporation, coupled with the indistinct terms of the contract dealing with the purposes for which the funds are to be expended, lead to the conclusion that the local economic development corporation is supported by public funds. Public funds are being used to support the organization rather than purchase services. Considering the totality of nine factors, the local economic development corporation is acting as an agency of government because it receives significant funding from governmental sources, pools those funds with other income of the corporation, and manages a pool of public funds on behalf of several political subdivisions. The definition of "governing body" in N.D.C.C.
§ 44-04-17.1(6) includes not only the corporation's board of directors, but also a committee of the board. Since there was no exception that applied to the committee's consideration of an audit report or discussion of general personnel matters, the corporation violated N.D.C.C.
§ 44-04-19 by refusing to allow a member of the public to attend the committee's meeting.

N.D.A.G. 2001-O-13
September 27, 2001

OPEN MEETINGS, IN GENERAL

It is reasonable to conclude that a meeting which cannot be heard by the public is the equivalent of a closed or secret meeting and would be a violation of N.D.C.C. § 44-04-19.

N.D.A.G. 2001-O-14
October 4, 2001

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL

The open meetings law does not apply unless there is a gathering or series of smaller gatherings involving a quorum of the members of a governing body. The open meetings law describes how a public entity must conduct its meetings, but does not establish meetings as the exclusive method for a public entity to conduct business. The members of a governing body may communicate with each other in writing without holding a meeting that must be open to the public and preceded by public notice.

N.D.A.G. 2001-O-15
November 5, 2001

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
GOVERNING BODY

A county social service board is a "governing body" subject to the open meetings law. The use of the phrase "reasonably predictable" in N.D.C.C. § 44-04-19.1 requires more than a simple possibility of litigation or adversarial administrative proceedings. A governing body must show more than a fear or potential of being a party to litigation or an administrative proceeding. The possibility of litigation or a proceeding by or against the governing body must be realistic and tangible. However, a public entity to wait until the moment before a lawsuit or administrative appeal is filed before obtaining its attorney's advice in an executive session. Viewed in its entirety, the board's announcement was deficient because, in the absence of a statement that the attorney consultation pertained to reasonably predictable litigation or proceedings, there was doubt as to the legal authority the board was relying on for the executive session. The board's meeting notice was deficient because it listed "employee relations" and "executive session" as separate agenda items and therefore did not contain a general description of the executive session. The discussion at a regular meeting is not limited to the topics included in the notice of the meeting.

N.D.A.G. 2001-O-16
November 9, 2001

PUBLIC ENTITY
VOTING

A committee established by statute to nominate three individuals for appointment to the North Dakota Wheat Commission is a public entity and its gathering to select the three individuals is a "meeting" under the state open meetings law. Because the ballots cast by the committee to choose the three nominees were not procedural votes, the committee was required under N.D.C.C. § 44-04-21 to vote by recorded roll call vote rather than by unsigned written ballots.

N.D.A.G. 2001-F-10
December 11, 2001

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS

The requirement that final action be taken during an open meeting does not relieve a governing body of its obligation to refrain from disclosing confidential information to the public. In order to prevent the disclosure of confidential information, a member of a governing body may make a detailed motion in the executive session. The presiding officer may then reconvene in an open session, summarize the motion without disclosing confidential information, and call for a vote.

N.D.A.G. 2001-O-17
December 24, 2001

EXECUTIVE SESSION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS
PERSONNEL MATTERS
VOTING
A motion to hold an executive session is a nonprocedural vote that must be taken by recorded roll call vote. An announcement that an executive session was for "wage negotiation strategy" was sufficient because the phrase "negotiation strategy" identified N.D.C.C. § 44-04-19.1(7) as the legal authority for the session and the term "wage" indicated the topic of the executive session was the salary increases the City was considering paying its employees. A significant portion of a city council's executive session for negotiation strategy was not authorized because it involved a lengthy discussion of an employee's job performance that went beyond the discussion needed to reach a decision on the salary increases to offer the employee.

N.D.A.G. 2001-O-18
December 27, 2001

MEETING, DEFINED
A discussion involving only two of the five members of a county social service board did not involve a quorum of a governing body and was not a meeting.

2002

N.D.A.G. 2002-O-01
January 10, 2002

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
An announcement that an executive session was being held pursuant to N.D.C.C. § 44-04-19.1 in a specific personnel matter was not a sufficient description of the legal authority for the executive session because that statute authorizes multiple reasons for an executive session. The purpose of the exceptions to the open records and meetings laws in N.D.C.C. § 44-04-19.1 is not to prevent public access to attorney work product or attorney consultation. However, as a practical matter, to effectively conceal a public entity's attorney work product or attorney consultations from its adversary in a pending or reasonably predictable lawsuit or administrative proceeding, that information must be concealed from the public as well. A public entity essentially waives its right to invoke the exceptions to the open records and meetings laws in N.D.C.C. § 44-04-19.1 if the public entity allows its adversary to review the work product or attend the consultation.

N.D.A.G. 2002-O-02
February 4, 2002

PUBLIC ENTITY
Meetings of the governing body of a dispatch center that was created by a joint powers agreement of several political subdivisions are required to be open to the public unless otherwise specifically provided by law.

N.D.A.G. 2002-O-07
July 12, 2002 and
August 13, 2002
Addendum

MEETING, DEFINED
NOTICE OF MEETINGS
SCHOOLS
Notice need not be provided when a school board meets for a social gathering and public business is not considered. Notice was not properly provided for special meetings held to interview and select a new superintendent. Sufficient notices of these special meetings were not filed with the county auditor as required by N.D.C.C. § 44-04-20.

N.D.A.G. 2002-O-09
September 17, 2002

CITIES
ECONOMIC DEVELOPMENT
NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY
Under N.D.C.C. § 44-04-17.1(12)(c), the Minot Area Chamber of Commerce Task Force (Task Force) is considered a "public entity" because it (1) is supported by public funds from the city of Minot (City) that are not provided in exchange for goods or services having an equivalent fair market value and (2) applying the Schwab factor test, it acted as an agent of the City to encourage the retention and oppose the closure of the Minot Air Force Base, essentially an economic development function of the City. Therefore, the meetings of the Task Force will generally be open to the public. Strategies and plans of the Task Force's expert consultant relating to base retention activities are protected as trade secrets or commercial information under N.D.C.C. § 44-04-18.4(1). Such information is privileged and, therefore, confidential under N.D.C.C. § 44-04-18.4(1) because release of such information would cause substantial harm to the Task Force and the City in that it would place them at a competitive disadvantage. Therefore, the parts of meetings where this confidential information is discussed will not be open to the public.

N.D.A.G. 2002-O-10
October 18, 2002

ATTORNEY CONSULTATION
EXECUTIVE SESSION,
NOTICE OF MEETING
PROCEDURAL REQUIREMENTS
The notice, when read as a whole, adequately indicated to the public the general subject matter of the executive session. If a public entity no longer has a main office, the requirement of posting notice at the main office does not apply. It was both reasonable and proper for the county superintendent and the board's attorney to be present at an executive session given the subject matter of the executive session and their expertise. An executive session held for an attorney consultation under N.D.C.C. § 44-04-19.1(2) can be for a consultation of legal options regarding a pending administrative proceeding.

N.D.A.G. 2002-O-11
November 29, 2002

NOTICE OF MEETINGS
A general statement in the notice of a special meeting that "any other issues" that come up will be discussed is not proper. Notices for special or emergency meetings must have a specific list of issues to be discussed. Discussion at the special or emergency meeting is then limited to the issues listed on the notice.

N.D.A.G. 2002-O-12
December 18, 2002

NOTICE OF MEETING
OPEN MEETINGS, IN GENERAL

Notice of a meeting is not required to be published unless there is a specific law requiring the notice to be published, or the entity has decided to publish the notice. N.D.C.C. § 44-04-20(1). This opinion dealt with a state-wide entity that holds meetings in different locations around the state. The fact that the entity discussed a matter that directly affected a town 120 miles from the meeting location did not violate the open meetings law. The open meetings law does not specifically address the proximity of the public entity's meeting place to the people affected by the entity's decisions, however, holding a meeting a substantial distance away from the public entity's jurisdiction could result in the denial of the public's access to the meeting.

2003

N.D.A.G. 2003-L-01
January 2, 2003

MEETING DEFINED
SCHOOLS

N.D.C.C. § 15.1-09-29 concerning "members present" is intended to define the portion of the total membership of a board needed to transact business. It is not designed to require actual physical presence by all of those persons in the same room at a meeting. Therefore, a school board member may participate in a school board meeting by telephone or video equipment and be included in the number of board members needed to constitute a quorum and the number of votes needed to transact business.

N.D.A.G. 2003-O-02
February 21, 2003

NONGOVERNMENTAL
ORGANIZATIONS
PUBLIC ENTITY

James River Senior Citizen's Center is a public entity subject to the open meetings law because it receives mill levy money for its general support without a specific contract with the county for specific services to be provided in exchange for the mill levy money. In addition, the Senior Center has the discretion to decide how the mill levy funds are spent within general areas that are outlined in statute. All meetings of the Senior Center regarding discussion items funded all or in part by the mill levy fund are open to the public.

N.D.A.G. 2003-O-03
February 21, 2003

CITIES
EXECUTIVE SESSION, PROCEDURAL
OPEN MEETINGS, IN GENERAL

There is no law requiring a governing body to announce at a meeting that the open portion of the meeting will reconvene after the executive session is completed. The Attorney General's office encourages governing bodies to estimate when the open meeting will reconvene and announce this to the public, so the public has some idea when they should return for the rest of the meeting.

N.D.A.G. 2003-O-05
April 11, 2003

CITIES
MEETING, DEFINED

Even without a quorum, the gathering of three members of a seven-member city council at a meeting of another public entity could have been a meeting if the members were acting pursuant to authority delegated to them by the city council. However, since no such delegation was made, it was not a meeting.

N.D.A.G. 2003-O-07
June 5, 2003

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
SCHOOLS

Section 44-04-20 does not provide a process to amend a notice for a special meeting. The school board took appropriate steps by issuing the amended notice as soon as the additional agenda item was requested and by following requirements in N.D.C.C. § 44-04-20(6) when it amended the notice of the special meeting. The meeting agenda for a regular meeting can be amended on the day of the meeting or during the meeting. It is appropriate to explain to the public changes made to the agenda, but there is not legal requirement to do so. The public has the right to access meetings of a governing board, but the access does not give members of the pubic the right to participate or speak at the public meeting.

N.D.A.G. 2003-O-08
July 22, 2003

NONGOVERNMENTAL
NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
ORGANIZATIONS
PUBLIC ENTITY

The Dakota Center for Independent Living is a public entity for purposes of the open records and meetings laws because it is recognized by state law to exercise public authority or perform governmental function. Providing independent living core services and other assistance to the disabled is a governmental function. By the enactment of N.D.C.C. § 50-06.5, the center was recognized by state law. The center receives funding through a legislative appropriation and has discretion on how to spend the funds. Notice of meetings must be given to a member of the public who requests it, at the same time the governing body's members are notified.

N.D.A.G. 2003-O-12
September 8, 2003

CITIES
OPEN MEETINGS, IN GENERAL

New agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting. From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity. If members of the public or press leave a meeting before it ends, they do so at their own risk.

N.D.A.G. 2003-O-13
October 22, 2003

CITIES
NOTICE OF MEETING

Committees of a city council are subject to the same meeting notice requirements as the city council. It was the responsibility of the committee's chairperson to post the notice as soon as the members of the committee were notified. It was a violation of N.D.C.C. § 44-04-20(5) to not notify the public as soon as the committee members knew of the meeting. Unless otherwise provided by law, resolution, or ordinance, or as decided by the public entity, meeting notices need not be published. The purpose of providing the notice to the public entity's official newspaper is not necessarily so it can publish the notice, but instead to notify the newspaper so it can cover the meeting if it desires. Minutes must be taken of committee meetings.

N.D.A.G. 2003-O-14
October 22, 2003

ATTORNEY CONSULTATION
EXECUTIVE SESSION

The fact that after resigning, the police chief changed his mind and asked to be terminated in order to be eligible for unemployment benefits does not indicate that there is a threat of anticipated litigation or adversarial administrative proceeding. The fact that a public entity has fired someone does not alone create a reasonably predictable threat of litigation or adversarial administrative proceeding. A governing body of a public entity may not close its evaluation of a public employee's job performance under section 44-04-19.1(4) simply because the employee was fired or asked to resign.

N.D.A.G. 2003-O-15
October 22, 2003

EXECUTIVE SESSION, PROCEDURAL
EXECUTIVE SESSION, RECORDS
GOVERNING BODY
OPEN MEETINGS, IN GENERAL

Committees set up by governing bodies are subject to the open records and meetings law. The two members of the Fargo Airport Authority who viewed the Power-Point presentation constituted a committee and was subject to the open meetings law and needed to follow the procedures in N.D.C.C. § 44-04-19.2 to go into executive session. No legal authority was announced during the open portion of the meeting that would authorize the executive session to be held. The executive session was not recorded.

N.D.A.G. 2003-O-16
October 22, 2003

NOTICE OF MEETING

In the event of special or emergency meetings, the public entity must give notice to its official newspaper. N.D.C.C. § 44-04-20(6). However, there is no requirement for state entities, such as Workforce Safety & Insurance (WSI), to select an official newspaper. Therefore, there is no statutory requirement for a state entity to send the notice to any newspaper, unless of course, the newspaper requested to receive notice. Because no request from the media was received, WSI was not
legally required under N.D.C.C. § 44-04-20(6) to give notice of the meeting. (*But see* N.D.C.C. 44-04-20(6).)

N.D.A.G. 2003-O-18
November 3, 2003

CITIES
OPEN MEETINGS, IN GENERAL
The Planning and Zoning Committee violated N.D.C.C. § 44-04- 21(2) by failing to take minutes of the June 24, 2003, meeting. Individual committee members going to the Chairman's office at different times to sign a permit is not a meeting.

N.D.A.G. 2003-O-19
November 12, 2003

NOTICE OF MEETING
OPEN RECORDS, IN GENERAL
PUBLIC BUSINESS
UNREASONABLE DELAY
A request for records made during a meeting is as valid as a request made at any other time. If the records were not available during the meeting, the board had a duty under the open records law to provide access or copies of the records within a reasonable time after the meeting. The board did not violate N.D.C.C. § 44-04-20 because social gatherings are not meetings under N.D.C.C. § 44-04-17.1(8) as long as public business was not discussed. Placing a meeting announcement of the local community announcement television channel is one way to inform the community of upcoming meetings, however, it does not replace the notice requirements found in N.D.C.C. § 44-4-20.

N.D.A.G. 2003-O-20
November 13, 2003

NOTICE OF MEETING
Topics to be discussed at a special meeting must be in the notice. By failing to include the topics in the notice, members of the public were prevented from obtaining proper advance notice of the special meeting. The Towner County Commission violated N.D.C.C. § 44-04-20(6) when it failed to notify the official newspaper about a special meeting at the same time as the commission members were notified.

N.D.A.G. 2003-O-22
December 1, 2003

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS
NOTICE OF MEETING
A citation in a notice to N.D.C.C. § 44-04-19.1 fails to describe the subject matter of the executive session to a member of the public. The announcement in the minutes identified the contract under consideration, but did not refer to "negotiation strategy," "negotiation instruction" or similar language. Using the word "negotiation" in some form would have sufficiently identified N.D.C.C. § 44-04-19.1(7) as the legal authority for the executive session. The purpose of requiring all executive session to be recorded is to provide a process for citizens to verify that the discussion during an executive session was limited to the announced topics. An executive session is permissible only if a governing body is discussing negotiating strategy or providing negotiation instructions. The law does not allow an executive session
for a governing body to receive an update or summary from its negotiator on the status of contract negotiations.

2004

N.D.A.G. 2004-O-02
January 13, 2004

MEETING, DEFINED
NOTICE OF MEETING
PUBLIC BUSINESS
Gathering of a quorum of county commissioners to receive training from Workforce Safety and Insurance was "public business" and was therefore a meeting.

N.D.A.G. 2004-O-04
January 22, 2004

NONGOVERNMENTAL ORGANIZATION
OPEN MEETING, IN GENERAL
PUBLIC ENTITY
A private, nonprofit entity like the hospital can be a public entity if it is supported, in whole or in part, by public funds, or is expending public funds. N.D.C.C. § 44-04-17.1(9), (12)(c). The hospital receives approximately $45,000 per year in property tax proceeds from the district which constitutes cash assets with more than minimal value and meets the definition of "public funds." The more discretion an entity has over how public funds are used, the more likely it is that the funds are for the entity's general support, rather than for a purchase of goods or services. The hospital has discretion over the use of the funds, the funds are for its general support. Only those portions of the hospital's board of director's meetings dealing with the expenditure of district funds are open under the open meetings law.

N.D.A.G. 2004-O-08
April 6, 2004

NOTICE OF MEETING
OPEN MEETINGS, IN GENERAL
PUBLIC BUSINESS
It was a meeting when a quorum of the county commission met with the state's attorney prior to a meeting. It is not relevant that no motions were made and no actions were taken in determining whether the gathering was a meeting subject to open meetings law. Rather, any discussion or receipt of information regarding public business at a gathering of a quorum of the commission is a meeting under N.D.C.C.
§ 44-04-17.1(8) that must be properly noticed.

N.D.A.G. 2004-O-09
April 12, 2004

NOTICE OF MEETING
The fact that the business manager was not available does not excuse the failure to provide notice to the public at the same time the governing body's members are notified. If a public entity finds it necessary to hold an emergency or special meeting, the entity must utilize reasonable means to assure that the public notice, and the notice to anyone requesting this information, is, in fact, reasonably designed to reach the public and those who have requested this information at the same time it is communicated to members of the governing body.

N.D.A.G. 2004-O-10
May 3, 2004

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS
NOTICE OF MEETING
PUBLIC ENTITY

The Stutsman County Correctional Center is a joint enterprise created by a joint powers agreement of several political subdivisions. In the agreement, the subdivisions delegate a governmental function to the joint enterprise, making it an agency of the subdivisions and therefore subject to the open meetings law as a public entity. The location of a meeting must be listed in an agenda as it is a material item required by law. The governing authority explained that the legal basis for the executive session was attorney consultation to discuss threatened litigation regarding employee classification in open session prior to going into executive session. This sufficiently indicated the topic to be discussed at the executive session and the legal authority for holding the executive session and therefore complied with N.D.C.C. § 44-04-19.2(2)(b). The recording of a closed portion of a meeting is a closed record. The governing authority's executive session was lawful and thus the County Correctional Center did not violate N.D.C.C. § 44-04-18 by refusing to disclose a recording of that session.

N.D.A.G. 2004-O-12
June 16, 2004

CITIES
GOVERNING BODY
MEETING DEFINED

Medora has a five member city council, including the mayor. Since only two of the five members were present at a meeting with a city employee, no quorum was present. Even without a quorum, the gathering of two council members with the complaining city employee could have been a meeting if the members were acting pursuant to authority delegated to them by the city council. In order for a delegation of authority from a governing body to come under the open meetings law, the delegation must be to a "group of persons."

N.D.A.G. 2004-O-13
June 28, 2004

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS
NEGOTIATING STRATEGY SESSIONS
NOTICE OF MEETING

The notice included "Collaborative Bargaining" as an agenda item, but did not indicate that the collaborative bargaining item would be discussed in an executive session or that it was related to teacher salary negotiation. Notice must have a general description of the subject matter of an executive session sufficient to provide information about the topic or purpose of the session to a member of the public. This phrase "collaborative bargaining strategies" sufficiently identified the legal authority for the executive session. A discussion by the members clearly indicated the collaborative bargaining strategies related to negotiations over teacher salaries. This announcement, supplemented by the member's discussion, sufficiently identified the legal authority for the session and the topic to be discussed. The district was not required to disclose a copy of the tape of the executive session if the discussion in the executive session was limited to the topics announced in the open portion of the meeting.

N.D.A.G. 2004-O-14
July 1, 2004

NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY

The Fargo Moorhead Chamber of Commerce is neither supported by public funds, nor an agent of the city of Fargo, therefore the Chamber is not a public entity subject to the open records and meetings laws and therefore is not required to hold meetings that are open to the public.

N.D.A.G. 2004-O-15
July 9, 2004

GOVERNING BODY
OPEN MEETING, IN GENERAL
SCHOOLS

A committee delegated authority to perform any function, including fact gathering, reporting, or recommending action, as well as taking actions, on behalf of a governing body is subject to the state's open meetings law, including the requirements to notice its meetings and prepare minutes. A quorum of the board's Finance Committee was present at the meeting. The subject matter of the meeting was within the scope of responsibilities delegated to the Finance Committee by the board. Therefore, the Finance Committee of the board violated the open meetings law by not providing public notice of the meeting and failing to prepare minutes.

N.D.A.G. 2004-O-16
July 16, 2004

CITIES
MINUTES, CONTENT

Section 44-04-21, N.D.C.C., is silent as to if or when minutes may be edited. Therefore, the open meetings law is not violated when individual council members propose edits of the minutes to the auditor. However, other laws govern the extent to which minutes may be edited. Under N.D.C.C. § 40-16-03, it is the city auditor's duty to attend all governing body meetings and to keep complete records of its proceedings. The authority to edit minutes does not authorize the governing body to rewrite or to remove accurate information from the minutes.

N.D.A.G. 2004-O-17
July 16, 2004

OPEN MEETINGS, IN GENERAL
VOTING

The purpose of N.D.C.C. § 44-04-21 is to make a record of the vote of each member of a governing body for the benefit of those attending the meeting as well as those who are reviewing the minutes of the meeting. Voting by raising hands, rather than taking roll call votes, wrongly assumes that every board member is raising his or her hand in a manner that can be seen by anyone attending the meeting. This also does not take into consideration members of the public who do not attend the meeting and may only read the minutes. "[M]otion carries" is not synonymous with "unanimous." Therefore, a member of the public, reading the minutes, would not know how the board members voted.

N.D.A.G. 2004-O-18
July 16, 2004

NOTICE OF MEETING
SCHOOLS

Because the board did not expect to discuss the superintendent's nonrenewal at the time the notice was prepared, the school district did not violate N.D.C.C. § 44-04-20 when it considered that topic at its regular meeting.

N.D.A.G. 2004-O-19
August 10, 2004

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PERSONNEL MATTERS
NOTICE OF MEETING

The notice did not list the location of the meeting or that an executive session was planned. An executive session for "attorney consultation" was authorized because it was reasonable for the council to conclude that there was a tangible threat of litigation when the fired employee stated several times that he was consulting with an attorney and going to appeal his termination. The discussion in the executive session regarding job performance of the terminated employee was improper. There is no exception to the open meetings law for personnel matters.

N.D.A.G. 2004-O-20
September 7, 2004

FEES FOR ACCESS & COPIES
NOTICE OF MEETING
OPEN RECORDS, IN GENERAL
UNREASONABLE DELAY

Notice requirements were violated when notice of the special meeting was not posted in advance, but only handed out to the council members and the media when they arrived at the meeting. It was also a violation to discuss topics at a special meeting that were not included in the notice and agenda. It was a violation of 44-04-19(3) to prohibit a member of the public from videotaping an open meeting.

N.D.A.G. 2004-O-21
October 8, 2004

EXECUTIVE SESSION, PERSONNEL MATTERS
EXECUTIVE SESSION, PROCEDURAL MATTERS
MINUTES, CONTENT
SCHOOLS

The minutes of the executive session reveal the true purpose of the executive session was to discuss a personnel matter. No matter how uncomfortable it might be for a governing body to discuss an employee's job performance in public, there is no exception to the open meetings law for personnel matters. The board violated the law by failing to record the executive session and including in the minutes that the superintendent's alleged improper payment was the general topic discussed during the executive session.

N.D.A.G. 2004-O-22
October 12, 2004

EXECUTIVE SESSION, PROCEDURAL MATTERS
NOTICE OF MEETINGS

The notice for the regular meeting failed to state that there would be an executive session. According to the city attorney, the executive session was not intentionally left off the notice and agenda. Therefore, it was not a violation to hold an executive session during the regular meeting. The council did not take final action in executive session. Rather, it received advice about the offer and waited to make a final decision in the open meeting by passing a motion to reject the offer.

N.D.A.G. 2004-O-24
November 4, 2004

ATTORNEY CONSULTATION
NEGOTIATION STRATEGY SESSIONS
VOTING

It was proper to hold an executive session for negotiation strategy when the discussion was limited to negotiating a contract for early retirement, instruction was given to a negotiator, and conducting such a discussion in an open meeting would have revealed financial incentives, thereby hurting the negotiation position of the public entity. There was a realistic and tangible possibility of litigation, justifying an executive session for "attorney consultation," when an employee hired an attorney, the attorney made an offer "in lieu of litigation," and the employee stated that litigation would be forthcoming. During the July 8, 2004 executive session, the discussion stayed within the parameters of attorney consultation and negotiation strategy. However, the board took final action on two motions that should have occurred in the open part of the meeting. After the employee accepted the board's offer, negotiations were complete and there was no longer any reason to hold an executive session based on negotiation strategy.

2005

N.D.A.G. 2005-O-01
January 10, 2005

CITIES
MINUTES, CONTENT
NOTICE OF MEETINGS
VOTING

A governing body is free to discuss any topic at a regular meeting, as long as the notice of the meeting listed all the topics the governing body expected to discuss when the notice was prepared. All topics discussed at the meeting must be listed in the minutes. Failing to list a topic that was discussed is a violation of N.D.C.C. § 44-04-21(2)(c). Not all matters brought before a public entity must be voted on. Deciding not to revisit an issue that was previously discussed is not a matter that must be voted upon.

N.D.A.G. 2005-O-02
January 12, 2005

GOVERNING BODY
MEETING, DEFINED
MINUTES, CONTENT
NOTICE OF MEETINGS
PUBLIC ENTITY
VOTING

The Cass County Historical Society is a public entity because it is supported by public funds, it expends public funds, it is recognized by state law as a county historical society, and serves a governmental function of promoting historical work. The board authorized the executive committee to act on its behalf between board meetings. It is therefore a governing body whose meetings regarding public business are subject to the open meetings law. Meetings may take place by telephone. A meeting involving two members of the three-member executive committee, constituted a meeting of a quorum of the executive committee at which minutes should have been taken. Failure
to take a roll call vote, even though there is a record of the result, violates the law.

N.D.A.G. 2005-O-03
February 8, 2005

CITIES
GOVERNING BODY
MEETING, DEFINED
NEGOTIATION STRATEGY SESSIONS

The Fargo mayor was directed by the city commission to appoint a committee to negotiate a cable contract and report back to the commission. Even though the committee had no binding decision making authority, its gatherings were still meetings subject to the open meetings law. An entity may not close a meeting on the basis of contract negotiation if the actual negotiations are conducted with the other party. Allowing the party with which the city is negotiating to attend the meeting does no protect the bargaining of the city in its negotiations.

N.D.A.G. 2005-O-04
February 9, 2005

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS

The notice of a meeting must contain the location of a meeting even if the location of all meetings is specified in a city ordinance. Date, time, location and general subject matter of any executive session are minimum items required in any notice. The fact that the council could have provided greater detail in the public notice of the executive session subject matter does not mean that it failed to comply with the minimum requirements. Litigation is reasonably predictable when communications regarding settlement of a possible wrongful termination claim with an ex-employee's attorney have been ongoing for several months.

N.D.A.G. 2005-L-14
April 29, 2005

CITIES
MEETINGS, DEFINED

A delegation of authority from a governing body must be to more than one person. The commission could legally delegate authority to a single commissioner to attend meetings without violating the open meetings law.

N.D.A.G. 2005-O-07
May 12, 2005

CITIES
NOTICE OF MEETINGS
VOTING

Committees created by a public entity's main governing body are subject to notice requirements. Only items listed in the agenda of a special meeting may be discussed at the meeting. The purpose of requiring the notice to be filed with the auditor is to have a central location for people to find out about public meetings affecting the city. Although the city auditor prepared the notice, she did not file it and the requirement to "file" the notice requires something more than its preparation. When the full council attended a committee meeting, sat at the council table, and participated in the discussion, it was a quorum of the full council and should have been noticed as a meeting of the full council. If it was reasonable to suspect beforehand that a quorum might attend the committee meeting, public notice should have been provided when the members learned of the gathering. A decision to recommend to the council that the deputy auditor's position be full-time pertained to the merits of the matter before the committee and a roll call vote should have been taken.

N.D.A.G. 2005-O-08
May 13, 2005

CITIES
MINUTES, CONTENT
NOTICE OF MEETINGS

There is no mandatory minimum time period for giving notice prior to a meeting. Instead, the notice must be provided to the public and the media at the same time the governing body's members are notified. Failing to list the location of a meeting on the notice is a material omission that violates N.D.C.C. § 44-04-20(6). While minutes may reflect discussions that take place, it is not necessary for the minutes to do so.

N.D.A.G. 2005-O-10
June 9, 2005

MINUTES-CONTENT
NOTICE OF MEETINGS
VOTING

When a public entity serves territory in two counties, the board should file meeting notices in the county auditor's office of each participating county. Roll call votes must be taken for every nonprocedural matter, even when the results are typically unanimous. The roll call vote of each member should be reflected in the minutes so that members of the public can determine how an individual board member voted by reading the minutes. It is not clear how board members voted when the minutes say "all agreed" or "motion carried."

N.D.A.G. 2005-O-14
August 25, 2005

OPEN MEETINGS, IN GENERAL
SCHOOLS

School assemblies, where a quorum of the school board is in attendance, are meetings subject to the open meetings law, even if there is no decision-making or motions made.

N.D.A.G. 2005-O-15
September 19 2005

CITIES
MEETING, DEFINED
PUBLIC BUSINESS

It was not a meeting of a governing body when a consultant for the city of Bismarck held a meeting with air charter operators. The city commission did not delegate authority to the consultant and the city administrator, who attended the meeting, to conduct the meeting on its behalf. Even though the meeting was related to public business, no quorum of a governing body of a public entity attended the meeting.

N.D.A.G. 2005-O-17
November 8, 2005

COUNTIES
NOTICE OF MEETINGS

When a county-level governing body establishes a schedule for its regular meetings, it is required to file a copy of the schedule with the county auditor. When a board does not hold regularly scheduled meetings, the board should treat its meetings as emergency or special meetings and provide notice accordingly. The location of a meeting is a material element of the notice, therefore a notice without it does not substantially comply with the requirements of N.D.C.C. § 44-04-20. Topics listed on a meeting notice for a special meeting must be specific. "Old Business" is not specific enough.

N.D.A.G. 2005-O-18
November 8, 2005

CITIES
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
MINUTES, CONTENT
NEGOTIATION STRATEGY SESSIONS
NOTICE OF MEETINGS

Notice of a regular meeting was insufficient because it incorrectly described the general subject matter of an executive session by referring to the wrong township and by saying "negotiations" rather than "negotiation strategy" or "negotiating instructions." When going into executive session under N.D.C.C. § 44-04-19.1(9), using the term "negotiation" in the announcement at the meeting is misleading because a governing body cannot go into executive session to negotiate with another party. A discussion by a governing body in executive session providing authority and instructions to a negotiator is not final action as defined in N.D.C.C. § 44-04-19.2(2)(e). The minutes of the regular meeting at which an executive session was held were insufficient because the minutes failed to identify the members attending the executive session and did not indicate the time it began and ended.

N.D.A.G. 2005-O-19
November 22, 2005

OPEN MEETINGS, IN GENERAL
PUBLIC ENTITY

The Gender Fairness Committee is a committee created by the North Dakota Supreme Court as a part of its rule making process. Due to the separation of powers doctrine, the open meetings law does not apply to the exclusive functions of the Court. The Court is not a public entity subject to the open meetings law.

N.D.A.G. 2005-O-20
December 5, 2005

NOTICE OF MEETINGS

Emergency and special meetings may be called on short notice. If complying with notice requirements is impossible for reasons beyond the control of the public entity, steps should be taken as soon as possible to rectify the defect. Public notice and filing can occur after a meeting and substantially comply with N.D.C.C. § 44-04-20 in cases where notification is impossible.

N.D.A.G. 2005-O-21
December 8 2005

NEGOTIATION STRATEGY SESSION
SCHOOLS
VOTING

"Final action" does not include guidance given my members of the governing body to legal counsel or other negotiators in a closed attorney consultation or negotiation preparation session. The first part of the motion made and voted upon in executive session was not "final action" because it was giving the negotiators authority to make a final offer. The second part of the motion authorized the unilateral issuance of contracts and that motion to give authority to unilaterally issue contracts goes beyond negotiation strategy or instruction and should have been made in open session.

2006

N.D.A.G. 2006-O-01
January 9, 2006

HIGHER EDUCATION
PUBLIC ENTITY
RECORDS
UNREASONABLE DELAY
The North Dakota State University Research Foundation is a public entity subject to the open records law because it acts as an agent of NDSU and performs a governmental function on behalf of the University. It was an unreasonable delay when the Foundation took six months to provide records to the Dakota Resource Council.

N.D.A.G. 2006-O-02
February 2, 2006

MEETINGS, DEFINED
PUBLIC ENTITY
The Red River Valley Fair Association is a public entity because it recognized by state law to perform a governmental function and it also is supported by public funds. The by-laws of the Fair Association create an "Executive Board" that has the specific authority of planning matters to be considered at the next regular Board meeting. The Executive Board violated the law four times when it met and performed duties that were consistent with the authority given to it under the by-laws.

N.D.A.G. 2006-O-03
February 14, 2006

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PERSONNEL MATTERS
An organization, such as the Red River Valley Fair Association, is a public entity both because it is supported by public funds and because it is recognized under state law to exercise a public function. It was improper for the Red River Fair Association's Search Committee to use N.D.C.C. § 44-04-18.1(3) to go into executive session at its February 8, 2006, meeting to review job applications. The mere presence of the attorney for the Fair Association at the executive session was not sufficient to close the meeting under "attorney consultation."

N.D.A.G. 2006-O-04
February 21, 2006

NOTICE OF MEETINGS
PUBLIC ENTITY
The Bismarck-Mandan Orchestral Association is a public entity supported in part by public funds. It is required to give notice of its meetings under the Open meetings law of all meetings, including executive and personnel committee meetings and to provide copies of the notices to individuals who requested them.

N.D.A.G. 2006-O-05
February 28, 2006

NOTICE OF MEETINGS
PUBLIC ENTITY
The North Dakota Firefighter's Association receives appropriated funds from the Legislature to carry out its duties and is recognized in state law to perform a governmental function. Therefore it is a public subject to the Open meetings law. Since the executive board of the North Dakota Firefighter's Association does not hold regularly scheduled meetings, it must treat its meetings as emergency or special meetings and provide notice according to N.D.C.C. § 44-04-20(6).

N.D.A.G. 2006-O-06
March 30, 2006

NOTICE OF MEETINGS
PUBLIC ENTITY
The North Dakota Judicial Conference is a public entity because it was created by the Legislature without giving the Supreme Court's authority to pass rules regarding the openness of its meetings and, as such, must include the material requirements of N.D.C.C. § 44-04-20(2) in its meeting notices.

N.D.A.G. 2006-O-07
May 1, 2006

NOTICE OF MEETINGS
The annual schedule of meetings created by the Nome City Council did not meet the notice requirements for individual meetings because the topics to be considered must be included in the notice that is posted prior to a meeting

N.D.A.G. 2006-O-09
May 15, 2006

NOTICE OF MEETINGS
The Grand Forks City Council meets both as a council and as a Special Committee of the Whole. In both instances, a quorum of the city council is present and therefore, action may be taken at either type of meeting. Regardless of how the meeting is characterized, the notice for "Committee of the Whole" meetings must state that it is a meeting of the city council.

N.D.A.G. 2006-O-10
June 7, 2006

NOTICE OF MEETING
The Cavalier County Weed Board posted the notice of its meeting on the doors of the meeting room the day before and the day of the meeting. Although the doors of the meeting room were opened and the notice was hidden from view for a short period of time before the notice was put on the other side of the door, the board substantially complied with the posting requirements.

N.D.A.G. 2006-O-11
July 7, 2006

HIGHER EDUCATION
OPEN MEETINGS, IN GENERAL
Although two of the members' of the State Board of Higher Education had conversations about public business, the meetings were not at the direction of the Higher Education Board and therefore did not constitute meetings of a committee subject to the open meetings law. Overall the various conversations between board members about general dissatisfaction with certain people were not organized in an effort to form a consensus among the collective quorum and did not constitute avoidance of access to public meetings.

N.D.A.G. 2006-L-22
August 16, 2006

ATTORNEY CONSULTATION
It was proper to exclude a member of the city commission from an executive session when the subject of the executive session is litigation involving the excluded member.

N.D.A.G. 2006-O-14
October 4, 2006

EXECUTIVE SESSION, RECORDS
PUBLIC ENTITY
As an entity that is supported in whole or in part by public funds, the Williston Family Crisis Shelter is subject to the Open Records and Open meetings law. Its board may hold executive sessions but the minutes of the regular meeting during which the executive session is convened must include the topics to be considered at the executive session.

N.D.A.G. 2006-L-34
October 20, 2006

HIGHER EDUCATION
Faculty advisor to the ND State Board of Higher Education is not a member of the State Board, but may have the right to attend executive sessions of the State Board under N.D.C.C. § 15-10-02(2) which allows that the "adviser may attend and participate in all meetings of the state board but may not vote."

2007

N.D.A.G. 2007-O-02
February 14, 2007

NOTICE OF MEETINGS
MEETING, DEFINED
Publication of meeting notices is not required by the open meetings law. Notices of special or emergency meetings must be given to the official newspaper. If it is impossible to provide the notice prior to the meeting, the newspaper must be provided with the notice following the meeting. If giving advance notice of a meeting to an individual who has requested the same is not reasonably possible, a notice provided following the meeting constitutes substantial compliance.

A quorum of a governing body cannot discuss public business outside of a properly noticed meeting.

N.D.A.G. 2007-O-04
March 23, 2007

NOTICE OF MEETING
There is no minimum mandatory notice requirement under N.D.C.C. § 44-04-20, however a notice filed with the Secretary of State's office 26 days prior to the meeting substantially complies with the law.

N.D.A.G. 2007-O-05
March 28, 2007

NOTICE OF MEETING
OPEN MEETINGS, IN GENERAL
SCHOOLS
There is no requirement to publish meeting notices in the newspaper, however notification of emergency or special meetings compensate for the possibility of the public not learning about the meeting. A school district must file the notice of its meetings with the county auditor to provide a central location for people to find out about the meeting.

It was constructive denial of access to an open meeting when a board president publicly announced to a parent, in front of the school board and other officials that the daughter of the parent should not attend a meeting of the board.

N.D.A.G. 2007-O-08
June 8, 2007

MEETING, DEFINED
NOTICE OF MEETINGS
PUBLIC BUSINESS
A governing body must provide notice of a meeting when a quorum is present and public business is discussed. Such gatherings must be noticed, even if they took place during a privately funded forum or during the annual convention of the ND Association of Counties.

N.D.A.G. 2007-L-09
June 15, 2007

OPEN MEETINGS, IN GENERAL
State law specifically excludes "meetings of any national … association" in its definition of "meeting" and any participation by members of or the director of a state agency does not violate the state's open meetings law.

N.D.A.G. 2007-O-09
June 25, 2007

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PERSONNEL MATTERS
Generally a public entity cannot hold an executive session to discuss personnel matters. In this instance, there were liability issues that the Commission had to consider when determining its options for disciplining the employee because of a threatened lawsuit. However, once the legal advice about the liability issues had been received, the Commission should have deliberated about the disciplinary action in open meeting.

N.D.A.G. 2007-O-10
June 26, 2007

NOTICE OF MEETINGS
A governing body must provide notice of its meetings to anyone requesting it even if the time and place of the meeting never changes.

N.D.A.G. 2007-O-11
August 3, 2007

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETING
OPEN MEETINGS, IN GENERAL
A public entity has the authority to control the decorum of a public hearing.

When holding an executive session for "negotiation" the City of Mandan went beyond the scope of the executive session. It also failed to give sufficient detail in its announcement prior to an executive session that adequately explained what contracts it was to discuss.

Notice must be given to anyone requesting the same.

N.D.A.G. 2007-O-13
October 8, 2007

GOVERNING BODY
NOTICE OF MEETING
By failing to notice its meetings, the School Board's committee was able to find an interim superintendent and negotiate the contract without public scrutiny.

By failing to provide notice the Board effectively cut the public out of a process that, by law, should have been open.

N.D.A.G. 2007-O-14
December 5, 2007

MEETING, DEFINED
Commission violated open meetings law by holding a "meeting" by email involving a quorum of the Commission and related to public business.

N.D.A.G. 2007-O-15
December 5, 2007

GOVERNING BODY
The Street Committee, a subcommittee appointed by the Bottineau City Council, violated open meetings law when it failed to post notice of a meeting.

2008

N.D.A.G. 2008-O-01
January 28, 2008

MEETING DEFINED
There was no violation of the open meetings law when one member of the Forbes City Council discussed public business over coffee with a group of individuals, none of whom were also on the City Council.

N.D.A.G. 2008-O-02
February 4, 2008

EXECUTIVE SESSION, PERSONNEL MATTERS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
The Burke County held an executive session without notice or any necessary procedural requirements to discuss personnel matters that arose during the budget process.

N.D.A.G. 2008-O-10
May 2, 2008

MEETING, DEFINED
NOTICE OF MEETING
PUBLIC BUSINESS
It was a meeting of the Stark County Commission when a quorum attended a lunch presentation given by a private entity that related to business of the commission. Even though the event was hosted by a private business, it was a "meeting" subject to public notice.

The Stark County Zoning Board did not have a quorum in attendance at this same meeting.

N.D.A.G. 2008-O-11
June 6, 2008

MEETING, DEFINED
PUBLIC BUSINESS
The Dickinson City Commission and the South Heart City Council violated the open meetings law when, without providing public notice of the lunch meeting, a quorum of each governing body attended a presentation given by Great Northern Power, the sole purpose of which was to give information which would likely have an economic impact on the area.

N.D.A.G. 2008-O-13
June 23, 2008

MEETING, DEFINED
NOTICE OF MEETINGS
The Traill County Water Resource District violated the open meetings law when they attended an information gathering presentation about a project under their control without providing public notice of the meeting.

N.D.A.G. 2008-O-21
August 24, 2008

GOVERNING BODY
NOTICE OF MEETING
A "meeting" occurred when the three person WSI Governance Committee met and discussed public business.

N.D.A.G. 2008-O-22
September 9, 2008

MEETING, DEFINED
PUBLIC BUSINESS
An e-mail exchange between two members of a three member committee was a meeting when the discussion went beyond planning the agenda and moved to the substance of the issues.

N.D.A.G. 2008-O-23
September 19, 2008

NOTICE OF MEETINGS
SCHOOLS
The agenda should describe the items a governing body knows will be discussed at a meeting in a way that actually give the public an idea of what may occur.

N.D.A.G. 2008-O-24
October 10, 2008

MEETING, DEFINED
Attendance by one member of the Mandan School Board at a meeting of different entities held on April 2, 2008, was not a "meeting" under the open meetings law required to be preceded by public notice.

N.D.A.G. 2008-O-28
December 12, 2008

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL
The Fargo City Commission failed to reasonably accommodate the public when it held a meeting during a bus tour and excluded the public, which includes the media, altogether.

N.D.A.G. 2008-O-29
December 12, 2008

NONGOVERNMENTAL ORGANIZATIONS
NOTICE OF MEETINGS
PUBLIC ENTITY
The Association is a public entity and violated the law by failing to e-mail a copy of a records, give notice of meetings by e-mail.

2009

N.D.A.G. 2009-O-03
February 23, 2009

GOVERNING BODY
NOTICE OF MEETING
The Rugby Public Safety Committee failed to notice its meetings. Although the Rugby City Council only discussed matters listed on the special meeting agenda, it should discontinue stating "other business" on agendas for special meetings.

N.D.A.G. 2009-O-04
March 6, 2009

NOTICE OF MEETING
Mailing a requested notice immediately following a meeting when the request was received the day of the meeting was reasonable. No violation when governing body only discussed items listed on special meeting agenda.

N.D.A.G. 2009-O-05
March 12, 2009

GOVERNING BODY
NOTICE OF MEETING
Two Mandan City commissioners, appointed to the business development portfolio, met to discuss portfolio business and failed to provide public notice.

N.D.A.G. 2009-O-06
April 23, 2009

NOTICE OF MEETINGS
PUBLIC ENTITY
SCHOOLS
The Lidgerwood School Board failed to post a notice of a special meeting in a place where the public would see it. Posting notice of the sports co-op committee meetings was the responsibility of that committee, not the school board because it is a separate public entity.

N.D.A.G. 2009-O-09
July 1, 2009

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS
NOTICE OF MEETINGS
VOTING

Notice of regular meeting substantially complied with N.D.C.C. § 44-04-20 even though it did not include the meeting room number nor was it published in the newspaper. General description of meeting and executive session in notice was in substantial compliance with N.D.C.C. § 44-04-20.

A governing body may go into executive session, under N.D.C.C. § 44-04-19.1(9) to discuss a proposed contract to sell property and to discuss counteroffer from sellers because the discussions involved the Board's negotiation strategy and position, and these discussions, if held in public, could have caused an adverse fiscal effect on the bargaining position of the Board.

Final action does not need to be taken in the open portion of the meeting for a negotiation preparation session authorized under N.D.C.C. § 44-04-19.1(9). However, minutes reveal Board came out of executive session and made motion to respond to seller's counteroffer and by doing so the Board's actions should have been clear to the public or media attending the meeting and thus no final action was taken in executive session.

N.D.A.G. 2009-O-10
July 2, 2099

NOTICE OF MEETING

Fireworks Committee did not violate notice of meeting requirements of N.D.C.C. § 44-04-20 when they did not notify an individual who had not requested personal notice of the meetings.

N.D.A.G. 2009-O-11
July 14, 2009

MEETING, DEFINED
PUBLIC BUSINESS

Pre-meeting discussion involving less than a quorum is not a meeting. Board members went into business manager's office prior to meeting to look up correct citation for an executive session under North Dakota statute but did not discuss the executive session or public business.

N.D.A.G. 2009-O-12
July 17, 2009

GOVERNING BODY
NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL

The appointment of two William County Commissioners to the Commission's Emergency Services Department portfolio created a committee of the governing body. Because the committee was delegated authority to perform a function on behalf of a governing body, it was subject to open meetings law and notice requirements. When a portfolio is held by more than one member of a governing body such as the two county commissioners in this instance, any meeting attended by the two commissioners is subject to open meetings law if the meeting pertains to the business assigned to that portfolio.

N.D.A.G. 2009-O-13
July 30, 2009

MEETING, DEFINED
NOTICE OF MEETINGS
School Board failed to notice its meeting in substantial compliance with N.D.C.C. § 44-04-20 when it failed to post notice at the location of the meeting, which was essential in order for the public to know the location of the meeting especially when the meeting was held in a different building than normal.

Although personal notice, as requested by the individual, was not precisely complied with, notice was provided in substantial compliance with N.D.C.C. § 44-04-20 when considering timing issues and the fact that the individual was informed of the meeting by newspaper and in a follow up confirmation.

N.D.A.G. 2009-O-14
August 14, 2009

ATTORNEY CONSULTATION
EXECUTIVE SESSION, RECORDS
NONGOVERNMENTAL ORGANIZATION
PUBLIC ENTITY
Unable to determine if North Dakota Emergency Medical Services Association is supported by public funds received from the Department of Health because record is inconclusive if support received is beyond that provided in exchange for goods or services having an equivalent fair market value. However, Association is performing a governmental function as an agent of a public entity as per factors set forth in News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So.2d 1029 (Fla. 1992).

Executive session with attorney to discuss negative audit was not authorized by law because fear of Department's reaction to audit is not the same as a threat of litigation or administrative action and there was nothing to indicate there was a threat of any sort of legal action against the Association at the time of the meeting.

N.D.A.G. 2009-O-15
August 21, 2009

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
SCHOOLS
School Board's notice of executive session to discuss negotiations per N.D.C.C. § 44-04-19.2 did not substantially comply with notice requirement as it did not identify the general subject matter of the executive session.

N.D.A.G. 2009-O-16
September 9, 2009

NOTICE OF MEETINGS
City Council did not include topic it expected to address in notice because it was a "routine" topic, this violated notice requirements. Regardless of size of town, personal notice must be provided when requested. Law is silent as to how meeting notices must be provided to individuals requesting but can be hand delivered or even provided orally, which negates a cost prohibitive argument.

N.D.A.G. 2009-O-17
September 11, 2009

MEETING DEFINED
PUBLIC BUSINESS
A meeting was held that required public notice when the City Council met to monitor a person's access to public records because a quorum was present, the Council was acting in its official capacity, and even though no public business was discussed, public business was performed.

N.D.A.G. 2009-O-18
October 9, 2009

NOTICE OF MEETINGS
TOWNSHIP
Township Board was required to comply with notice requirements of N.D.C.C. § 44-04-20(4) in addition to any statutory notice requirements of a township, such as for a meeting of township electors which requires meeting notices to be published.

N.D.A.G. 2009-O-19
October 19, 2009

Council members vote to terminate was based on problems encountered and were discussed at previous meeting. Requester alleges quick vote at meeting indicated members met before but opinions must be based off of record and information from Council who deny a private meeting took place.

N.D.A.G. 2009-O-20
November 13, 2009

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
VOTING
Airport Authority went into executive session to read letter from an attorney concerning former employee of Authority. Executive session not authorized by law as Authority's attorney was not at executive session and Authority's attorney did not write the letter. Authority also violated procedural requirements for holding executive session.

2010

N.D.A.G. 2010-O-01
February 5, 2010

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
GOVERNING BODY
OPEN MEETINGS IN GENERAL
Commission's three-member security committee, which included one member of the Commission, was still a governing body. Before going into a closed session, committee was required to convene in open session and follow notice and procedural laws of open meetings. Statute that allows Commission to make orders respecting property of the county does not expel Commission of providing public notice.

N.D.A.G. 2010-O-03
April 14, 2010

Commission denies quorum of Commission met outside public meetings to discuss software purchase. Opinions must be based on facts given by public entity per N.D.C.C. § 44-04-21.1(1).

N.D.A.G. 2010-O-05
April 20, 2010

NOTICE OF MEETINGS
City Council is allowed to amend the agenda of special meeting to include additional topic prior to meeting. City must then repost agenda and provide notice to newspaper, which does not require publication.

N.D.A.G. 2010-O-06
May 17, 2010

MEETINGS, DEFINED
MINUTES, CONTENT
PUBLIC BUSINESS
Quorum of Council members was present in the auditor's office prior to the meeting in order to pick up meeting information binders. However, no public business was discussed so this was not a "meeting" that required notice. Minutes need to meet minimum requirements of N.D.C.C. § 44-04-21(2), which includes list of topics discussed and this does not require verbatim report.

N.D.A.G. 2010-O-07
June 2, 2010

NOTICE OF MEETINGS
SCHOOLS
VOTING
School board failed to provide notice to newspaper and auditor for special meeting. Notice provided general topic to be discussed during special meeting and although was not a formal description or agenda, it clearly referenced topic to be discussed in substantial compliance with N.D.C.C. § 44-04-20. Law does not prohibit use of suggestion box although suggestions would be open records.

N.D.A.G. 2010-O-09
July 1, 2010

MEETING, DEFINED
Violation of open meetings law when City Council discussed public business by e-mail. Although it is appropriate to use e-mail in lieu of the mail as a means to provide information to a governing body, there must be safeguards to protect against communication that may trigger the open meetings law and members of governing body should be careful not to use the "reply all" function when responding to information received by e-mail. Reply in email by one member expressing opinion about how to handle public business is the equivalent to having a discussion because it contributes to the consensus building process and therefore the reply triggered open meetings law.

N.D.A.G. 2010-O-10
July 1, 2010

GOVERNING BODY
MEETING NOTICE
Through oversight, committee of City Council failed to give notice of special meeting to newspaper and individual who had previously requested such notice.

N.D.A.G. 2010-O-11
September 24, 2010

NEGOTIATION STRATEGY SESSIONS
NOTICE OF MEETINGS
SCHOOLS
School Board discussed topics not included in notice of special meeting, which contained catch-all language, and did not substantially comply with N.D.C.C. § 44-04-20.

School Board's discussions during executive session about providing superintendent with raise and to modify contract were unilateral decision and not subject to negotiation so any discussion to exercise its discretion under the contract should have been discussed in open meeting. Elements necessary for N.D.C.C. § 44-04-19.1(9) to apply were absent.

N.D.A.G. 2010-O-12
September 24, 2010

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
Regular meeting of City Council and at time agenda and notice were drafted and posted, auditor was unaware of any specific topics the Council anticipated discussing at the meeting. Thus, agenda using phrases of "new business" and "old business" was acceptable.

N.D.A.G. 2010-O-13
October 27, 2010

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
GOVERNING BODY
MEETING, DEFINED
Commission held unauthorized executive session to discuss unfavorable audit report. Governing bodies may not hold closed or secret meetings to discuss either personnel matters or potentially unpopular and controversial topics. Public has right to hear the report regardless of how uncomfortable it may be to the Commission.

Negotiations regarding contract between management company and City of Grand Forks were conducted in city attorney's office rather than with members of Commission. Since no quorum of Commissioners met to discuss contract terms or negotiations, no meeting was held which required public notice.

N.D.A.G. 2010-O-14
November 12, 2010

MEETINGS, DEFINED
NOTICE OF MEETINGS
PUBLIC ENTITY
Accusations that Board met secretly to discuss public business before meeting was question of fact and law requires opinions to be based on facts given by public entity. Board denies quorum of Board discussed firing of executive director by any means before meeting.

Squad meeting held by Board was "meeting" that must be publicly noticed even though no action was taken because a quorum of a governing body was present and the topic was one of public business.

2011

N.D.A.G. 2011-O-01
January 4, 2011

MEETING, DEFINED
NOTICE OF MEETINGS
Mayor, who was member of City Council, met with city auditor, representative from an engineering firm, and the U.S. Dept. of Agriculture to discuss letter of conditions for a grant. Because only mayor was present, no meeting occurred, even though public business was discussed, because no quorum was present.

City Council held special meeting before scheduled meeting without giving proper notice in violation of N.D.C.C. § 44-04-20. Public notice must be given of all meetings of a governing body even if the meetings are called on short notice.

N.D.A.G. 2011-O-02
January 12, 2012

MEETINGS, DEFINED
NOTICE OF MEETINGS
SCHOOLS

Upon receiving a teacher's resignation letter, superintendent called each Board member, one by one, to ask for vote on whether to release teacher from contract. Meeting thus occurred and Board only posted notice at usual location in school. By only providing partial notice, the likelihood of the public knowing about the meeting was diminished and Board violated N.D.C.C. § 44-04-20 by not filing with county auditor and notifying newspaper.

Questions of whether Board met secretly to discuss reassigned classes or allegation of secret phone meeting were questions of fact and law requires opinion to be based on facts provided by public entity. Board denies secret meeting and pre-meeting so no violation occurred.

N.D.A.G. 2011-O-03
January 26, 2011

GOVERNING BODY
PUBLIC ENTITY

Committee created by the Board held meeting that was not noticed.

N.D.A.G. 2011-O-04
February 7, 2011

GOVERNING BODY
MEETING
PUBLIC ENTITY
TOWNSHIP

On-site inspection City of McKenzie attended by a quorum of the Township Board of Supervisors and Township Zoning Commission constituted a "meeting" as defined by N.D.C.C. § 44-04-17.1, which required public notice in substantial compliance with N.D.C.C. § 44-04-20.

N.D.A.G. 2011-O-05
March 25, 2011

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
MEETING, DEFINED

Board may hold executive session authorized by N.D.C.C. §§ 44-04-19.1 and/or 44-04-19.2. However, must meet procedural requirements which include announcing the legal authority and the topic to be considered with enough specificity so that citizens can clearly understand why they cannot attend that portion of the meeting. Commission's announcement that proposed sign code was to be discussed because it is the subject of reasonably anticipated or threatened litigation was insufficient.

Executive session was authorized by law under facts of this case where individual repeatedly threatened to sue the City of Fargo and threats were specific and made to several officials. Record confirms discussion were limited to attorney's advice regarding drafting of the ordinance and N.D.C.C. § 44-04-19.1 specifically allows this type of consultation.

Dinner meeting at private restaurant that followed Commission meeting was still meeting as defined by N.D.C.C. § 44-04-17.1(8) that required notice.

N.D.A.G. 2011-O-06
May 26, 2011

NOTICE OF MEETING
Commission did not violate N.D.C.C. § 44-04-20 by discussing topics at the regular meeting that were not included on the notice and agenda because additional topics discussed were not known at the time the notice and agenda were prepared. A governing body is only required to include in its notice a list of topics it expects to discuss at the time the notice is prepared and does not have an obligation to amend the notice and agenda for a regular meeting. It is only a violation of law if the public entity deliberately omits a topic that it knows will be discussed at the time it prepares the notice.

N.D.A.G. 2011-O-07
May 26, 2011

NOTICE OF MEETING
Commission was not required to provide notice to newspaper of regular meeting who did not request such notice.

N.D.A.G. 2011-O-08
June 28, 2011

MEETING, DEFINED
Four members who remained after meeting was adjourned, two of whom continued to discuss public business, did not constitute a "meeting" as defined under N.D.C.C. § 44-04-17.1(9) because no quorum was present.

N.D.A.G. 2011-O-10
August 10, 2011

EXECUTIVE SESSION, PERSONNEL MATTERS
NOTICE OF MEETING
Special meetings failed to comply with the notice requirements of N.D.C.C. § 44-04-20 when Board failed to file with the county auditor and failed to notify the official newspaper. Executive session held to discuss personnel matters and Attorney General request was not authorized by law.

N.D.A.G. 2011-O-13
September 23, 2011

NOTICE OF MEETING
Board had several hours after situation that prompted need for special meeting and the special meeting itself and this was sufficient time to provide notice. Regardless of urgency, presiding officer of governing body is still responsible for public notice be given at the same time as the governing body's members.

N.D.A.G. 2011-O-14
September 23, 2011

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
Agenda of City Council that only referenced "old business" and "new business" substantially complied with notice requirements of the statute since at the time of posting the notice, the drafter was unaware of any specific topics the Council anticipated discussing at the meeting.

Tax Equalization Board is required to publish notice of meetings in accordance with N.D.C.C. § 57-23-02 and this requirement is in addition to that of N.D.C.C. § 44-04-20.

City Council held unauthorized executive session to discuss that attorney had been hired to represent it in a lawsuit and to discuss the status of the court case. Council also did not properly follow procedural requirements of N.D.C.C. § 44-04-19.2 because they failed to announce, during open portion of the meeting, items to be discussed
and legal authority for holding the executive session.

N.D.A.G. 2011-O-15
October 3, 2011

NOTICE OF MEETINGS

Commission substantially complied with N.D.C.C. § 44-04-20 during a special meeting to discuss a grievance hearing. During the meeting, an objection was made by the employee's attorney, which made it necessary for the Commission to appoint special counsel for the City in order for the hearing to proceed. Though the notice for the special meeting did not include the appointment of special counsel, the topic disclosed was a grievance hearing. It was appropriate for the Commission to appoint special counsel as the action was related or within the scope of the topic listed on the special meeting notice and was in response to an objection made during the hearing.

N.D.A.G. 2011-O-16
November 10, 2011

NOTICE OF MEETINGS

Township electors must publish notice of any meetings pursuant to N.D.C.C. chap. 58-04. Board of Township Supervisors, though not township electors and therefore not required to publish notice for any meeting N.D.C.C. chap. 58-04, must still notify the newspaper of special meetings pursuant to N.D.C.C. § 44-04-20.

N.D.A.G. 2011-O-17
December 22, 2011

MEETINGS, DEFINED

Mayor contacted a quorum of the Council via telephone to inform them that a lawsuit had been filed and the steps he took on behalf of the City. These discussions were public business because it was a form of information gathering. The public had a right to know what steps were taken by the mayor and what steps were endorsed by the governing body. Since a quorum of the Council received information through a series of telephone calls and the topics discussed were public business, a meeting occurred that is subject to open meetings law.

2012

N.D.A.G. 2012-O-01
January 19, 2012

Newspaper accused Commissioners of consulting with each other in private before public meeting was held to approve the project. Commissioners denied accusations and instead provide that decisions to approve were based on discussions in past meetings and no outside consultation occurred. Opinions are based on facts provided by public entity.

N.D.A.G. 2012-O-02
February 6, 2012

MEETING, DEFINED
OPEN MEETINGS, IN GENERAL
SCHOOLS

Board president made series of telephone calls to each Board member separately to discuss the state's attorney's investigation and this was "meeting" because it was information gathering that is a step in the decision making process.

N.D.A.G. 2012-O-03
February 24, 2012

OPEN MEETINGS, IN GENERAL

Research Park held annual meeting in Minneapolis, Minnesota, because NDSU football team was playing in Minneapolis and this presented an opportunity for the annual meeting to be held in conjunction with other events surrounding the game, providing an opportunity for everyone affiliated with the Research Park to make contacts and gain business leverage with different alumni and corporations that would also be in Minneapolis at the same time.

N.D.C.C. § 44-04-19 does not address the proximity of the public entity's meeting place to the people affected by the entity's decision so factors were considered to analyze whether the location of the meeting denied access in violation of the open meetings law, including: (1) jurisdiction of the public entity; (2) proximity of the meeting place to the persons affected by the public entity's decision, and (3) purpose behind the choice of location. Based on the information in this particular circumstance, holding one annual meeting in a different state did not violate N.D.C.C. § 44-04-19 and was accessible to the public.

N.D.A.G. 2012-O-04
March 20, 2012

NOTICE OF MEETINGS

Township failed to provide any advance notice of the special meeting as required under open meetings law. Requirements for noticing township meetings in N.D.C.C. ch. 58 are in addition to the notice requirements of N.D.C.C. § 44-04-20.

N.D.A.G. 2012-O-05
March 20, 2012

MEETINGS, DEFINED

Three of four Township Supervisors, via telephone, discussed public business, which constituted a meeting that must be publicly noticed.

N.D.A.G. 2012-O-06
May 18, 2012

MEETING, DEFINED
NOTICE OF MEETINGS
SCHOOLS

Accusation that Board held a secret meeting because the amount approved for purchase agreement for project during open meeting was greater than amount accepted at previous meeting. Board denied secret meeting and explained amount accepted at previous meeting allowed for "Future Specials Assumed by Buyer" which were therefore included in amount approved at the later meeting.

Board attended Finance Committee meeting but did not provide notice alleging they attended the meeting as concerned citizens. Public Business was discussed at the Committee meeting and a quorum of the Board was present. This is therefore a meeting in which notice must be provided even if attendance of a quorum is unplanned and unexpected because the elements for a meeting were present, the members represented themselves as Board members, and the public would not be able to distinguish the Board's private concerns from their role as Board members.

Two Board members were asked to appear on a radio show. Public forums must be noticed as public meetings if a quorum or a committee of a governing body attends the public forums and public business is discussed. In this case, two Board members did not constitute a quorum and they were not acting as a committee of the Board and therefore appearances on radio show was not a meeting that required public notice.

2013

N.D.A.G. 2013-O-01
January 10, 2013

NOTICE OF MEETINGS
MEETINGS, DEFINED
Notice of the special meeting that included general terms that could have numerous meanings do not provide the public with meaningful notice and is a violation of open meetings law. The use of catch all phrases is inappropriate in agenda notices of special meetings, however, there is no violation if the entity, realizing its mistake, limits discussion to only specific items listed on the agenda. Telephone calls to a quorum of the Board for ministerial purposes are not meetings.

N.D.A.G. 2013-O-02
January 10, 2013

VOTING
No final action was taken during executive session when Commission received guidance from an attorney regarding negotiation.

N.D.A.G. 2013-O-03
March 13, 2013

MEETING, DEFINED
PUBLIC ENTITY
The Metro Flood Diversion Board of Authority, which was created by a joint powers agreement of several political subdivisions and was delegated performance of a governmental function, is an "agency" of those subdivisions and a "public entity" subject to open record and meeting laws. The Board of Authority does not have an obligation under open meetings law to provide public notice of a meeting in which two members of the Board attended a meeting of a federal entity, not subject to this state's open record and meeting laws, because the Board did not delegate authority to the attending members.

N.D.A.G. 2013-O-04
April 9, 2013

NOTICE OF MEETINGS
A regular meeting allegedly beginning a few minutes early substantially complied with notice requirements as minutes indicate the meeting began when scheduled and the governing body did not believe the meeting began early.

N.D.A.G. 2013-O-05
April 16, 2013

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL

In addition to filing its yearly schedule with the Secretary of State's office, the State Parole Board had to file notice of upcoming meeting that meet the requirements of N.D.C.C. § 44-04-20, that include a list of topics to be discussed, anticipated executive sessions, and the date, time, location of the meeting. Due to construction of normally used larger meeting room, unique set of factors were taken into consideration in analyzing whether the public was denied access to a parole hearing. Board had to balance security concerns of having increase number of people in smaller room during parole hearing with inmate in attendance, against the public's right to attend. Given the space limitations, and resulting security concerns, the Board made reasonable accommodations for the public to attend by having a limited number of people in the actual meeting room, and the rest attending the meeting through video conference. It is also within the Board's discretion to limit and determine how much testimony and public input, if any, it will hear at its meetings. It was not sufficient for the Board to announce once, at the beginning of the meeting, the authority for entering into every executive session that would follow throughout the meeting. N.D.C.C.
§ 44-4-19.2 requires announcing the legal authority and topic to be discussed before every executive session so as to adequately inform the attendees, who can vary throughout the meeting, of the specific topic and authority for each executive session. Finally, it was not a violation to exclude inmate from part of his parole hearing because an incarcerated person is not free to attend public meetings and must follow the rules and guidelines set forth by the Department of Corrections.

N.D.A.G. 2013-O-06
April 18, 2013

HIGHER EDUCATION
MEETING, DEFINED
MINUTES, CONTENT
NOTICE OF MEETINGS

When a quorum of members of the State Board of Higher Education meets at a private residence and discusses public business, a meeting occurs that is subject to open meetings law. Because the dinner socials were held on a different day than the regularly scheduled meetings, they are considered special meetings that must be noticed accordingly. General "catch all" phrases are inappropriate to use in the notice and minutes of these special meetings.

N.D.A.G. 2013-O-07
May 3, 2013

HIGHER EDUCATION
MEETINGS, DEFINED
PUBLIC BUSINESS

This opinion clarifies N.D.A.G. 2013-O-06, due to new information coming to light about the actual nature of a dinner social attended by a quorum of members of the State Board of Higher Education. Public business was actually discussed, subjecting the dinner meeting to open meetings law. In addition, the SBHE used e-mail to circumvent open meetings law when a quorum of members exchanged opinions, gathered information, and engaged in substantive discussions about public business. Such a practice showed widespread violations. Any meeting in which a quorum is present, and public business is discussed,
is a "meeting," that must be properly noticed and followed by sufficiently detailed minutes.

N.D.A.G. 2013-O-09
June 12, 2013

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS
NOTICE OF MEETINGS
Superintendent knew at the time the meeting notice was prepared that he planned on suggesting an executive session to discuss a background check. Mere reference to "personnel matters" or a "background check" is insufficient to identify the legal authority to close a meeting. There is a difference between a "criminal history record check" performed by the Bureau of Criminal Investigation through searching confidential law enforcement databases, and is confidential, and a background check that searches publically available records. Only criminal history record checks are confidential records that are proper for executive session.

N.D.A.G. 2013-O-11
August 6, 2013

ATTORNEY CONSULTATION
NEGOTIATION STRATEGY SESSIONS
Portions of the executive session in which the State Board of Higher Education received advice from its attorney regarding litigation strategy and recommendations were properly closed. However, other discussions were improperly held in executive session because it did not involve attorney consultation regarding reasonably predictable litigation nor did it involve negotiation strategy or instruction that would result in an adverse fiscal effect.

N.D.A.G. 2013-O-12
August 6, 2013

MEETING, DEFINED
Meetings between three State Board of Higher Education members and various North Dakota University System presidents were not a "meetings" subject to open meetings law because neither a quorum or the SBHE or a committee thereof was present.

N.D.A.G. 2013-O-13
August 14, 2013

NEGOTIATION STRATEGY SESSIONS
The Mandan City Commission properly held an executive session with the Mandan Park District to discuss negotiation strategy and instructions because if the discussions would have been held in public it would have caused an adverse fiscal effect on the Commission and Park District's bargaining position.

N.D.A.G. 2013-0-14
August 28, 2013

MEETING, DEFINED
The Commission violated open record laws when it took two months to provide records, even though the records were not in the entity's possession and allegedly not subject to open record laws, because the Commission did not give this reasoning to the requestor but instead obtained the records from a third party. The Commission provided meeting minutes within a reasonable time when factoring in the time it took to sort through a requestor's multiple requests and to prepare the minutes. Finally, when a quorum of the Commission attended another group's meeting where public business was discussed, a "meeting" occurred subject to open meetings law.

N.D.A.G. 2013-O-16
November 8, 2013

PUBLIC ENTITY
VOTING
JSDC is a public entity because it receives public funds and because it is an agent of Jamestown and Stutsman County performing a governmental function of promoting economic development. JSDC violated open meetings law by taking final action in executive session and by closing a meeting to discuss personnel issues not exempt or confidential under law. JSDC violated open records law by not providing a response to a request for personnel records.

2014

N.D.A.G. 2014-O-01
January 14, 2014

OPEN MEETINGS, IN GENERAL
During a special meeting of the BCMAA, a member voiced an opinion that additional items should be discussed but the governing body, in recognizing the additional items were outside the scope of the posted agenda, immediately ceased consideration of the additional topics and moved on to discuss items directly related to the agenda.

N.D.A.G. 2014-O-03
February 3, 2014

NOTICE OF MEETINGS
Notice of special meeting contained all that was required by N.D.C.C. § 44-04-20(2). The law does not require the public entity to include a street address for the location of the meeting as long as the notice contains a location that a member of the public could reasonably identify.

N.D.A.G. 2014-O-05
May 15, 2014

NOTICE OF MEETINGS
When the city commission delegated public business to a group of people, it formed a committee subject to open meetings law, regardless of whether a formal motion was made. The committee violated open meetings law when it failed to properly notice its meeting and failed to follow correct procedures for entering into an executive session.

N.D.A.G. 2014-O-08
August 8, 2014

ATTORNEY CONSULTATION
VOTING
The Crosby City Council held an illegal executive session when, at no time during the discussion, did it seek or receive advice from its attorney regarding pending or anticipated litigation. The Council also failed to properly announce the topics it would consider before proceeding into executive session and violated open meetings law when it took final action during executive session.

N.D.A.G. 2014-O-09
August 8, 2014

ATTORNEY CONSULTATION
Discussions during the Belfield City Council's executive session went beyond that authorized by law for "attorney consultation" and to consider a memorandum containing exempt "attorney work product" and "active criminal intelligence information." Further discussions on personnel matters and termination proceedings should have been held during an open meeting. It was also a violation of open meetings law when the Council took final action to terminate employment during the executive session.

N.D.A.G. 2014-O-11
August 28, 2014

NOTICE OF MEETINGS

The notice and agenda of a regular meeting of the City Council substantially complied with the requirements of open meetings law even though the notice was not posted at the location of the meeting and contained only general phrases. The City Council met in the same location for the past three years and the auditor responsible for posting notice was unaware at the time the agenda was prepared of any specific topics the Council would be considering.

N.D.A.G. 2014-O-12
September 9, 2014

MEETING, DEFINED

The School Board ultimately held an illegal meeting by email when the emails included a quorum of the members and went beyond merely providing information or taking care of ministerial matters and instead included members' thoughts, opinions, positions, and suggested courses of action.

N.D.A.G. 2014-O-13
September 22, 2014

MEETING, DEFINED
NOTICE OF MEETINGS

An interview conducted by the HLC Advisory Team with the SBHE was a "meeting" subject to open meetings law because a quorum of the SBHE was present and the SBHE's "public business" was discussed. The SBHE violated the law when it failed to properly post notice or take minutes of the meeting.

N.D.A.G. 2014-O-19
November 21, 2014

OPEN MEETINGS, IN GENERAL

The State Board of Higher Education violated open meetings law when it effectively closed a meeting without authority by asking those in attendance to leave the room.

N.D.A.G. 2014-O-23
December 26, 2014

OPEN MEETINGS, IN GENERAL

The City Council violated open meetings law when the mayor made a series of telephone calls to a quorum of Council members and discussed and reached a consensus on matters relating to the Council's public business without providing public notice.

2015

N.D.A.G. 2015-O-01
January 2, 2015

ATTORNEY CONSULTATION

The Circle of Friends Humane Society is a public entity subject to open records and meetings law because it is supported by public funds from the unrestricted mill levy and tax funds it receives from the City of Grand Forks and Grand Forks County. The Humane Society is also a public entity because it acts as an agency of government when it provides sheltering services for abused, abandoned, and neglected animals in place of the City of Grand Forks and Grand Forks County. The Humane Society held illegal executive sessions on September 25 and October 8 when there were no pending or reasonably predictable litigation or adversarial administrative proceedings but instead discussions centered on personnel and administrative issues.

N.D.A.G. 2015-O-02
February 26, 2015

The Lindahl Township Board of Supervisors violated open meetings law when it failed to post notice its December 8, 2014, meeting.

N.D.A.G. 2015-O-03
March 12, 2015

The Tioga Township Board of Supervisors violated open meetings law when it failed to post notice of its November 20, 2014, meeting.

N.D.A.G. 2015-O-04
March 20, 2015

NEGOTIATION STRATEGY SESSION
OPEN MEETINGS, IN GENERAL
The City Commission violated open meetings law when it held a series of discussions involving a quorum of the Commission relating to public business without a properly noticed meeting. The Commission further violated open meetings law by failing to sufficiently post notice of a special meeting and entering into an unauthorized executive session for negotiation strategy when the separation agreement at issue was already negotiated and signed by the public employee.

N.D.A.G. 2015-O-06
April 17, 2015

MEETING, DEFINED
The Commission violated open meetings law when the Chairman of the Commission asked the Auditor to act as a liaison, conveying information and building consensus regarding a matter of public business to the entire Commission, without holding a properly noticed meeting.

N.D.A.G. 2015-O-09
May 14, 2015

OPEN MEETINGS, IN GENERAL
The City of Benedict violated open meetings law when it asked members of the public to leave the room during a regular meeting without legal authority so the council could avoid disruption as it conferred on a contentious matter of public business.

N.D.A.G. 2015-O-10
June 2, 2015

The executive committees of the North Dakota State University Alumni Association and Development Foundation violated open meetings law by taking final action of appointing a subcommittee during an executive session, when the subcommittee held meetings not noticed or open to the public, and by receiving a history and status of prior negotiations during an executive session at a subsequent meeting.

N.D.A.G. 2015-O-12
August 6, 2015

MEETING, DEFINED
NOTICE OF MEETINGS
The Board violated open meetings law when it failed to post notice with either county auditor. However, the Boards use of email and text messages for purely ministerial functions, such as setting a meeting date and time, did not violate open meetings law because such uses did not involve discussing public business.

N.D.A.G. 2015-O-13
August 7, 2015

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
MEETING, DEFINED
NEGOTIATION STRATEGY SESSION
NOTICE OF MEETINGS
The Board failed to properly post notice of its regular meeting by only referencing “executive session” when the Board knew at the time the agenda was prepared the topic and legal authority for the executive session. The Board’s announcement before proceeding into an executive session was insufficient because it failed to identify the legal authority and topic to be considered. Finally, portions of an executive session in which opposing counsel was present for the Board’s negotiation and attorney consultation discussions negated the legal authority for holding such executive session.

N.D.A.G. 2015-O-14
August 14, 2015

MEETING, DEFINED
Although most exchanges between Board members and its executive director by email were ministerial in nature, few emails expressed opinions and suggested courses of action in which Board members would "reply all," resulting in consensus being built in violation open meetings law.

N.D.A.G. 2015-O-15
October 12, 2015

ATTORNEY CONSULTATION
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSION
VOTING
The Commission violated open meetings law by failing to pass a motion by recorded roll call vote before proceeding into an executive session for an attorney consultation and negotiation strategy session. The Commission's executive session for attorney consultation and negotiation strategy was authorized by law because, if held in a public meeting, there would be an adverse effect on the Commission's litigation, bargaining, and fiscal position. Guidance given to its attorney for ongoing negotiations was not "final action" and is allowed to be given in an executive session.

N.D.A.G. 2015-O-16
October 19, 2015

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
The Stark County Commission did not violate open meetings law when it added an item to the agenda of a regular meeting that it did not know it would be discussing at the time the notice was prepared. The Commission violated open meetings law when it failed to announce and pass a motion for "attorney consultation" before convening in executive session.

2016

N.D.A.G. 2016-O-01
January 12, 2016

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
EXECUTIVE SESSION, RECORDS
NEGOTIATION STRATEGY SESSIONS
The SCDRC Executive Board failed to announce its legal authority for holding an executive session during the May 20, 2015, regular meeting, and failed to record the executive session. This executive session, which discussed personnel issues, was unauthorized by law. The Executive Board again violated open meetings law when it failed to sufficiently provide notice of the topics to be discussed during an executive session held during a June 5, 2015, special meeting. Portions of the June 5, 2015, executive session in which the Executive Board received its attorney's advice regarding reasonably predictable litigation were properly closed as attorney consultation, however, other topics including discussions on rehiring an employee, investigating the entity's
workplace environment, and reviewing draft minutes, were not authorized to be held in the executive session.

N.D.A.G. 2016-O-02
January 13, 2016

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
It was a violation of the open meetings law when a quorum of the Commission met to discuss public business an hour before a regularly scheduled meeting without posting notice of the early meeting. The Commission failed to follow proper procedure and held an unauthorized executive session during its May 26, 2015, meeting. The Commission did follow proper procedure and hold an authorized executive session during its June 8, 2015, regular meeting for "attorney consultation" when the Commission received its attorney's advice regarding reasonably predictable litigation involving the City's tax assessments. This executive session, however, was not noticed properly and during the session the Commission took final action that should have been taken during the open portion of the meeting.

N.D.A.G. 2016-O-04
March 15, 2016

NOTICE OF MEETINGS
The Health Council posted notice of its upcoming meeting at the required locations and provided the notice to anyone requesting, but failed to post notice at the same time as members of the governing body were informed of the meeting.

N.D.A.G. 2016-O-05
March 23, 2016

NOTICE OF MEETINGS
The Washburn City Commission delegated part of its government business of reviewing and comparing bids on a public works project to a group of people and thus formed a committee whose meetings are subject to the same notice requirements as the full governing body. The Committee violated open meetings law when it failed to post notice of its meetings.

N.D.A.G. 2016-O-06
April 19, 2016

MINUTES, CONTENT
The organizations violated open meetings law when it failed to provide notice of a meeting and when meeting minutes failed to meet the minimum qualifications required by N.D.C.C. § 44-04-21(2).

N.D.A.G. 2016-O-07
April 19, 2016

Notice for a Flasher City Commission meeting was provided in substantial compliance with N.D.C.C. § 44-04-20.

N.D.A.G. 2016-O-09
May 2, 2016

The Kensal School Board violated open meetings law when it failed to provide notice or take minutes of committee meetings.

N.D.A.G. 2016-O-11
June 29, 2016

MEETING, DEFINED
When three of the five commissioners met with representatives from various industries, open meetings law were triggered because a quorum was collectively involved and a particular topic of public business was considered and discussed.

N.D.A.G. 2016-L-01
July 26, 2016

VOTING
N.D.C.C. § 44-04-21(1) did not apply to votes taken by members of a nonprofit corporation because the members were not the "governing body" of the public entity. The Board of Directors of the Humane Society is the governing body who must vote in compliance with N.D.C.C. § 44-04-21(1).

N.D.A.G. 2016-O-12
July 26, 2016

EXECUTIVE SESSION, PERSONNEL MATTERS
The Board failed to properly announce its legal authority to the public before proceeding into an executive session. Although the discussions generally involved job performance issues, an executive session was authorized because it required disclosing confidential information related to an active criminal investigative and a child abuse and neglect investigation. Based on information received by the public entity, the Board did not ask for members to leave the meeting, rather the member left on her own and voluntarily.

N.D.A.G. 2016-O-13
July 26, 2016

ATTORNEY CONSULTATION
The Commission failed to announce the topics to be considered and its legal authority for holding an executive session, and failed to take a recorded roll call vote, before proceeding into the executive session. The Commission was authorized to close the meeting for an "attorney consultation."

N.D.A.G. 2016-O-14
July 26, 2016

OPEN MEETINGS, IN GENERAL
The Board violated open meetings law when it failed to file notice of a special meeting with the County Auditor or with the official newspaper.

N.D.A.G. 2016-O-15
July 27, 2016

GOVERNING BODY
The Board of Commissioners violated open meetings law when it failed to post notice of a committee meeting.

N.D.A.G. 2016-O-16
July 27, 2016

PUBLIC BUSINESS
The City Council violated open meetings law when it failed to post notice or take minutes of a meeting in which personnel issues were discussed.

N.D.A.G. 2016-O-17
August 11, 2016

MINUTES
NOTICE OF MEETINGS
The Board violated open meetings law when it failed to give notice to its official newspaper of a special meeting and when it considered topics not included on the agenda during the special meeting.

N.D.A.G. 2016-O-18
August 26, 2016

NOTICE OF MEETING
The Board violated open meetings law when it failed to provide notice of a special meeting to the newspaper, at the location of the meeting, or to individuals requesting to receive personal notice.

N.D.A.G. 2016-O-19
September 23, 2016

MEETING, DEFINED
There was no evidence of a secret meeting being held when the mayor, individually and without consulting any other Commissioner, came to a decision regarding ordinance enforcement.

N.D.A.G. 2016-O-21
September 23, 2016

Council posted notice of rescheduled regular meeting in compliance with N.D.C.C. § 44-04-20.

N.D.A.G. 2016-O-22
December 14, 2016

EXECUTIVE SESSION, PROCEDURAL REQUIREMENT
During an executive session, the Fargo City Commission accepted an offer from homeowners and instructed its negotiators to finalize a purchase agreement and such action was considered "final action" that should have been publicly voted upon in an open meeting.

N.D.A.G. 2016-O-23
December 29, 2016

MEETING DEFINED
A violation of the open meetings law occurred when a quorum of the NoVAC Board of Directors attended another group's meeting where NoVAC business was discussed and no public notice was given and the public was denied access.

2017

N.D.A.G. 2017-O-02
May 12, 2017

MEETING, DEFINED
The Glen Ullin City Council violated open meetings law when a quorum was present to receive information regarding the City's purchase of equipment that was not noticed as a public meeting.

N.D.A.G. 2017-O-03
May 12, 2017

EXECUTIVE SESSION, PERSONNEL MATTERS
NEGOTIATION STRATEGY SESSIONS
The Commission held an executive session that, except for a brief reference to medical information protected under N.D.C.C. § 44-04- 18.1, was unauthorized as the Commission reviewed job performance evaluations and came to a unilateral decision to place the employees on leave with pay which did not involve any negotiation strategy or instruction.

N.D.A.G. 2017-O-04
May 12, 2017

MEETING, DEFINED
NOTICE OF MEETING
The Commission violated open meetings law when it provided tacit approval for a decision of the Chair and Vice Chair via email on a matter of public business. The Commission's notice of a special meeting was inadequate when it only referenced the Commission would be conducting interviews of candidates but did not state the Commission would be voting on a final applicant, and was not posted on the entities website or with the county auditor.

N.D.A.G. 2017-O-08
October 27, 2017

PUBLIC BUSINESS
Although a quorum of the Industrial Commission was present during a roundtable discussion, the public business of the Commission was not considered or discussed at the roundtable and therefore it was not a "meeting" subject to open meetings law.

2018

N.D.A.G. 2018-O-04
February 16, 2018

The Wildrose City Council violated open meetings law when it failed to properly post notice of a special meeting. The City Council took subsequent steps to remedy the violation, including publishing minutes and holding another meeting, properly noticed, to affirm its decisions.

N.D.A.G. 2018-O-07
May 17, 2018

NOTICE OF MEETING
A committee of the Beulah School Board violated open meetings law when it included vague phrases in its special meeting agenda and notice was not provided to the appropriate central location, the newspaper, or at the location of the meeting.

N.D.A.G. 2018-O-08 May 17, 2018	NEGOTIATION STRATEGY SESSIONS VOTING The School Board held an authorized executive session for negotiation strategy, however, it took final action during the executive session in violation of the law.
N.D.A.G. 2018-O-09 May 17, 2018	The School Board failed to post notice of a special committee meeting in substantial compliance with N.D.C.C. § 44-04-20.
N.D.A.G. 2018-O-10 May 17, 2018	MEETING, DEFINED MINUTES, CONTENT VOTING The Wildrose City Council held several "meetings" through means such as text messaging and serial phone conversations which did not comply with open meeting requirements. The City Council's amended January 8, 2018, meeting minutes complied with the requirements of N.D.C.C. § 44-04-21(2).
N.D.A.G. 2018-O-11 July 2, 2018	NOTICE OF MEETING The Committee violated open meetings law when it failed to timely post notice and when it failed to post notice with each public entity it served.
N.D.A.G. 2018-O-12 July 2, 2018	MEETING, DEFINED The School Board failed to post notice of a special meeting in compliance with N.D.C.C. § 44-04-20. However, the School Board's use of text messaging for ministerial purposes did not violate open meetings law.
2018-O-14 July 19, 2018	VOTING The City of Lincoln violated the law when it took "final action" during executive sessions of two special meetings.
2018-O-15 July 19, 2018	The township violated the law when it failed to notice a special meeting.
2018-O-16 October 11, 2018	EXECUTIVE SESSION, PERSONNEL MATTERS VOTING The School Board violated open meetings law when it discussed personnel matters of the qualifications of the finalists for the superintendent position in executive session and when it reached a "consensus" in the executive session rather than taking a vote in public. However, the last five minutes of the executive session in which the School Board discussed how it would move forward with negotiating compensation was authorized by law as negotiation strategy and instruction.
2018-O-17 October 1,1 2018	MEETING DEFINED The Divide County Ambulance Board of Directors violated open meetings law by failing to properly post notice of its annual meeting and by holding "meetings" through various means without complying with open meetings law requirements.

2018-O-18
October 11, 2018

It was not a "meeting" subject to open meetings law when the mayor, individually and without City Council participation or involvement, contacted the Sheriff's Office and Highway Patrol regarding safety matters.

2018-O-19
November 14, 2018

MEETING, DEFINED
NOTICE OF MEETINGS
Notice of committee meetings lacked the level of specificity required of special meetings and were not provided to the newspaper. It was a violation of the open meetings law when a quorum of the School Board attended town hall meetings organized by the superintendent without providing notice when its public business was being considered and discussed.

2018-O-20
December 10, 2018

MEETING, DEFINED
It was a violation of the open meetings law when a quorum of the Commissioners participated in various meetings in Washington, DC, in which notice was not properly posted and the public was not allowed to attend.

2018-O-22
December 10, 2018

Notwithstanding the fact that it appears there was no intentional delay in this case, the Board failed to provide a response to a record request within a reasonable time.

2018-O-25
December 10, 2018

The Board did not violate open meetings law because it never received a request for personal notice of upcoming meetings.

2018-O-26
December 10, 2018

The Committee did not violate open meetings law because it never received a request for personal notice of upcoming meetings.

2018-O-28
December 11, 2018

NOTICE OF MEETING
The agenda for the special meeting lacked the level of specific required by law as it did not sufficiently list the topic to be discussed and the executive session. Notice was not given to the official newspaper. Discussions during the executive session unrelated to an internal employee and law enforcement investigation were not proper.

2019

2019-O-03
April 11, 2019

Violation of open meetings law when no notice was posted or agenda prepared for committee meetings.

2019-O-05
April 12, 2019

The Board violated open meetings law when it failed to post notice or create an agenda of its special meeting in substantial compliance with N.D.C.C. § 44-04-20.

2019-O-08
May 13, 2019

MEETING, DEFINED
The City Council did not violate open meetings law when three out of seven Council members held discussions because no quorum or committee was present.

2019-O-10
July 1, 2019

MEETING, DEFINED
It was not a violation of open meetings law when three members of a seven member school board individually corresponded with the school's superintendent and business manager as a quorum did not discuss a matter of public business outside of a meeting.

2019-O-11
July 2, 2019

MEETING, DEFINED
The School Board did not violate open meetings law when Board members individually filled out evaluations as such actions did not involve a quorum.

2019-O-12
July 2, 2019

ECONOMIC DEVELOPMENT
The Linton Industrial Development Corp. violated open meetings law when it failed to properly post notice of its meeting and by failing to announce the legal authority before entering into an executive session. However, the executive session was authorized by law to discuss protected economic development and financial information.

2019-O-16
July 19, 2019

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
Committee meetings were not properly noticed, but under the facts presented, the Committee did not attempt to conduct a meeting that could not be attended or heard by members of the public.

2019-O-17
August 14, 2019

NOTICE OF MEETINGS
Park District's special meeting agenda of "HR/Staff Review" lacked the level of specificity required of a special meeting notice in violation of N.D.C.C. § 44-04-20.

2019-O-18
October 17, 2019

CITIES
OPEN MEETINGS, IN GENERAL
The reasons for meeting outside its city limits did not outweigh the expense and inconvenience of the members of the public whose business the City Council was discussing; therefore the meeting was inaccessible and violated open meetings law.

2019-O-19
October 17, 2019

ATTORNEY CONSULTATION
EXECUTIVE SESSION, RECORDS
The Board properly held two executive sessions for attorney consultation and to review exempt records.

2019-O-20
October 24, 2019

The Association's special meeting agenda failed to include all information required by law and was not posted at required locations.

2020

2020-O-01
February 6, 2020

MEETING, DEFINED
NOTICE OF MEETINGS
The Board violated open meetings law when its notice incorrectly listed the meeting date and failed to include an agenda. However, ministerial uses of email to set the meeting date and time were permissible.

2020-O-02
April 29, 2020

EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
The School Board adequately announced a topic to be discussed before proceeding into executive session in compliance with N.D.C.C. § 44-04-19.2.

2020-O-03
May 18, 2020

EXECUTIVE SESSION, PERSONNEL MATTERS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NOTICE OF MEETINGS
The City Council's meeting notice contained all topics to be considered at the time it was prepared. Although the City Council properly announced the topic it would consider before proceeding into executive session, it failed to announce the legal authority for holding the executive session. Only parts of the executive session in which the City Council received its attorney's advice were proper as "attorney consultation," all other discussions regarding personnel matters should have occurred in an open meeting.

2020-O-04
May 20, 2020

NOTICE OF MEETINGS
The School Board properly noticed a special meeting and statements made at the meeting related to and were within the scope of the topics listed on the notice.

2020-O-05
July 7, 2020

NOTICE OF MEETINGS
All topics discussed during special meetings of the School Boards were within the scope of agenda items properly noticed to the public.

2020-O-06
July 8, 2020

ATTORNEY CONSULTATION
The School Board properly held an executive session for "attorney consultation."

2020-O-09
September 23, 2020

NOTICE OF MEETINGS
The county properly noticed meetings.

2021-O-11
December 21, 2020

OPEN MEETINGS, IN GENERAL
The school board did not violate the open meetings law when the chair of a committee met with a staff member.

2021

2021-O-01
February 24, 2021

OPEN MEETINGS, IN GENERAL
The county commission did not violate the law when it held a meeting in a locked building, because it provided contact information in the notice and on the courthouse doors where the meeting was held for how the public could attend.

2021-O-02
April 16, 2021

GOVERNING BODY
The expert panel created by the mayor was not subject to the open meetings laws because it was not created by the city council nor had it been delegated any authority by the governing body.

2021-O-03 May 12, 2021	NOTICE OF MEETINGS The school board violated the open meetings laws when it failed to post notice of a special meeting of its school improvement and co-curricular committee but did not violate the law with regard to a cooperative meeting because the school board was not the governing body responsible for providing notice for the cooperative.
2021-O-04 May 12, 2021	NOTICE OF MEETINGS The city violated the open meetings law when the mayor read a prepared statement at a special meeting that was not included on the meeting notice.
2021-O-06 July 8, 2021	OPEN MEETINGS, IN GENERAL The district did not violate open meetings laws when it discussed an employee's job performance and compensation during a properly noticed meeting.
2021-O-07 July 8, 2021	NOTICE OF MEETINGS The water district violated the open meetings laws when it created a nominating committee, subject to the open meetings laws, and failed to notify the official newspaper of the committee's special meeting. The water district violated the open meetings laws when it approved minutes that did not contain all the statutorily required information.
2021-O-08 August 26, 2021	NOTICE OF MEETINGS The city properly filed its meeting notice with the city auditor. Open meeting laws allow a city to file notice with its auditor, or other designee, or post it to the website. There is not requirement to post notice on the public entity's website.
2021-O-10 September 23, 2021	NOTICE OF MEETINGS Although it usually posts meeting notices on its website, the Mandan Public School Board provided proper notice of a special meeting and met the requirements of the open meetings laws because it filed the meeting notice with the county auditor.
2021-O-12 December 17, 2021	NOTICE OF MEETINGS Horse Race North Dakota is a non-profit corporation and to the extent it is supported by public funds is a public entity subject to the open records and meetings laws. HRND failed to provide proper notice of its meeting when it did not provide requested notice to the Forum. Further, the meeting notice was insufficient because it failed to include an agenda or the information necessary to join the meeting when it was held remotely

2022

2022-O-02
January 19, 2022

NOTICE OF MEETINGS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
NEGOTIATION STRATEGY SESSIONS
The School Board's notice of executive session did not substantially comply with notice requirement as it did not identify the general subject matter of the executive session. The announcement in open session was insufficient because it failed to state the specific topic to be discussed. The School Board also discussed topics outside of those announced or that it had legal authority to discuss in executive session.

2022-O-03
April 6, 2022

NOTICE OF MEETINGS
OPEN MEETINGS, IN GENERAL
The City of Benedict admitted that it failed to prepare and post notice of a regular meeting. The city also failed to post an agenda for the meeting.

2022-O-04
May 13, 2022

NOTICE OF MEETINGS
EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS
The Commission's notice of executive session did substantially comply with notice requirement as it did identify the general subject matter of the executive session. However, the announcement in open session was insufficient because it failed to state the legal authority for the executive session. The Commission provided access to the meeting by having a phone connection available after the executive session.

2022-O-06
May 19, 2022

NOTICE OF MEETINGS
The Board's special meeting notice listed the date, time and location of the meeting and one agenda item. The notice failed to state that discussions of the agenda item were expected to be held in an executive session. Additionally, the Board was unable to establish that it received a request for specific notice of its meetings so there was no violation when they did not provide such notice.

2022-O-07
July 1, 2022

NOTICE OF MEETINGS
An interview committee held a special meeting to discuss whether an applicant could continue to be a member of the county commission while serving on the Board. The committee posted the notice on the Board's Facebook page and website but did not post notice at the Board's principal office, provide notice to the official newspaper, or include the information necessary for the public to join the call.

2022-O-08
September 1, 2022

NOTICE OF MEETINGS
The requester alleged he did not receive notice of a meeting. The Board did not hold a meeting on the date alleged; therefore, no notice was required.

2022-O-09
September 29, 2022

NOTICE OF MEETINGS
The City Council held a special meeting for administrative nuisance hearings prior to the regular City Council meeting. The city did not prepare a notice or meeting agenda for the nuisance hearings. No notice was posted at any of the required locations, nor was the newspaper provided notice of this special meeting. Therefore, the City Council violated the open meetings laws.

2022-O-10
September 29, 2022

NOTICE OF MEETINGS
The School Board received a request from an individual for notice of all future board meetings. Later, the Board held a special meeting and failed to provide notice to the requestor.

2022-O-11
September 29, 2022

NOTICE OF MEETINGS
The School Board posted notice of its special meeting on its website, the main entrance of the school, outside of the meeting location, and at numerous other physical locations at its schools. The Board also emailed notice of the special meeting to its official newspaper.

2022-O-12
September 29, 2022

NOTICE OF MEETINGS
The requester alleged the Board did not provide proper notice of a meeting. The Board did notify its official newspaper and did post the notice its website; therefore, it did not violate open meetings laws.

2022-O-13
September 29, 2022

GOVERNING BODY
The School District's Superintendent established a committee pursuant to the District's policy. The Superintendent established the committee as part of his administrative duties without School Board direction or involvement. The policy limited the committee's actions to making recommendations for submission to the Board through the Superintendent. Therefore, the Minot Public School District No. 1 did not violate the open meetings law because the committee does not meet the statutory definition of a governing body.

2022-O-14
October 17, 2022

NOTICE OF MEETINGS
The Township Board held three special meetings. One of the meeting notices stated the wrong date. The notice was not updated until after the meeting had been held. No notices were posted at any of the required locations, nor was the newspaper provided notice of the special meetings. Therefore, the Board violated the open meetings laws.

2022-O-16
December 22, 2022

NOTICE OF MEETINGS
A quorum of the Commission met in a series of gatherings regarding public business. Failure to provide notice for these gatherings was a violation of the open meetings laws.

2023

2023-O-03
August 22, 2023

NOTICE OF MEETINGS / COUNTIES
The Commission violated open meetings laws when it failed to notice a quorum, and record minutes, of the members of the County Commission's attendance at a County departments meeting wherein discussion related to the Commission's public business occured.

2023-O-01
July 27, 2023

NOTICE OF MEETINGS
The Park Board's notice, presumably with an incorrect meeting date, on its website was substantial compliance with the notice requirements of N.D.C.C. § 44-04-20.

2023-O-05 October 12, 2023	EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS The school board satisfied the statutory requirements for the general subject matter and notice for the executive session. The announcement prior to the executive session satisfied the statutory requirement by announcing the topic to be considered and the legal authority for the executive session. The school board erred by not limiting the discussion in executive session to the topics announced and the legal authority announced.

2024

2024-O-04 January 9, 2024	EXECUTIVE SESSION, NOTICE OF MEETINGS It is proper to deny a request asking for executive session records that constitute attorney consultation and negotiation strategies. The executive session was legal and therefore the executive session recording is protected by law. The notice provided of the executive session was proper as it stated the board would be discussing confidential information. The later amendment to the notice to include attorney consultation and negotiation strategy was unnecessary.
2024-O-05 July 15, 2024	EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS A governing body must provide proper notice of an anticipated executive session. A governing body's discussion must stay within the scope of the reason the executive session was originally called, in this case attorney consultation.
2024-O-07 September 11, 2024	NOTICE OF MEETINGS Special meetings may be called upon short notice, and properly noticed, as long as the notice is provided to the public and the media at the same time the governing body's members are notified
2024-O-09 September 17, 2024	NOTICE OF MEETINGS, EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS The entity violated open meetings laws by failing to properly notify the public about a special meeting. The notice lacked the meeting location, specific agenda details, and failed to mention planned executive sessions.
2024-O-11 December 20, 2024	MINUTES, PUBLICATION An entity failing to meet its legal obligations by not creating required meeting minutes

2025

2025-O-01 January 2, 2025	EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS An entity entering into an executive session is in violation of open meetings law, if the notice of such a session does not contain the legal authority or general subject matter to be discussed in the executive session. The session is also in violation if the subject matter does not meet the definition of attorney consultation.
2025-O-02 January 10, 2025	NON-GOVERNMENTAL ENTITY A committee of a governing body of a public entity is subject to open meeting laws. Technical review boards can be committees. It is a violation to fail to notice committee meetings.

2025-O-03 March 6, 2025	NOTICE OF MEETINGS The entity violated open meetings law by failing to include the meeting location and the name of the public entity on notices for its regular meetings, and by failing to include the location and notify the local newspaper for its special meeting
2025-O-05 March 7, 2025	EXECUTIVE SESSION, PROCEDURAL REQUIREMENTS The entity violated open meetings laws by failing to announce the legal authority and topics for its executive session and by not taking a required roll call vote. Additionally, most of the executive session was not authorized by law
2025-O-06 March 7, 2025	NOTICE OF MEETINGS The entity complied with notice requirements for its meeting

Attendance of a quorum of the members of the Commission at a departments meeting was a meeting of the Commission which should have been noticed and minutes taken.