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OPEN RECORDS AND MEETINGS OPINION
2022-O-14

DATE ISSUED: October 17, 2022

ISSUED TO: Butte Township Board of Supervisors

CITIZEN'S REQUEST FOR OPINION

Scott Howe requested an opinion under N.D.C.C. § 44-04-21.1 from this office asking whether the Butte Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to properly notice special meetings.

FACTS PRESENTED

The Butte Township Board of Supervisors (Board) held special meetings on May 19, 2021, May 27, 2021, and June 3, 2021.¹ The McLean County Auditor was notified of the May 19, 2021, special meeting,² and the notice was posted on the McLean County website; however, the notice incorrectly identified the meeting date as June 19, 2021.³ The Board Chairman notified the McLean County Auditor of the incorrect date on June 3, 2021, and the notice was updated to reflect the meeting was held on May 19.⁴ The May 19 meeting had been “personally scheduled” with Mr. Howe and held at his property.⁵ On May 25, 2021, the Board requested the McLean County Auditor post notice of a special meeting to be held on May 27, 2021.⁶ On June 3, 2022, the Board notified the country auditor of a special meeting to be held that afternoon.⁷ None of the three special meetings were noticed at the locations of the meetings; nor was the newspaper notified of any of the special meetings.⁸

¹ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 26, 2021).

²*Id.*

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jun. 3, 2022).

Mr. Howe alleges the May 19 special meeting was not properly noticed, the May 27 special meeting never occurred, and the June 3 special meeting was preceded by only 50 minutes notice to the McLean County Auditor.⁹

ISSUES

Whether the Butte Township Board of Supervisors provided sufficient notice of its May 19, 2021, May 27, 2021, and June 3, 2021, special meetings.

ANALYSIS

“A township is a political subdivision and is therefore a ‘public entity’ subject to the open records and meeting law.”¹⁰ “The township board of supervisors is the ‘governing body’ of the township as that phrase is defined in N.D.C.C. § 44-04-17.1(6).”¹¹ “Therefore, meetings of the Board are required to be open to the public unless a specific law provides otherwise.”¹² “In addition, notice of the meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.”¹³

“Meeting notices of the Board must be posted at the public entity’s office, if there is one,¹⁴ filed with the county auditor or posted on the public entity’s website, and posted at the location of the meeting on the day of the meeting.”¹⁵ If the meeting is a special meeting, as it was in this instance, “notice must be provided to the official newspaper, but is not required to be published.”¹⁶

⁹ E-mail from Scott Howe to Off. of Att’y Gen. (Aug. 5, 2021, 3:18 PM).

¹⁰ N.D.A.G. 2016-O-18 citing N.D.C.C. § 44-04-17.1(13)(b) (definition of “public entity” includes a (sic) “governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state”), N.D.C.C. § 44-04-17.1(11), (definition of “political subdivision” includes townships); N.D.A.G. 2015-O-03; N.D.A.G. 2015-O-02. *See* N.D.A.G. 2012-O-05; N.D.A.G. 2012-O-04; N.D.A.G. 2011-O-16; N.D.A.G. 2011-O-04; N.D.A.G. 2009-O-18; N.D.A.G. 98-O-09.

¹¹ N.D.A.G. 2016-O-18 citing N.D.C.C. § 44-04-19. *See* N.D.A.G. 2012-O-05; N.D.A.G. 2011-O-16; 2011-O-04; N.D.A.G. 98-O-09.

¹² N.D.A.G. 2011-O-16.

¹³ N.D.A.G. 2011-O-16, citing N.D.C.C. § 44-04-20(9). *See also* N.D.A.G. 2015-O-02; N.D.A.G. 2012-O-02.

¹⁴ Townships typically do not have offices, and past opinions from this office have recognized that this requirement would not apply. *See* N.D.A.G. 2015-O-02; N.D.A.G. 2011-O-16.

¹⁵ N.D.A.G. 2011-O-16 citing N.D.C.C. § 44-04-20(4).

¹⁶ N.D.A.G. 2011-O-16 citing N.D.C.C. § 44-04-20(6); N.D.A.G. 2009-O-18. *See also* N.D.A.G. 2015-O-03, N.D.A.G. 2015-O-02, N.D.A.G. 2012-O-04.

Townships generally do not have main offices; however, this office has long stated “filing the notice with the county auditor and posting the notice at the location of the meeting are the two steps required to provide public notice of meetings under N.D.C.C. § 44-04-20.”¹⁷ In the past, a township posted notice “outside the door of the private home where the special meeting was being held” in order to comply with the open meeting requirements.¹⁸

May 19th Special Meeting

The Board called the McLean County Auditor and informed her of “the upcoming special meeting of 19 May 2021 and asked [her] to properly publicize it.”¹⁹ The May 19 special meeting notice posted on the McLean County website includes the date and time of the meeting.²⁰ The notice describes the meeting location as “1/2 mile south of Kongsberg and County Road 27.”²¹ The Board stated, in later correspondence with this office, the purpose of the May 19 special meeting was “to discuss the illegal plowing up of township roads in Section 5 of Butte Township on [Howe’s] land”²² but no agenda²³ was listed in the notice posted on the website. The May 19, 2021, meeting notice incorrectly stated the meeting was to be held on June 19, 2021.²⁴ The Board did not notify the McLean County Auditor of the mistake until after the meeting had occurred.²⁵

May 27th Special Meeting

Mr. Howe alleges the May 27th special meeting “was not held on 27 May as advertised.”²⁶ According to the Board, “[t]he special meetings held on 27 May and 3 June 2021 occurred as publicized.”²⁷ I am required by law to use the “facts given by the public entity.”²⁸ As a result,

¹⁷ N.D.A.G. 98-O-09.

¹⁸ N.D.A.G. 2011-O-16.

¹⁹ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jun. 3, 2022).

²⁰ Meeting Notice, Butte Twp. Bd. (May 27, 2021).

²¹ *Id.*

²² Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jun. 3, 2022).

²³ The requester did not allege lack of an agenda in his request for this opinion; however, I remind the Board of its requirements to make and post an agenda under N.D.C.C. § 44-04-20.

²⁴ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 26, 2021).

²⁵ *Id.*

²⁶ E-mail from Scott Howe to Off. of Att’y Gen. (Aug. 5, 2021, 3:18 PM).

²⁷ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 26, 2021).

²⁸ N.D.C.C. § 44-04-21.1(1).

this opinion is premised on the meeting having occurred on May 27, 2021. The notice included the date, time, and location of the meeting as 2831 10th Ave NW, Ruso, ND 58778.²⁹ The topics to be discussed were listed as “pending lawsuit issues concerning the plowing up of a township road in Section 5 of Butte Township” and “executive session to discuss this legal issue with their attorney, per NDCC 44-04-19.1.”³⁰

June 3rd Special Meeting

On June 3, 2021, the Board notified the county auditor of a special meeting to be held at 3:00 p.m. that day.³¹ The Board did not contradict or elaborate on Howe’s assertion that this meeting was preceded by only 50 minutes notice.³² In response to questions about the timing of the notice, the Board stated “I again refer to the Open Meetings Guide: ‘Generally, there is no minimum advance notice period for public meetings.’”³³ This is correct, and I find no violation on this alleged timing issue.

Although township supervisors may meet in unconventional locations due to the nature of their work,³⁴ they must follow open meetings law when a quorum meets to discuss public business. Here, notice was not posted at any of the locations where the three special meetings were held.³⁵ Also, notice was not sent to the official newspaper for these three special meetings.³⁶ While it does not appear the Board was trying to keep the meetings secret, the Board violated open meeting laws when it failed to provide notice in compliance with N.D.C.C. § 44-04-20 for its May 19, 2021, May 27, 2021, and June 3, 2021, special meetings.

²⁹ Meeting Notice, Butte Twp. Bd. (May 27, 2021).

³⁰*Id.* Mr. Howe also asked this office to review whether the Board had created minutes for the meetings held in May and June. That request was outside the statutory review period for this office. However, the Board provided copies of the minutes for those meetings. The requester did not question the sufficiency of the minutes but after a cursory review of the minutes, I strongly advise the Board and its legal counsel to review the requirements in N.D.C.C. § 44-04-21(2) regarding minutes. *See also* N.D.A.G. 98-O-09. I also encourage the Board to review its executive session procedures with regard to motioning to enter executive session at a different location and then resuming the session when all parties are present at a different location.

³¹ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 26, 2021).

³²*Id.*

³³*Id.*

³⁴ At 7:30 p.m. Township Board of Supervisors members inspected streets, culverts, and property of the unincorporated City of McKenzie to determine what needed to be resurfaced or how to address sewage issues. N.D.A.G. 2011-O-04.

³⁵ Letter from Richard Olson, Chairman, Butte Twp. Bd. of Supervisors, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jun. 3, 2022).

³⁶*Id.*

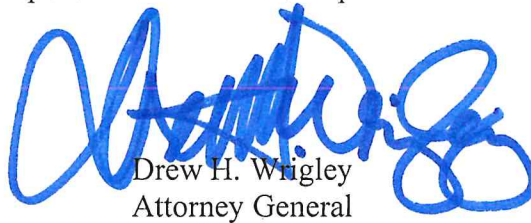
CONCLUSION

Due to an incorrect meeting date, failure to post notice of the meetings at the locations of the meetings, and failure to send notices to the official newspaper, the Board violated the open meetings laws with regard to notice of its May 19, 2021, May 27, 2021, and June 3, 2021, special meetings.

STEPS NEEDED TO REMEDY VIOLATION

As the Board already remedied the clerical mistake on the May 19, 2021, special meeting notice, there is nothing further to be done with updating any of the special meeting notices at issue in this opinion. However, the Board must provide copies of the May 19, 2021, May 27, 2021, and June 3, 2021, special meeting minutes to the requester, the official newspaper, and anyone else requesting them, free of charge.

While I have reason to expect the Butte Township Board of Supervisors will remedy this situation, I note that failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.³⁷ Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.³⁸



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aml
cc: Scott Howe (via email only)

³⁷ N.D.C.C. § 44-04-21.1(2).

³⁸ *Id.*