

**OPEN RECORDS AND MEETINGS OPINION
2002-O-12**

DATE ISSUED: December 18, 2002
ISSUED TO: State Board of Higher Education

CITIZEN'S REQUEST FOR OPINION

On October 8, 2002, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Senator Ben Tollefson asking whether the State Board of Higher Education violated N.D.C.C. § 44-04-19 by failing to make the meeting accessible to the public, and whether it violated N.D.C.C. § 44-04-20 by failing to properly notice the meeting.

FACTS PRESENTED

The State Board of Higher Education (Board) held a regular meeting on September 26 and 27, 2002, on the campus of Williston State College in Williston, North Dakota. Notice of the meeting was filed with the Secretary of State's office. The notice was also posted at the North Dakota University System office, at the meeting room on the college campus on the day of the meeting, and on the university system's website. Additionally, the notice was mailed to approximately sixty media outlets and other entities who have requested notice of meetings. One of the items on the Board's agenda was a proposal recommended by Minot State University to rename the auditorium in Old Main to the Ann Nicole Nelson Hall.

ISSUES

1. Whether the State Board of Higher Education provided proper notice of the September 26 and 27, 2002 meeting in compliance with N.D.C.C. § 44-04-20.
2. Whether the State Board of Higher Education's meeting was accessible to the public in compliance with N.D.C.C. § 44-04-19.

ANALYSES

Issue One

Public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1). Under N.D. Const. Art. VIII, § 6 and N.D.C.C. § 15-10-01, the Board is the multimember body responsible for making decisions on behalf of the University

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System, and is therefore a “public entity.” N.D.A.G. 98-O-05; N.D.C.C. § 44-04-17.1(12)(a). For state-level bodies, notice must be filed in the Secretary of State’s office, and must be posted at the principal office of the governing body and at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4). The notice must contain the date, time, and location of the meeting and the topics to be discussed at the meeting. N.D.C.C. § 44-04-20(2). A notice of a meeting is not required to be published unless there is a specific law requiring the notice to be published, or the public entity has decided to publish the notice. N.D.C.C. § 44-04-20(1).

In this case, the notice of the September 26 and 27 meeting was filed with the Secretary of State’s office. It was also posted at the University System’s office in Bismarck and at the location of the meeting on the Williston State College campus. Additionally, the notice was posted on the University System’s website and mailed to media outlets and other entities who requested individual notice. There is no state law requiring notice of the Board’s meetings to be published, and, according to the Board’s attorney, the Board has not decided to publish notice of its meetings. Therefore, it is my opinion that the Board gave proper notice in compliance with N.D.C.C. § 44-04-20.

Issue Two

All meetings of a public entity must be open to the public unless otherwise specifically provided by law. N.D.C.C. § 44-04-19. To be open to the public, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. N.D.C.C. § 44-04-19(2). Senator Tollefson contends that the public was denied access to the Board’s meeting because the Board considered and approved a name change of a Minot State University auditorium at the meeting in Williston. His position is that anyone from Minot who wanted to attend the meeting would have had to travel 120 miles to Williston. Senator Tollefson contends that the time and expense necessary to travel to the meeting prohibited Minot residents from attending the Board’s meeting and voicing their position on changing the name of the auditorium.

Although the proximity of the public entity’s meeting place to the people affected by the public entity’s decisions is not specifically addressed in N.D.C.C. § 44-04-19, 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. See Rhea v. School Bd. Of Alachua County, 636 So.2d 1383, 1386 (Fla. Dist. Ct. App. 1994) (meeting of a county school board held 100 miles from the board’s headquarters at a convention hotel did not afford citizens of county a reasonable opportunity to attend); 1979-80 Mich. Op. Atty. Gen. 386 (while the open meetings act does not dictate that a meeting be held within the jurisdictional limits of the public body’s jurisdiction, if a meeting is held so far from the public it serves that it would be difficult or inconvenient for citizens residing in the area

served by the public body to attend, the meeting could not be considered as being held at a place available to the general public).

In this case, the Board has statewide jurisdiction. Its headquarters, like many state agencies and boards, are in Bismarck. As an entity with statewide jurisdiction the members of the public it affects are located throughout the state. At any given meeting, the Board could potentially discuss issues affecting every college and university in the state. In fact, the agenda for the September 26 and 27 meeting reveals that the Board did discuss issues affecting all of the colleges and universities in the state. According to the Board's attorney, it is the Board's practice to alternate its meeting locations among the eleven state college and university campuses. It does so not as an attempt to circumvent the open meeting laws, but, in part, to give people throughout the state an opportunity to easily appear before the Board. While members of the public affected by the Board's decisions may have to spend time and incur expenses to attend the Board's meetings, it is my opinion that the Board did not violate N.D.C.C. § 44-04-19 by holding its meeting in Williston.

CONCLUSIONS

1. It is my opinion that the State Board of Higher Education provided proper notice of its September 26 and 27, 2002, meeting in compliance with N.D.C.C. § 44-04-20.
2. It is my opinion that the State Board of Higher Education's meeting was accessible to the public in compliance with N.D.C.C. § 44-04-19.

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