

**OPEN RECORDS AND MEETINGS OPINION  
2003-O-07**

DATE ISSUED: June 5, 2003

ISSUED TO: Kindred School District No. 2

**CITIZEN'S REQUEST FOR OPINION**

Paula Swenson made a timely request under N.D.C.C. § 44-04-21.1 for an opinion asking whether the Kindred School District Board (Board) violated the open meeting laws by 1) adding an agenda item to the notice of a special school board meeting less than 24 hours before the meeting was to take place, 2) removing an item from the agenda of a regular meeting, and 3) not allowing members of the public to address the Board at a regular meeting of the Board.

**FACTS PRESENTED**

On February 11, 2003, inclement weather caused the Board to postpone its regular meeting scheduled for that day until February 25, 2003. Due to the postponement, the Board determined that a special meeting was necessary to consider a proposed 2002-2003 calendar adjustment. The Board scheduled a special meeting for 7:30 a.m. February 13, 2003. A notice of that special meeting was provided to the Cass County Auditor's Office and the official newspaper on February 11, 2003. The notice included only one agenda item, discussion of a proposed 2002-2003 calendar adjustment.

A short time after receiving the special meeting notice, a school board member requested that the second reading of the Superintendent Evaluation Form be added to the February 13 special meeting agenda so school board members could use the form prior to the March 15, 2003, evaluation deadline. Notice of this additional agenda item was faxed to the Cass County Auditor and the official newspaper on February 12 at approximately 9:26 a.m. A notice that included all of the agenda items was posted outside the school district's business office and outside of the Board's meeting room on February 12, 2003.

The regular Board meeting, originally planned to be held on February 11, 2003, was held on February 25, 2003. At the February 25 meeting an item on the typed agenda regarding the Family Educational Rights and Privacy Act was removed and one item regarding a

## OPEN RECORDS AND MEETINGS OPINION 2003-O-07

June 5, 2003

Page 2

staffing question was added. According to the requester, the Board gave no explanation of why the changes were made.

At the same meeting on February 25 the Board denied a request by four people to address the Board.

### ISSUES

1. Whether the Board violated N.D.C.C. §44-04-20 when it gave notice of a new agenda item for a special meeting less than 24 hours prior to the meeting.
2. Whether the Board violated N.D.C.C. § 44-04-20 when it removed an agenda item at a regular meeting without prior notice and without explanation.
3. Whether the Board violated N.D.C.C. § 44-04-19 when it denied four members of the public an opportunity to address the Board at a regular meeting.

### ANALYSES

#### Issue One

Required notices “must be given in advance of all meetings of a public entity.” N.D.C.C. § 44-04-20(1). The time, place, date and topics to be considered at a special or emergency meeting must be stated in the meeting notice of such a meeting. N.D.C.C. § 44-04-20(6). The notice must be filed with the county auditor, posted at the public entity’s main office if one exists, and posted at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4); N.D.A.G. 2002-O-10. In addition, for special or emergency meetings, the public entity’s official newspaper must be notified. N.D.C.C. § 44-04-20(6); N.D.A.G. 2002-O-10.

Although public entities must give notice of their meetings, there is no mandatory minimum notice period in N.D.C.C. § 44-04-20. N.D.A.G. 98-O-13. Public notice must be given at the same time as the governing body’s members are notified. N.D.C.C. § 44-04-20(5). Also, regarding special or emergency meetings, the public entity must give notice to its official newspaper, if any, and to representatives of the news media who have requested to be notified of special or emergency meetings at the same time it notifies the governing body’s members. N.D.C.C. § 44-04-20(6). Special or emergency meetings are likely to be scheduled upon short notice. To compensate for the possibility that the public may not be aware of a special or emergency meeting, N.D.C.C. § 44-04-20(6) requires that public entities notify the media.

## OPEN RECORDS AND MEETINGS OPINION 2003-O-07

June 5, 2003

Page 3

Section 44-04-20, N.D.C.C., does not provide a process to amend a notice for a special meeting. This office has never addressed the issue of the appropriateness of adding items to the agenda of a special meeting after notice has already been provided to the county auditor and before the time of the meeting. As stated in the facts, a school board member requested the second reading of the Superintendent Evaluation Form be added to the February 13 special meeting agenda shortly after receiving the initial notice of the special meeting. The Board issued the amended notice as soon as the request by the board member was made, which was the morning of February 12. The Board followed the same procedure required to give notice of a special meeting when it gave notice of the amendment. Consequently, the Board took appropriate steps by issuing the amended notice as soon as the additional agenda item was requested and by following the requirements in N.D.C.C. § 44-04-20(6), when it amended the notice of the special meeting.

It is my opinion that the Board did not violate N.D.C.C. § 44-04-20 when it gave notice of an agenda change on February 12, 2003, for a special meeting held February 13, 2003.

### Issue Two

At a regular meeting, "a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken" at the meeting. N.D.C.C. § 44-04-20(2). The meeting agenda for a regular meeting can be amended on the day of the meeting or during the meeting. N.D.A.G. 2001-O-15, N.D.A.G. 98-O-21. While it may be appropriate for the Board to explain why an agenda item is being removed, the law does not require such an explanation.

Thus, it is my opinion that the Board did not violate the open meetings laws when it removed an agenda item at the regular Board meeting.

### Issue Three

At the regular meeting on February 25, 2003, four members of the public sought time to address the board. According to the Board, these same people had addressed the Board several times at previous meetings regarding the same subject. Therefore, the Board declined to give them time to speak at the meeting.

As indicated in the analysis of issue two, the governing body is given a certain amount of leeway in setting the agenda at a regular public meeting. N.D.C.C. § 44-04-20(2). This office has concluded in several opinions that the purpose of the open meetings law is to give members of the public access to the meetings of a governing board of a public entity,

OPEN RECORDS AND MEETINGS OPINION 2003-O-07

June 5, 2003

Page 4

but that access does not give members of the public the right to participate or speak at the public meeting. N.D.A.G. 99-O-07, N.D.A.G. 98-O-17, N.D.A.G. 98-F-11.

Thus, the Board did not violate the open meetings law when it denied attendees the opportunity to address it.

CONCLUSIONS

1. The Board did not violate N.D.C.C. § 44-04-20 when it gave notice of a new agenda item for a special meeting less than 24 hours prior to the meeting.
2. The Board did not violate N.D.C.C. § 44-04-20 when it changed the agenda at a regular meeting without prior notice and without an explanation.
3. The Board did not violate N.D.C.C. § 44-04-19 when it denied four members of the public an opportunity to address the Board during its regular meeting.

STEPS NEEDED TO REMEDY VIOLATION

Because there were no violations, no further action is necessary.

Wayne Stenehjem  
Attorney General

Assisted by: Thomas A. Mayer  
Assistant Attorney General

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