

**OPEN RECORDS AND MEETINGS OPINION
2003-O-19**

DATE ISSUED: November 12, 2003

ISSUED TO: Northwood Park Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from RuthAnn Schol asking whether the Northwood Park Board violated N.D.C.C. § 44-04-18 by denying a request for records and N.D.C.C. §§ 44-04-19 and 44-04-20 by holding meetings not preceded by proper notice.

FACTS PRESENTED

On July 7, 2003, RuthAnn Schol attended a monthly meeting of the Northwood Park Board (Board). At the meeting, she requested to see a copy of the Board's by-laws. She was told the by-laws were being re-written and she never did receive a copy. At the same meeting Ms. Schol requested copies of reprimands given to two Northwood lifeguards on July 4, 2003. The reprimands were not available at the meeting and she did not receive copies after the meeting.

Ms. Schol also alleges that on two occasions a quorum of the Board met without prior notice. On July 17, 2003, Board members Wade Bilden, Sue Peterson, and Chris Kjorven were observed talking while sitting at a table in the park. On August 4, 2003, after a regular meeting of the Board, Board members Sue Peterson, Donovan Bye and Chris Kjorven were observed talking outside the Northwood Community Center.

Finally, Ms. Schol alleges that on July 30, 2003, there was a special meeting of the Board that was not publicly noticed and not held in the usual place.

ISSUES

1. Whether the Northwood Park Board violated N.D.C.C. § 44-04-18 by not providing copies of records to a requester within a reasonable time.

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2. Whether the Northwood Park Board violated N.D.C.C. § 44-04-20 on two occasions by failing to provide notice of Board meetings in substantial compliance with that section.
3. Whether the Northwood Park Board violated N.D.C.C. § 44-04-20 by failing to properly notice a special meeting.

ANALYSES

Issue One

Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. N.D.C.C. § 44-04-18. Upon request for a copy of specific records a public entity must furnish the requester one copy of the public records requested. N.D.C.C. § 44-04-18(2). A request need not be made in person or in writing. Id.

In this instance, Ms. Schol alleged that the Board failed to provide copies of the requested by-laws and reprimands. She asked to see the records at the Board meeting. None of the records was available at the meeting. When asked, the Board reported that it was not sure if Ms. Schol had actually requested to receive copies of the records or if she simply wanted to review the documents at the meeting. Therefore, the Board did not provide Ms. Schol with a copy of the by-laws or the reprimands after the conclusion of the meeting.

A request for records made during a meeting is as valid as a request made at any other time. Ms. Schol asked to inspect certain records of the Board. 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. A response to a request for records must not be unreasonably delayed. N.D.C.C. § 44-04-18(7). Under most circumstances, a delay of a month in providing copies of requested records would be unreasonable. N.D.A.G. 98-O-20. In this instance, it has been almost four months and Ms. Schol has not received the records she requested. Therefore, it is my opinion that the Board violated N.D.C.C. § 44-04-18 by not providing requested records within a reasonable time.

Issue Two

All meetings of a public entity must be open to the public. N.D.C.C. § 44-04-19. A “meeting” means a formal or informal gathering, whether in person or through other means such as telephone or video conference of a quorum of the members of the governing body

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of a public entity regarding public business. N.D.C.C. §44-04-17.1(8)(a)(1). "Meeting" includes work sessions, but does not include chance or social gatherings where public business is not considered. N.D.C.C. § 44-04-17.1(8)(b). A "quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity. N.D.C.C. § 44-04-17.1(14).

Ms. Schol alleged two instances where a quorum of the Board met without proper public notice. The first was on July 17 when a quorum of the Board was talking in the park and the second was outside the Northwood Community Center after the August 4 Board meeting. In any opinion issued under N.D.C.C. § 44-04-21.1, the Attorney General must base the opinion on the facts given by the public entity. N.D.C.C. § 44-04-21.1(1). Although the Board did not deny that a quorum of members was seen talking, it denied that public business was discussed on either occasion. The Board explained that Northwood is a small town and the Board members frequently interact socially.

As the definition indicates, a "meeting" must pertain to "public business." It does not include social or chance gatherings as long as public business is not considered. *Id.* N.D.C.C. § 44-04-17.1(8). In a prior opinion this office addressed a situation where a school board met after meetings at a local restaurant for supper. The gatherings were social gatherings, and no business of the board was considered. The opinion explained that the open meetings law does not require members of governing bodies to sacrifice personal friendships, and board members are free to meet socially, even as a group. N.D.A.G. 2002-O-07. Similarly, in this instance, the Board members interacted socially in a public park and outside the community center. No public business was discussed during these gatherings. Because social gatherings of Board members are not "meetings" under N.D.C.C. § 44-04-17.1(8), it is my opinion that the Board did not violate N.D.C.C. § 44-04-20.

Issue Three

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity including executive sessions, conference call meetings, and video conferences. N.D.C.C. § 44-04-20(1). For special or emergency meetings the time, place, date and topics to be considered must be stated in the meeting notice. N.D.C.C. § 44-04-20(6). The notice must be filed with the city 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, if any, must be notified. N.D.C.C. § 44-04-20(6); N.D.A.G. 2002-O-10.

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The Board met on July 30, 2003, at its regular meeting location for a special meeting called by Board member Sue Peterson. The Board was unable to provide this office with a copy of the meeting notice. The Board did not file a notice with the City Auditor, post a notice at the door, or notify the public entity's official newspaper. According to the Board, an announcement about the meeting may have been carried on the community announcement television channel. It supported this theory by the fact that several members of the community were present at the meeting.

Although placing a meeting announcement on the local community announcement television channel is one way to inform the community of upcoming meetings, it does not replace the notice requirements found in N.D.C.C. § 44-04-20. See also N.D.A.G. 2001-O-05 (announcing a meeting date during a previous meeting is not a substitute for posting and filing a notice as required in N.D.C.C. § 44-04-20); N.D.A.G. 2000-O-03 (notifying interested members of the public is not a substitute for complying with N.D.C.C. § 44-04-20). The Board has a duty to notice any regular or special meeting according to the open meetings law. It is my opinion that the Board violated the open meetings law when it failed to provide the notice required by N.D.C.C. § 44-04-20 for its July 30 special meeting.

CONCLUSIONS

1. The Northwood Park Board violated N.D.C.C. § 44-04-18 by not providing copies of records to Ms. Schol within a reasonable time.
2. The Northwood Park Board did not violate N.D.C.C. § 44-04-19 when it did not notice social gatherings of board members.
3. The Northwood Park Board violated N.D.C.C. § 44-04-20 when it failed to provide notice of its July 30, 2003, special meeting in substantial compliance with that section.

STEPS NEEDED TO REMEDY VIOLATIONS

The Board must provide Ms. Schol with copies of the by-laws and the two reprimands free of charge.

A notice that the July 30, 2003, meeting occurred needs to be prepared and filed with the city auditor and posted at the Board's main office. N.D.C.C. § 44-04-20(4). The notice must also be provided to the Board's official newspaper and any person who had previously requested to receive notice. N.D.C.C. § 44-04-20(5), (6). The notice must contain the date, time, and location of the meeting and the topics that were considered at

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the meeting. N.D.C.C. § 44-04-20(2). The notice must also specify that minutes of the July 30, 2003, meeting are available from the city auditor for any member of the public who wants a copy.

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. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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