

**OPEN RECORDS AND MEETINGS OPINION
2004-O-15**

DATE ISSUED: July 9, 2004

ISSUED TO: Fargo School District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Steven A. Johnson on behalf of Forum Communications Company and from Representative Kim Koppelman asking whether the Fargo School District violated N.D.C.C. §§ 44-04-20 and 44-04-21 by holding a meeting of a committee of the Fargo School District without proper notice and by not taking minutes of the meeting.

FACTS PRESENTED

The Fargo School District's superintendent organized a joint staff meeting with Fargo city officials. The meeting was held on May 10, 2004, in the mayor's office. The meeting was requested by the city of Fargo. The following people attended the meeting: Fargo Mayor Bruce Furness, City Administrator Pat Zavoral, City Attorney Garylle Stewart, Superintendent David Flowers, School Board Members Rick Steen and Jim Johnson, School District Administrator Lowell Wolff, and School District Attorney Bev Adams.

The purpose of the meeting was to discuss whether state statutes conflict regarding the taxing authority and control of schools for the Fargo School District Board of Education (Board). While reviewing the statutes, another issue arose, i.e., whether the West Fargo School District has the authority to operate a school in the city of Fargo. According to the school district, at no point did any of those who were invited or who attended the meeting perceive that it was a meeting of the Fargo School District's Finance Committee.

The Board has established a five-member Finance Committee consisting of the Fargo School District's business manager, the superintendent of schools, and three Board members appointed by the president of the Board. Fargo School District, GP-7 (Governance Process, Committee Structure). Meetings of the Finance Committee are listed in the Fargo School District calendar of public meetings and the committee normally prepares meeting minutes.

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On or before May 7, 2004, the superintendent invited the Finance Committee's chairman, Rick Steen, to attend the meeting so he would be aware of the issues. Mr. Steen requested another school board member, Jim Johnson, who also serves on the Finance Committee, be invited to attend. Mr. Johnson received notice of the meeting on May 7 and, since the superintendent's administrative assistant invited Mr. Johnson to the meeting, the superintendent knew on May 7 that a quorum of the Finance Committee would attend the May 10 meeting. Because the school district did not consider the gathering to be a meeting of the Finance Committee, no notice of the meeting was given, nor were minutes or a recording of the meeting made.

ISSUE

Whether the Fargo School District violated N.D.C.C. §§ 44-04-20 and 44-04-21 by not giving notice of a May 10, 2004, meeting attended by a quorum of the school district's Finance Committee and not taking minutes of that meeting.

ANALYSIS

A school board is the governing body of a public entity. N.D.C.C. § 44-04-17.1(12)(b). See also N.D.A.G. 2002-O-10; N.D.A.G. 2002-O-07; and N.D.A.G. 97-O-02. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity. N.D.C.C. §44-04-20(1). "Meeting" is defined as "a formal or informal gathering, . . . of . . . [a] quorum of the members of the governing body of a public entity regarding public business" N.D.C.C. §44-04-17.1(8)(a)(1). A "quorum" means one-half or more of the governing body's members, or any smaller number if sufficient for the governing body to transact business on behalf of the public entity. N.D.C.C. § 44-04-17.1(14).

A "governing body" of a public entity subject to the open meetings and records laws includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body." N.D.C.C. § 44-04-17.1(6). Thus, meetings of a committee of a governing body are subject to the open meetings laws. N.D.A.G. 2003-O-13 (meeting of the employee relations committee of a city council); see also N.D.A.G. 2003-O-15; N.D.A.G. 2001-O-11; N.D.A.G. 2001-O-04. "Public business" under the open meetings law "means all matters that relate or may foreseeably relate in any way to . . . [t]he performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or . . . [t]he public entity's use of public funds." N.D.C.C. §44-04-17.1(11) (emphasis added).

This office has previously determined that the gathering of the members of a governing body or a committee is a meeting "even when no motions are made and no action is

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taken.” N.D.A.G. 98-O-16. Thus, an on-site inspection by a quorum of a water resource district board of an area that was the subject of a complaint was found to be a meeting. N.D.A.G. 98-F-16. Attendance of a quorum of the city council members at the meeting of another public entity to hear presentations by sanitation companies was considered to be a meeting. N.D.A.G. 98-O-18. Receiving information regarding public business at a gathering of a quorum of a board is a meeting. N.D.A.G. 98-O-11. See also N.D.A.G. 98-F-16 (“meeting” covers all stages of the decision-making process, including information gathering); N.D.A.G. 98-O-08 (“public business” includes all stages of the decision-making process from information gathering to final action).

Under these definitions, 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 laws, including the requirements to notice its meetings and prepare minutes. See N.D.A.G. 2004-O-12; N.D.A.G. 2003-O-15; N.D.A.G. 2003-O-13; N.D.A.G. 2001-O-11; N.D.A.G. 96-F-09.

The issue is whether the meeting with the mayor and his staff attended by a quorum of the members of the Board’s Finance Committee (i.e., Rick Steen, Jim Johnson, and David Flowers) constituted a meeting of the Finance Committee. The answer depends on whether the Finance Committee’s delegated authority included the issues discussed at the meeting. The Finance Committee is responsible for:

- ? increasing the Board’s knowledge of budget and finance issues
- ? working with the [school district] administration in developing a long-range financial plan.

Fargo School District, GP-7, ¶ 2(a)(1) and (2) (Governance Process, Committee Structure).

The issue of whether property in the city of Fargo is subject to school taxes has a clear relationship to the subjects for which the Finance Committee is responsible. The meeting was held, in part, to help Finance Committee members determine how to address the apparent conflict in the law relating to the authority of the Fargo and West Fargo school districts. Mr. Steen and Mr. Johnson reported back to the full Board at its May 11 meeting regarding the meeting with the city of Fargo and recommended the Board take certain action on the matter. See Minutes of the Fargo School District Board of Education Meeting (May 11, 2004). As such, it is clear that the subject matter of the meeting was within the scope of responsibilities delegated to the Finance Committee by the Board. See Fargo School District, GP-7, ¶ 2(a)(1) and (2). Since the meeting dealt with issues within the scope of the Finance Committee’s responsibility, the school district’s argument that no meeting took place because the Board did not delegate specific authority “to make

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any decisions relating to the legal taxing authority of the Fargo Public Schools or to make any decisions relating to the subject matter of the [May 10] meeting,"¹ has no merit.

CONCLUSION

It is my opinion that the school district violated N.D.C.C. §§ 44-04-20 and 44-04-21 by not giving notice of the Finance Committee's meeting of May 10, 2004, and not preparing minutes of the meeting.

STEPS NEEDED TO REMEDY VIOLATION

The Fargo School District must prepare a notice of the May 10, 2004, meeting specifying that minutes of the meeting will be available upon request. The notice must be posted in the Fargo School District's main office, filed with the county auditor, and a copy must be given to the county's official newspaper, and any representatives of the news media that have requested notice of any special meetings of the school district. Also, detailed minutes of the meeting describing the topics discussed at the meeting must be prepared and distributed as requested.

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. 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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¹ Letter from David Flowers, Superintendent, to Lou Ziegler, Editor, The Forum (May 12, 2004),