

**OPEN RECORDS AND MEETINGS OPINION
2004-O-17**

DATE ISSUED: July 16, 2004

ISSUED TO: Pembina County Fair Board

CITIZEN'S REQUEST FOR OPINION

This office received a timely request for an opinion under N.D.C.C. §44-04-21.1 from Charles Thacker asking whether the Pembina County Fair Board violated N.D.C.C. § 44-04-21 by failing to take recorded roll call votes on nonprocedural matters.

FACTS PRESENTED

The Pembina County Fair Board (Board) held meetings on April 14 and April 28, 2004. According to the Board's president, the Board rarely takes roll call votes. Generally, it is the practice of the Board members to raise their hands when voting. The president explained to this office that the Board secretary takes minutes at every meeting. If there is a negative vote on a motion brought before the Board, the individual is named as voting in the negative in the minutes. If there are no negative votes, the minutes state that the motion carried. Therefore, when the minutes state "motion carried," it is a unanimous decision.

ISSUE

Whether the Pembina County Fair Board violated N.D.C.C. § 44-04-21(1) by failing to take roll call votes on nonprocedural issues.

ANALYSIS

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. A "meeting" is a formal or informal gathering of a quorum of the members of a "governing body" of a "public entity." N.D.C.C. § 44-04-17.1(8)(a). A "public entity" includes organizations or agencies supported in whole or in part by public funds, or expending public funds. N.D.C.C. § 44-04-17.1(12)(c). Counties have the authority under N.D.C.C. ch. 4-02 to levy a tax to support county fair associations. N.D.C.C. §§ 4-02-26, 4-02-27, and 4-02-27.1. The Pembina County Annual Fair and Exhibition Association (County Fair) is organized

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pursuant to the authority found in N.D.C.C. § 4-02-26 and is incorporated as a nonprofit corporation. According to the Board, the County Fair receives an unrestricted 1.5 mills from Pembina County pursuant to N.D.C.C. § 4-02-27. In a past opinion, this office determined that a senior center was a public entity because it received mill levy money used at the discretion of the senior center. N.D.A.G. 2003-O-02. Similarly, the County Fair is supported by public funds making it a public entity. Therefore, its April 14 and 28 meetings were subject to N.D.C.C. § 44-04-19, the state's open meetings laws. The Board is the governing body of the County Fair.

Because the County Fair is a public entity subject to the open meetings law, it is subject to the voting requirements in N.D.C.C. § 44-04-21 which provides:

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.

(Emphasis added.)

Meeting minutes must include:

- a. The names of the members attending the meeting;
.....
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.
.....

N.D.C.C. § 44-04-21(2).

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The purpose of N.D.C.C. § 44-04-21 is to make a record of the vote of each member of a governing body for the benefit of those attending the meeting as well as those who are reviewing the minutes of the meeting. N.D.A.G. Letter to Jacobson (Feb. 15, 2001) (a member of the public attending the meeting or reviewing the minutes of the meeting should be able to identify the vote of each member).

As stated above, the Board admits that it does not generally take roll call votes, but asserts that the public knows who voted because if members of the public attend the meeting, they can see the Board members raise their hands. This assumes that every Board member is raising his or her hand in a manner that can be seen by anyone attending the meeting. This also does not take into consideration members of the public who do not attend the meeting and may only read the minutes.

The Board argues that a member of the public reading the minutes can tell how members are voting because "motion carried" means the vote was unanimous. If a member votes in the negative, it specifically lists the member's name with the negative vote. However, "motion carried" is not synonymous with "unanimous." Therefore, a member of the public, reading the minutes, would not know how the Board members voted.

CONCLUSION

It is my opinion that the Board violated N.D.C.C. § 44-04-21(1) by not taking roll call votes on nonprocedural matters.

STEPS NEEDED TO REMEDY VIOLATION

The minutes from the April 14 and 28 meetings must be supplemented to indicate how each member individually voted, or, in the case of a unanimous vote, the minutes should state that the vote was unanimous. The minutes must clearly indicate which Board members were absent from the meeting and whether any Board member abstained from voting.

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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