

**OPEN RECORDS AND MEETINGS OPINION
2005-O-14**

DATE ISSUED: August 25, 2005

ISSUED TO: Cando School Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jamie S. Gibbens-Halverson asking whether the Cando School Board violated N.D.C.C. §§ 44-04-20 and 44-04-21 by taking a vote of persons attending a meeting on March 22, 2005, when such a vote was not on the meeting's agenda; by not keeping minutes of the March 22 meeting; by holding two meetings on April 29, 2005, and one meeting on May 2, 2005, with no notice; and by failing to give notice of a meeting at which the procedure for naming the co-op sports teams was determined.

FACTS PRESENTED

The Cando School District participates in a sports co-op with surrounding school districts. The Cando School Board (Board) held a Community Athletic Co-op Meeting on March 22, 2005, to receive community input about the sports co-op and name change. A quorum of the school board was present. At the conclusion of the meeting, Kim Wagenman, the vice-president of the Board, asked the community members present to express their opinion as to the direction of the proposed name change and sports cooperative by a show of hands. The members of the public at the meeting indicated support to proceed with the sports co-op and proposed name change. No minutes were taken at the March 22 community meeting.

On April 29, a quorum of the school board was present at a student assembly at the Cando school in order to discuss the sports co-op and name change with the students. No notice was given of the gathering. Later on April 29, after the school assembly, a quorum of the school board met with the Cando student council to get input on the sports co-op. No public notice was given.

On May 2, a quorum of school board members were again present at a school assembly to provide information to the Cando students regarding the Procedure for Name Selection developed by the Co-op Board. No notice of the meeting was given.

On April 20, the Board appointed two of its members to the Co-op Board to represent the Board and implement the name change of all co-op sports. Cando School Board

OPEN RECORDS AND MEETINGS OPINION 2005-O-14

August 25, 2005

Page 2

minutes, April 20, 2005. The Co-op Board is made up of members appointed by the school districts participating in the sports co-op. The Co-op Board met on May 1, 2005, to develop a plan to implement a new name for the co-op sports teams. No notice was given of the May 1 meeting.

ISSUES

1. Whether the Board violated N.D.C.C. §§ 44-04-20 and 44-04-21 when it took a vote of persons attending a meeting on March 22 regarding the proposed sports co-op when such a vote was not on the agenda for the meeting and because minutes of the meeting were not taken at the meeting.
2. Whether the Board's meetings on April 29 and May 2 and the Co-op Board meeting on May 1 were subject to the open meetings law and preceded by public notice in compliance with N.D.C.C. § 44-04-20.

ANALYSES

Issue one:

All "meetings" of the board of a public school district are required to be open to the public. N.D.C.C. § 44-04-19; N.D.A.G. 2001-O-05. The date, time, location, and topics to be considered at a special meeting must be stated in the meeting notice. N.D.C.C. § 44-04-20(6); N.D.A.G. 2003-O-20. Topics that may be considered at a special meeting are limited to those included in the notice. Id.

The notice of the March 22, 2005, meeting published in the newspaper contained the following agenda:

Agenda

1. Participation numbers for all co-op activities
2. Co-op name change
3. Future of boys and girls basketball in the area

At the bottom of the notice it stated "We invite everyone to come and discuss the future of High School Football, Volleyball and other sports in the area."

According to the Board, at the conclusion of the meeting, one of the school board members asked the community members present to express their opinion as to the direction of the proposed name change and sports cooperative by a show of hands. The requestor alleges this vote was illegal because the notice did not indicate such a vote would be taken.

OPEN RECORDS AND MEETINGS OPINION 2005-O-14

August 25, 2005

Page 3

The law requires that a governing body limit topics at a special meeting to those listed in the notice. Asking for members of the audience to indicate support for the name change by raising their hands is within the scope of "Co-op name change" listed in the agenda. The law does not require a governing body to list every action it may take within the scope of the topic. There is no question, by reading the notice, that public input was sought by the Board. Therefore, it is my opinion that the Board did not violate N.D.C.C. § 44-04-20 when it asked for a show of hands regarding the name change.

Minutes must be kept of all open meetings. N.D.C.C. § 44-04-21(2). The Board admits it did not take minutes of the March 22 meeting. It is further my opinion that the Board violated N.D.C.C. § 44-04-21 when it failed to take minutes of the meeting.

Issue two:

"Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public." N.D.C.C. § 44-04-19. The definition of "meeting" is not limited to a gathering at which formal action is taken on an item of public business, and includes work sessions and other informal gatherings where a quorum of members are present and public business is discussed. N.D.C.C. § 44-04-17.1(8); N.D.A.G. 2001-O-05.

Public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1). The notice must be posted at the public entity's main office, if any, and filed, in the case of a school district, with the county auditor, and given to anyone requesting such information. N.D.C.C. § 44-04-20(4); N.D.A.G. 2004-O-09. On the day of the meeting, the notice must be posted at the location of the meeting. N.D.C.C. § 44-04-20(4). In the case of a special meeting, the public entity's official newspaper and any other members of the media who have requested notice must be notified. N.D.C.C. § 4-04-20(6).

April 29 and May 2, 2005, meetings

As stated in the facts, a quorum of the Board was present at two school assemblies and a meeting with the student council. No notice was given by the Board of these meetings. In the response provided to this office by the Board's attorney, the Board explains that the purpose of the April 29 and May 2 assemblies were to provide forums for student input, as opposed to decision-making, so the Board did not perceive any of the three student gatherings as being meetings governed by the open meetings law. Letter from Gary Thune, June 30, 2005. The fact that no motions were made and no actions were taken by the school board is not relevant in determining whether the gathering was a meeting subject to the open meetings law. N.D.A.G. 2004-O-08; N.D.A.G. 98-O-11; N.D.A.G. 98-O-16. Any discussion regarding public business at a

OPEN RECORDS AND MEETINGS OPINION 2005-O-14

August 25, 2005

Page 4

gathering of a quorum of the school board is a meeting under N.D.C.C. § 44-04-17.1(8) that must be properly noticed. Id. Therefore, it is my opinion that the meetings of the school board with the two school assemblies and the student council were “meetings” subject to the open meetings law. Thus, the school board violated N.D.C.C. § 44-04-20 by failing to provide notice of the three meetings.

May 1, 2005, meeting

The requestor alleges that between April 29 and May 2, an illegal meeting or meetings of the Board took place where a co-op board was created and a “Procedure for Name Selection” was developed.

According to the Board, two of its members were appointed to the Co-op Board at the April 20 regular board meeting. The only meeting that took place between April 29 and May 2 was a meeting of the Co-op Board that met on May 1 to develop the procedure to select a new name for the mascot. The Co-op Board is not a committee of the Board. It is made up of members appointed by the boards of school districts participating in the sports co-op. Public entities subject to the open meetings law include public bodies, public boards, or agencies of any political subdivision, like school districts. N.D.C.C. § 44-04-17.1(12)(b); N.D.A.G. 98-O-17. Thus the Co-op Board is subject to the same notice requirements of the open meetings law as the Board. N.D.A.G. 98-O-17. Therefore, it is my opinion that the Board did not violate N.D.C.C. § 44-04-20 because it was not responsible for providing notice of the Co-op Board meeting held May 1.

CONCLUSIONS

1. The school board did not violate N.D.C.C. § 44-04-20(6) by taking a community vote at a March 22, 2005, meeting regarding a proposed sports co-op during a meeting under the agenda topic “Co-op name change.”
2. The school board violated N.D.C.C. § 44-04-20 by failing to provide notice of two meetings held April 29, one held May 2, but did not violate N.D.C.C. § 44-04-20 by failing to provide notice of the Co-op Board’s meeting on May 1.

REMEDIES

The Board must create notices for the April 29, and May 2, 2005, meetings, post them at the main office for one week, and file them with the county auditor. Minutes must be created for the March 22 meeting, the two meetings held April 29, and the May 2 meeting. The notices must state that minutes of the meetings are available upon

OPEN RECORDS AND MEETINGS OPINION 2005-O-14
August 25, 2005
Page 5

request, free of charge. The school board must send minutes of all four meetings to the requestor, free of charge.

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