

**OPEN RECORDS AND MEETINGS OPINION
2007-O-04**

DATE ISSUED: March 23, 2007

ISSUED TO: North Dakota Judicial Conference

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Roland Riemers asking whether the Judicial Conference violated N.D.C.C. § 44-04-20 by giving notice of a meeting to board members on October 2, 2006, and filing it with the Secretary of State on October 26, 2006.

FACTS PRESENTED

On October 2, 2006, the State Court Administrator's Office sent notice of a November 20-21, 2006, meeting to the members of the North Dakota Judicial Conference (Conference). On October 26, 2006, notice of the November meeting was filed with the Secretary of State's office. Notice was posted outside the meeting room on the day of the meeting and on the Supreme Court website.

ISSUE

Whether the Conference provided notice of its November 2006 meeting in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

The Conference is a "public entity" subject to the open record and meeting laws.¹ Meetings of the Conference are required to be open to the public unless a specific law provides otherwise. Notice of meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.²

¹ See N.D.A.G. 2006-O-06.

² N.D.C.C. § 44-04-20(9).

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Section 44-04-20(4), N.D.C.C., provides:

The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, . . . the notice must be filed in the office of the secretary of state for state-level bodies . . . , the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies.

. . .³

For regular meetings of governing bodies that have no main office, such as the Conference, filing the notice with the Secretary of State and posting the notice at the location of the meeting are the two steps required to provide public notice of the meetings under N.D.C.C. § 44-04-20.⁴ Generally, public notice must be provided at the same time the governing body's members are notified.⁵

Mr. Riemers alleges that notice was insufficient because the public was not notified at the same time as Conference members. The Conference members received notice of the November 20-21, 2006, meeting on October 2, 2006, but the notice was not centrally filed with the Secretary of State until October 26, 2006.

While there is no minimum mandatory notice period in N.D.C.C. § 44-04-20, this office has concluded that notice must be posted in advance of a meeting unless providing advance notice is not reasonable.⁶ Advance notice provides information to interested members of the public concerning the governing body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate.⁷

Opinions from this office finding that a public entity violated N.D.C.C. § 44-04-20 because notice was not provided to the public at the same time it was provided to the governing body's members generally involved emergency or special meetings, which are typically called on short notice, and where little or no advance notice was given to the public.⁸ In this case, the central notice filing met the purpose of the notice requirement by giving the public 26 days advance notice of the November meeting of

³ N.D.C.C. § 44-04-20(4).

⁴ N.D.A.G. 98-O-09. See also N.D.A.G. 99-O-06 (if a public entity has no principal office, the requirement to post notice at the principal office does not apply).

⁵ N.D.C.C. § 44-04-20(5); N.D.A.G. 99-O-10; N.D.A.G. 2003-O-07.

⁶ N.D.A.G. 2006-O-07; N.D.A.G. 98-O-13.

⁷ N.D.A.G. 2006-O-07.

⁸ See e.g. N.D.A.G. 98-O-13 (notice posted after meeting had begun); N.D.A.G. 98-O-09 (no notice given of a March 2 meeting).

the Conference. Not filing the notice with the Secretary of State at the same time notice was given to members of the Conference did not preclude any member of the public from receiving advance notice of the Conference's meeting. The only shortcoming in the notice was that the central notice filed with the Secretary of State was not filed at the same time as the members received notice. Because the notice was filed with the Secretary of State 26 days before the meeting, it is my opinion that the Conference substantially complied with the requirements of N.D.C.C. § 44-04-20.

CONCLUSION

The public was given sufficient notice of the Conference's November 20-21, 2006, meeting.

Wayne Stenehjem
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