

**OPEN RECORDS AND MEETINGS OPINION  
2009-O-06**

DATE ISSUED: April 23, 2009

ISSUED TO: Lidgerwood 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 Mike and Kathy Skroch asking whether the Lidgerwood School Board violated N.D.C.C. § 44-04-20 by failing to comply with the notice requirements for special meetings held by the full board and its co-op committee.

**FACTS PRESENTED**

In 2007, the Lidgerwood School Board and the Wyndmere School Board each appointed three people to a sports co-op committee to facilitate a sports co-op between the two schools. The Lidgerwood School Board appointed one school board member, the elementary principal and the athletic director. Later, another school board member was added. The sports co-op committee met seven times in 2008. Notice of the time and place of the co-op committee meetings was posted on the Wyndmere Public School website. The Lidgerwood Public School website contained a web-link to the Wyndmere site.

On October 30, 2008, the Lidgerwood School Board held a special meeting at 7 a.m. Prior to the meeting, the school's business manager contacted all board members by telephone. The notice, along with an agenda, was posted in the board room/teacher's lounge and faxed to the Richland County News Monitor. Notice was not provided to the county auditor.

**ISSUE**

1. Whether the Lidgerwood School Board violated N.D.C.C. § 44-04-20 by failing to provide notice of the Lidgerwood Wyndmere sports co-op committee meetings.
2. Whether the Lidgerwood School Board violated N.D.C.C. § 44-04-20 by failing to provide proper notice of its October 30, 2008, special meeting.

## ANALYSIS

### Issue One

Public notice must be given in advance of all meetings of a public entity.<sup>1</sup> A “governing body” means the multimember body responsible for making a collective decision on behalf of a public entity.<sup>2</sup> A “public entity” means all “[p]ublic or governmental bodies, boards, bureaus, commissions or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function.”<sup>3</sup> A school district is a political subdivision of the state.<sup>4</sup>

The sports co-op committee consists of members appointed by both the Lidgerwood School Board and the Wyndmere School Board. In 2005, this office addressed a complaint against a school board for failing to notice a similar meeting.<sup>5</sup> The entity involved in the 2005 opinion was also a co-op board made up of appointees from the participating school districts.<sup>6</sup> In that opinion, this office explained that each of the participating school boards did not have to individually provide notice of the co-op board’s meetings because the co-op board was a public entity in its own right.<sup>7</sup> Likewise, the Lidgerwood and Wyndmere school boards created the sports co-op committee to perform the governmental function of facilitating a sports co-op.<sup>8</sup> The sports co-op committee is a governmental body of a public entity.<sup>9</sup> It has an independent duty under the open meetings law to notice its meetings accordingly.

The requester asked this office for an opinion regarding the Lidgerwood School Board, and not the Lidgerwood Wyndmere sports co-op committee. As explained in this opinion, the Lidgerwood School Board does not bear responsibility for noticing the co-op committee and thus, in my opinion did not violate N.D.C.C. § 44-04-20. However, I have no reason to believe that the facts provided to this office are incorrect, and

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<sup>1</sup> N.D.C.C. § 44-04-20.

<sup>2</sup> N.D.C.C. § 44-04-17.1(6).

<sup>3</sup> N.D.C.C. § 44-04-17.1(12)(b).

<sup>4</sup> N.D.C.C. § 44-04-17.1(10); N.D.A.G. 2005-O-14; N.D.A.G. 98-O-17.

<sup>5</sup> N.D.A.G. 2005-O-14.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> See also N.D.A.G. 98-O-04.

<sup>9</sup> See N.D.C.C. § 44-04-17.1(12)(b).

according to the facts provided to this office, the sports co-op committee met at least seven times without following the requirements of N.D.C.C. § 44-04-20.

### Issue Two

A meeting notice must contain the date, time and location of the meeting and, where practicable, the topics to be considered or agenda.<sup>10</sup> For every meeting, a notice must be posted at the public entity's principal office, centrally filed, in the case of a school board, with the county auditor, posted at the location of the meeting on the day of the meeting and given to anyone requesting such information.<sup>11</sup> In the case of special or emergency meetings, the public entity's official newspaper must also be notified.<sup>12</sup>

The Lidgerwood School Board (Board) held a special meeting on October 30, 2008, at 7 a.m. The Board posted the notice inside a board room that doubles as a teacher's lounge located inside the school's business office. Specifically, the notice was on a bulletin board next to the teachers' mailboxes. The school explains that the board room/teacher's lounge is not in a main thoroughfare but it is open to the public. Although technically this room is open to the public, it is unlikely that the public would enter the room without being invited. The bulletin board may be a convenient location to post notices for the teachers, but it is an obscure location for the public. The purpose of posting a notice at the principal office is so the public has a reasonable opportunity to see the notice. Thus, a notice posted at the principal office of the public entity should be in a location where the public has the best chance of seeing it.

The Board also failed to post the notice outside the meeting room on the day of the meeting and did not file the special meeting notice with the county auditor. The notice was provided to the official newspaper.

For the reasons discussed, it is my opinion that the Board failed to provide notice in substantial compliance with N.D.C.C. § 44-04-20 of its October 30, 2008, special meeting.

### CONCLUSION

1. The Lidgerwood School Board did not violate N.D.C.C. § 44-04-20 by failing to notice several meetings of the Lidgerwood Wyndmere co-op committee.

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<sup>10</sup> N.D.C.C. § 44-04-20(2) and (6).

<sup>11</sup> N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2005-O-20.

<sup>12</sup> N.D.C.C. § 44-04-20(6).

2. The Lidgerwood School Board failed to provide notice in substantial compliance with N.D.C.C. § 44-04-20 of its October 30, 2008, special meeting.

#### STEPS NEEDED TO REMEDY VIOLATION

The Lidgerwood School Board must prepare, post, and file the proper notices of the October 30, 2008, special meeting. Copies of the notices and minutes from the meetings must be provided to the county's official newspaper and to the requester at no cost.

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.<sup>13</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>14</sup>

Wayne Stenehjem  
Attorney General

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<sup>13</sup> N.D.C.C. § 44-04-21.1(2).

<sup>14</sup> Id.