

**OPEN RECORDS AND MEETINGS OPINION
2011-O-04**

DATE ISSUED: February 7, 2011

ISSUED TO: McKenzie Township Board of Supervisors and the McKenzie Township Zoning Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Fred Johnson asking whether the McKenzie Township Board of Supervisors and the McKenzie Township Zoning Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting without public notice.

FACTS PRESENTED

The members of the McKenzie Township Board of Supervisors (Board) are Rod Knutson, Hunter Johnson, and Troy Zahn. The McKenzie Township Zoning Commission (Commission) consists of the three township supervisors and two members at large, Dale Ott and Ron Vetter, who are appointed from the municipalities related to township zoning. Each governing body has distinct statutory duties: the Board has the duty to cause necessary improvements to be made to streets if a city within the limits of the township neglects to make the improvements¹ and the Commission has the duty to enforce zoning regulations and restrictions in the districts.²

At the Board meeting held July 20, 2010, Commission member Ott informed the Board that a letter was going to be sent to landowners regarding property maintenance.³ The Board also discussed resurfacing the streets in McKenzie and certain sewage issues.⁴ Board member Knutson suggested that a physical inspection be done of the streets,⁵ culverts, and property that may need attention in the unincorporated town of McKenzie.⁵ The physical inspection was planned for August 3, 2010, at 7:30 p.m.

¹ N.D.C.C. § 58-06-01(4).

² N.D.C.C. § 58-03-13.

³ Minutes, McKenzie Twp. Bd. (July 20, 2010).

⁴ Id.

⁵ Id.

On August 3, two members of the Board, along with the two zoning commissioners who were not Board members, inspected the streets, culverts, and property of the City of McKenzie to determine what needed attention.⁶ No notice of this inspection was provided.

ISSUE

Whether the McKenzie Township Board of Supervisors and the McKenzie Township Zoning Commission held a meeting that was not preceded by notice in substantial compliance with N.D.C.C. § 44-04-20 when quorums of both governing bodies conducted an inspection of the City of McKenzie.

ANALYSIS

A township is a political subdivision and is therefore a “public entity” subject to the open records and meetings law.⁷ The board of township supervisors is the governing body of a township.⁸ A township zoning commission may be created by a board of township supervisors to allow a township to exercise zoning authority,⁹ and it also is a governing body of the township because it exercises authority delegated to it by the board of township supervisors.¹⁰

Meetings of any governing body of a public entity are required to be open to the public unless otherwise provided by law.¹¹ A “meeting” is defined as “formal or informal gathering . . . of [a] quorum of the members of the governing body of a public entity regarding public business.”¹² The definition of “meeting” covers all stages of the decision-making process, including information gathering.¹³ “Public business” means all matters that relate or may foreseeably relate in any way to the performance of the public entity’s governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power or use of public funds.¹⁴

⁶ E-mail to Edward Erickson, Asst. Att’y Gen., from Barb Knutson, Clerk-Treasurer of McKenzie Twp. (Jan. 26, 2011).

⁷ N.D.C.C. § 44-04-17.1(10), (12)(b) (definition of “political subdivision” includes any . . . township); N.D.A.G. 2009-O-18; N.D.A.G. 98-O-09.

⁸ N.D.C.C. § 58-06-01. See also N.D.C.C. § 44-04-17.1(6).

⁹ N.D.C.C. § 58-03-13.

¹⁰ N.D.C.C. § 44-04-17.1(6) (governing body includes any group of persons acting collectively pursuant to authority delegated from the governing body).

¹¹ N.D.C.C. § 44-04-19.

¹² N.D.C.C. § 44-04-17.1(8)(a).

¹³ N.D.A.G. 98-O-05. See also N.D.A.G. 2006-O-02; N.D.A.G. 2004-O-15; N.D.A.G. 98-F-16; N.D.A.G. 98-O-08.

¹⁴ N.D.C.C. § 44-04-17.1(11).

Any meeting of a governing body of a public entity must be preceded by public notice.¹⁵ Written public notice containing the date, time, agenda, and location of the meeting must be provided at the same time the members of the governing body are provided notice of the meeting, and this notice must be available to anyone requesting such information.¹⁶ Meeting notices must be filed with the county auditor, posted at the public entity's office if there is one,¹⁷ and posted at the location of the meeting on the day of the meeting.¹⁸ Additionally, if the meeting is a special meeting, notice must be provided to the official newspaper, but is not required to be published.¹⁹ Meeting notices only have to be published if a statute specifically requires publication.²⁰

Public notice of the inspection was not provided because neither the Board nor the Commission considered it to be a meeting. It was not "called to order, no business conducted, [and] no minutes were kept."²¹ As I have explained in previous opinions, as long as the elements of the definition of "meeting" are present, it does not matter where the meeting takes place.²² Here, a quorum²³ of each governing body was present and the inspection of the infrastructure and property of the City of McKenzie was intended to aid each governing body in the performance of their governmental functions so it directly related to the public business of each governing body.²⁴

This office has previously determined that an on-site inspection by a quorum of the board of water resource district of an area that was the subject of a complaint was a

¹⁵ See N.D.C.C. § 44-04-20.

¹⁶ N.D.C.C. § 44-04-20(2), (5).

¹⁷ McKenzie Township does not have an office so this requirement would not apply. See Letter to Mary Kae Kelsch, Asst. Att'y Gen., from Barb Knutson, Clerk-Treasurer of McKenzie Twp. (Sept. 30, 2010).

¹⁸ N.D.C.C. § 44-04-20(4).

¹⁹ N.D.C.C. § 44-04-20(6); N.D.A.G. 2009-O-18; N.D.A.G. 2009-O-03; N.D.A.G. 2007-O-02; N.D.A.G. 2003-O-13.

²⁰ N.D.C.C. §§ 58-04-01, 58-04-03, and 58-04-19. See also N.D.A.G. 2009-O-18; N.D.A.G. 98-O-09

²¹ Letter to Mary Kae Kelsch, Asst. Att'y Gen., from Barb Knutson, Clerk-Treasurer of McKenzie Twp. (Sept. 30, 2010).

²² See N.D.C.C. § 44-04-17.1(8)(a).

²³ One half or more of a governing body's members or a lesser amount if sufficient to transact business. N.D.C.C. § 44-04-17.1(14). Two of the three total members of the Board were present. See also N.D.C.C. § 58-06-06. Four of the five total members of the Commission were present.

²⁴ See generally N.D.C.C. § 44-04-17.1(8)(a) (definition of meeting); N.D.A.G. 2008-O-11 (public business includes all matter that foreseeably relate in any way to the performance of the public entity's governmental functions).

meeting.²⁵ Attendance of a quorum of city council members at a meeting of another public entity to hear presentations by sanitation companies was a meeting, as was a bus tour taken by a city commission to view an area for a possible flood control project.²⁶ Therefore, it is my opinion that, in this instance, the inspection of the City of McKenzie by both the Board and the Commission was a “meeting” as defined in N.D.C.C. § 44-04-17.1. It is further my opinion that the Board and Commission failed to notice the meeting in substantial compliance with N.D.C.C. § 44-04-20.²⁷

CONCLUSION

The Board and Commission failed to notice a meeting that was held on August 3, 2010, when both governing bodies made an inspection of the streets, culverts, and property within the unincorporated town of McKenzie.

STEPS NEEDED TO REMEDY VIOLATION

Both the Board and the Commission must create minutes of the inspection and provide them 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. § 44-04-21.2.²⁸ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁹

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²⁵ N.D.A.G. 98-F-16.

²⁶ N.D.A.G. 98-O-18 and N.D.A.G. 2008-O-28. See also N.D.A.G. 2008-O-10 and N.D.A.G. 2008-O-11.

²⁷ Just as the Board and Commission conducted a joint meeting, a joint notice could have been prepared.

²⁸ N.D.C.C. § 44-04-21.1(2).

²⁹ Id.