

**OPEN RECORDS AND MEETINGS OPINION
2011-O-16**

DATE ISSUED: November 10, 2011

ISSUED TO: Dresden Township Board of Supervisors

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Tom Valentine asking whether the Dresden Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to provide public notice of a special meeting.

FACTS PRESENTED

On April 13, 2011, the Board held a special meeting to discuss culverts and roads in need of repair and to void the excess levy election held at the township tax equalization meeting on April 11. Notice of the meeting was filed with the Cavalier County Auditor at the Cavalier County courthouse and was posted outside the private residence where the meeting was held.

ISSUE

Whether the April 13, 2011, special meeting of the Board was preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

A township is a political subdivision and is therefore a "public entity" subject to the open records and meetings law.¹ Meetings of the governing body of a public entity are required to be open to the public unless otherwise provided by law.² The township board of supervisors is the "governing body" of the township as that phrase is defined in N.D.C.C. § 44-04-17.1(6). Therefore, meetings of the Board are required to be open to the public unless a specific law provides otherwise. In addition, notice of the meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20.³

¹ N.D.C.C. § 44-04-17.1(11), (13)(b).

² N.D.C.C. § 44-04-19.

³ N.D.C.C. § 44-04-20(9).

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Meeting notices of the Board must be posted at the public entity's office, if there is one,⁴ filed with the county auditor or posted on the public entity's website, and posted at the location of the meeting on the day of the meeting.⁵ Additionally, if the meeting is a special meeting, as it was here, notice must be provided to the official newspaper, but is not required to be published.⁶

Meeting notices only have to be published if a statute specifically requires publication.⁷ For example, when the township electors meet for either the annual or special meetings as set forth in chapter 58-04 of the North Dakota Century Code, notice is required to be published in a legal newspaper published in the township or, if none exists, in the county's official newspaper.⁸ The requirement to publish the meeting notices for meetings held pursuant to chapter 58-04 is in addition to the notice requirements found in the open meetings law.⁹

Here, the requester questions whether notice was provided prior to a special meeting of the board of township supervisors rather than the township electors.¹⁰ He did not see any notice posted before the April 13 special meeting of the Board. According to the Board, notice was filed with the county auditor and posted outside the door of the private home where the special meeting was being held.¹¹ The township does not have an office so the requirement to post notice at the "office" does not apply.

Notice, however, was not provided to the official newspaper as required by the open meetings law.¹² The Board explains that it did not believe it had to publish notice of the special meeting. Although the Board is correct that it did not have to publish notice of the meeting in the newspaper, it overlooked the requirement for special meetings in the

⁴ Townships typically do not have offices so this requirement would not apply.

⁵ N.D.C.C. § 44-04-20(4).

⁶ N.D.C.C. § 44-04-20(6); N.D.A.G. 2009-O-18.

⁷ N.D.A.G. 2009-O-18.

⁸ N.D.C.C. §§ 58-04-01 (publication required ten days prior to the annual township meeting), 58-04-03 (publication required ten days prior to a special township meeting), and 58-04-19 (publication required five days prior to township meeting held to organize and elect officers on date other than the annual meeting). See also N.D.A.G. 98-O-09.

⁹ N.D.A.G. 2009-O-18.

¹⁰ See N.D.C.C. ch. 58-06 (Board of Township Supervisors); N.D.C.C. § 58-06-04 (Board may hold special meetings).

¹¹ N.D.C.C. § 44-04-21.1 (I must base open meetings opinions on the facts given by the public entity).

¹² If a public entity does not have an official newspaper then it must notify the official newspaper of the county where its principal office or mailing address is located. N.D.C.C. § 44-04-20(6).

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open meetings law that requires governing bodies to notify the official newspaper.¹³ Notifying the official newspaper does not mean the notice must be published. As I have previously explained, the purpose of the notification is to give the newspaper the opportunity to send a reporter to the meeting if it so desires.¹⁴

Although it does not appear the Board was attempting to keep the special meeting a secret, providing notice to the official newspaper is a material requirement of N.D.C.C. § 44-04-20 and thus I conclude that the Board failed to provide notice of the April 13 meeting in substantial compliance with N.D.C.C. § 44-04-20.

CONCLUSION

The Board did not substantially comply with N.D.C.C. § 44-04-20 because it failed to provide notice to the official newspaper of its special meeting.

STEPS NEEDED TO REMEDY VIOLATION

Minutes from the meeting have already been provided to Mr. Valentine. Minutes should also be provided to the official newspaper.

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. § 44-04-21.2.¹⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁶

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¹³ See N.D.C.C. § 44-04-20(6).

¹⁴ N.D.A.G. 2011-O-01. See also N.D.A.G. 2010-O-07; N.D.A.G. 2003-O-20.

¹⁵ N.D.C.C. § 44-04-21.1(2).

¹⁶ Id.