

**OPEN RECORDS AND MEETINGS OPINION
2013-O-01**

DATE ISSUED: January 10, 2013

ISSUED TO: Lidgerwood Rural District Ambulance Service Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Connie Whittier asking whether the Lidgerwood Rural District Ambulance Service Board violated N.D.C.C. § 44-04-20(6) by meeting prior to the special meeting without providing public notice.

FACTS PRESENTED

The Lidgerwood Rural District Ambulance Service Board (Board) is comprised of seven members and holds quarterly meetings on the second Tuesday following the end of the quarter.

On Friday, April 13, 2012, the Board's business manager provided notice of a special meeting to be held on April 16, 2012. The notice was faxed to the Sargent County Auditor, e-mailed to the Lidgerwood City Office, provided to each Board member by telephone, and posted at the ambulance garage where the meeting was to be held. The Board failed to send the notice of the special meeting to the newspaper. The special meeting notice specified the date, time and location of the special meeting. The agenda on the notice stated, "1. Special Policy Meeting." The notice also included the phrase, "Additional topics may be discussed."

Prior to the special meeting, the Board president personally contacted Board members by telephone to tell them that he invited the Board's attorney to be present at the special meeting to give legal advice to the Board if necessary.

ISSUES

1. Whether the notice and agenda for the Special Board meeting on April 16, 2012, substantially complied with N.D.C.C. § 44-04-20(6).
2. Whether a quorum of the Board held a secret meeting prior to the April 16, 2012, special meeting.

ANALYSIS

Issue One

The open meetings law applies to rural ambulance service districts and the boards that serve them because the districts are created by statute to exercise public authority or perform a governmental function.¹ They are, therefore, public entities subject to the state's open records and meetings laws.²

Public notice must be given in advance of all meetings, unless otherwise provided by law.³ The notice, including the topics to be discussed at the special meeting, must be posted in the governing body's main office, filed with the county auditor or posted on the public entity's website, and posted at the meeting location on the day of the meeting.⁴ In the case of a special meeting, the public entity's official newspaper must be provided notice.⁵ The topics that may be considered at a special meeting are limited to those included in the notice.⁶

Here, the requester alleges the notice was deficient because the newspaper was not given notice, the description of the meeting topic was vague, and the notice included the phrase "[a]dditional topics may be discussed." I will discuss each allegation in turn.

As I have explained in several past opinions, the obligation in N.D.C.C. § 44-04-20(6) to notify the public entity's official newspaper only requires the governing body to make the newspaper aware of the upcoming special meeting and does not require that the notice be published prior to the special meeting.⁷ Although the Board did provide other means of notice, it concedes that it failed to provide notice to the newspaper as specifically required in N.D.C.C. § 44-04-20(6).

The notice listed one agenda item that stated "Special Policy Meeting." The requestor indicates that she believed the meeting was going to address the use of and

¹ N.D.A.G. 2011-O-03; N.D.A.G. 2010-O-14. See also N.D.C.C. §§ 11-28.3-06 and 11-28.3-07.

² N.D.A.G. 2010-O-14. See also N.D.C.C. § 44-04-17.1(13)(b); N.D.A.G. 2005-O-10 (rural ambulance service districts are public entities subject to the open records and open meetings laws).

³ N.D.C.C. § 44-04-20(1).

⁴ N.D.C.C. § 44-04-20(4).

⁵ N.D.C.C. § 44-04-20(6).

⁶ Id.

⁷ See N.D.A.G. 2011-O-01; N.D.A.G. 2010-O-07; N.D.A.G. 2003-O-20.

reimbursement for hotel rooms during multi-day trainings. The Board explained that it called the meeting to discuss the need for a social media policy.

As I have explained, the purpose of an agenda is to provide sufficient 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.⁸ Thus, general terms that could have numerous meanings do not provide the public with meaningful notice of what a governing body intends to discuss at a special meeting.⁹ "Special Policy Meeting" is a phrase that could have several meanings. The fact that the requester believed the meeting was about the hotel reimbursement policy rather than the social media policy lends support to the allegation that the phrase "special policy meeting" was too vague.

The notice also included the phrase "additional topics may be discussed" at the end of the agenda. "Catch-all" phrases such as "other business" or "additional topics" are not appropriate for special meetings because the topics that may be considered at a special meeting are limited to those included in the notice.¹⁰

Here, although this phrase appeared on the notice, the business manager realized the mistake and took steps to insure that no additional topics other than the "special policy" were discussed. In the past, this office has concluded that a violation of open meetings law does not occur when, despite the existence of a catch-all item on an agenda, the discussion at the meeting is limited to the specific items listed on the agenda.¹¹ Because no additional topics were discussed at the April 16, 2012, meeting, the inclusion of the "catch-all" phrase on the special meeting notice did not violate the law.

Based upon the foregoing, it is my opinion that because the special meeting notice was not provided to the newspaper and did not describe the topic to be discussed with sufficient specificity, the special meeting notice did not substantially comply with N.D.C.C. § 44-04-20(6).

Issue Two

The definition of "meeting" is not limited to face-to-face gatherings of a quorum of the members of a governing body.¹² A governing body may not avoid the requirements of

⁸ N.D.A.G. 2011-O-15; N.D.A.G. 2009-O-03; and N.D.A.G. 2008-O-23.

⁹ See N.D.A.G. 2008-O-23.

¹⁰ N.D.C.C. § 44-04-20(6). See N.D.A.G. 2009-O-03.

¹¹ Id.

¹² N.D.A.G. 2001-O-03.

the open meetings law by holding one or more smaller gatherings that collectively constituted a quorum.¹³

In response to this office's inquiry, the Board president explained during a telephone call with a member of my staff that he called the Board members to tell them that the Board's attorney would be present at the meeting to provide legal advice the Board.¹⁴ He confirmed that he did not discuss the substance of the matter with the Board members on his individual calls with them.¹⁵ North Dakota law requires me to base open meeting opinions on the facts given by the public entity.¹⁶

As I have explained in past opinions, telephone calls for ministerial purposes, such as setting the agenda or confirming committee assignments, are not meetings within the meaning of the open meeting statute.¹⁷ Although it is a ministerial function to inform board members of who would be in attendance at a meeting, it may be a better practice to have the business manager provide the information rather than the Board president, to remove any appearance of impropriety and temptation to discuss substantive matters. However, because the Board president limited his conversation to a ministerial matter, the telephone calls to a quorum of the Board did not constitute a meeting subject to public notice.¹⁸

The requester also asserts that a quorum of the Board met with the Board's attorney to discuss the upcoming special meeting. However, in response to this office's inquiry by telephone, the Board's attorney explained that she only met with the Board President and an employee of the Ambulance District prior to the April 16, 2012, special meeting.¹⁹ Thus, no quorum of the Board was present and as a result no violation of the law occurred.²⁰ Therefore, it is my opinion that the Board did not meet secretly, either by telephone or in person, prior to the April 16, 2012, special meeting.

CONCLUSIONS

1. The notice and agenda for the Special Board meeting on April 16, 2012, was not provided in substantial compliance with N. D. C. C. § 44-04-20(6).

¹³ See N.D.C.C. § 44-04-17.1(9)(a)(2). See also N.D.A.G. 2000-O-08.

¹⁴ Telephone call between Assistant Attorney General Ann Schaibley and Board President Jerry Nelson.

¹⁵ Id.

¹⁶ N.D.C.C. § 44-04-21.1(1).

¹⁷ N.D.A.G. 2007-O-08.

¹⁸ See N.D.A.G. 2007-O-08.

¹⁹ Telephone call between Assistant Attorney General Ann Schaibley and Attorney Megan Kummer.

²⁰ See N.D.C.C. § 44-04-17.1(15) (definition of "quorum").

2. A quorum of the Board did not meet in secret either in person or by telephone, prior to the April 16, 2012, special meeting.

STEPS NEEDED TO REMEDY VIOLATIONS

To remedy the lack of notice for the April 16, 2012, meeting, the minutes of the special meeting must be provided to the newspaper and must be made available to the general public free of charge.

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. § 44-04-21.2.²¹ It may also result in personal liability for the person or persons responsible for the noncompliance.²²

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²¹ N.D.C.C. § 44-04-21.1(2).

²² Id.