

**OPEN RECORDS AND MEETINGS OPINION
2016-O-06**

DATE ISSUED: April 19, 2016

ISSUED TO: Southeast Senior Services Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland County Council on Aging, Inc.

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Bruce Eckre asking whether the Southeast Senior Services Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland County Council on Aging, Inc. violated N.D.C.C. §§ 44-04-20 and 44-04-21 by failing to properly notice meetings and failing to take proper meeting minutes.

FACTS PRESENTED

Senior services in Richland County are offered through three organizations: Southeast Senior Services Council, Inc. (SESS), Wahpeton Harmony Senior Citizens Club, Inc. (WHSC), and Richland County Council on Aging, Inc. (RCCA).¹ The organizations have the same six member Board of Directors and the same registered address.² The

¹ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att'y Gen. (Jan. 13, 2016).

² Id.; see also Annual Reports, S.E. Senior Servs. Council, Inc.; Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty Council on Aging, Inc. (Jan. 12, 2012).

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organizations acknowledge that they are subject to the open meetings and records laws because of their receipt of public funds.³

The Board of Directors for the three organizations held a special meeting on the morning of November 20, 2015, to discuss the resignation of the executive director.⁴ Board members were notified of the special meeting by phone and email. No agenda was prepared and no public notice was posted.⁵

The special meeting began at 11 a.m. but because the director could not be present until after 1 p.m. that same day, the Board reconvened that afternoon to discuss with the director whether she would consider remaining in the position.⁶ During the afternoon meeting, the director outlined her terms that included a pay raise and removal

³ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att’y Gen. (Jan. 13, 2016). The definition of a “public entity” subject to open records and meeting laws includes nonprofit organizations who are “supported in whole or in part by public funds, or expending public funds.” N.D.C.C. § 44-04-17.1(13)(c) (definition of “public entity”). The entities acknowledge they are subject to the open meeting laws because they receive public funding in the form of county mill levies and money from the Fargo Park District. No agreements are in place and the public funds are provided for the general support of the organizations. See Letters from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att’y Gen. (Jan. 13, 2016 and Feb. 5, 2016), with supporting financial statements. For the purposes of this opinion, therefore, I will assume the organizations are “public entities” subject to open meeting laws because they are supported by public funds. See also N.D.A.G. 2003-O-02 (James River Senior Citizen’s Center is a public entity subject to open record and meeting laws because it is supported by public funds).

⁴ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att’y Gen. (Jan. 13, 2016); see also Minutes, Bd. of Dir., S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., (Nov. 20, 2015, 11:00am).

⁵ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att’y Gen. (Jan. 13, 2016)

⁶ Id. but see Minutes, Bd. of Dir., S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., (Nov. 20, 2015, 11:00am) (providing the next meeting to be scheduled for Nov. 23, 2015).

of Bruce Eckre from the Board of Directors.⁷ Bruce Eckre, who was not able to attend the morning meeting and was not informed of the afternoon meeting, requests an opinion on whether the organizations violated open meeting laws by failing to notice the November 20, 2015, meetings and whether the meeting minutes were in compliance with the law.

ISSUES

1. Whether the meetings of the Southeast Senior Services Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland County Council on Aging, Inc., held November 20, 2015, were noticed in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the November 20, 2015, meeting minutes complied with N.D.C.C. § 44-04-21.

ANALYSIS

Issue One

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public and proceeded by sufficient public notice in accordance with N.D.C.C. § 44-04-20.⁸ The SESS, WHSC, and RCAA, acknowledge that no notice was ever provided for the November 20, 2015, meetings.⁹ The organizations therefore violated N.D.C.C. § 44-04-20 by failing to give proper notice of their meetings.

Issue Two

Minutes must be kept of all public meetings which must include, at a minimum:

⁷ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att'y Gen. (Jan. 13, 2016); see also Minutes, Bd. of Dir., S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., (Nov. 20, 2015, 1:00pm).

⁸ N.D.C.C. §§ 44-04-19, 44-04-20.

⁹ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att'y Gen. (Jan. 13, 2016).

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1. The names of the members attending the meeting;
2. The date and time the meeting was called to order and adjourned;
3. A list of topics discussed regarding public business;
4. A description of each motion made at the meeting and whether the motion was seconded;
5. The results of every vote taken at the meeting; and
6. The vote of each member on every recorded roll call vote.¹⁰

The Attorney General's office does not review any alleged inaccuracies in meeting minutes, but will only review the content of the meeting minutes to determine whether they meet the minimum requirements set out above.¹¹

The minutes for the November 20, 2015, morning session do not include the time the meeting was called to order and adjourned.¹² The minutes also inaccurately state that the next meeting of the organizations would be on November 23, 2015, when the Board was meeting later that afternoon.¹³ The minutes for the afternoon session do not list the time the meeting was adjourned.¹⁴ The Board denies that any final action was taken at either of the meetings.¹⁵

The November 20, 2015, meeting minutes failed to meet the minimum qualifications, required by N.D.C.C. § 44-04-21(2).

¹⁰ N.D.C.C. § 44-04-21(2).

¹¹ N.D.A.G. 2013-O-06. Section 44-04-21(2), N.D.C.C., does not require a verbatim record, but does require the minutes to separately list all the topics discussed regarding public business at a special meeting.

¹² Minutes, Bd. of Dir., S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc. (Nov. 20, 2015).

¹³ Id.

¹⁴ Minutes, Bd. of Dir., S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., (Nov. 20, 2015, 1:00am)

¹⁵ Letter from Don R. Krassin, Chairman, S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty. Council on Aging, Inc., to Sandra DePountis, Asst. Att'y Gen. (Jan. 13, 2016). Final action on the topics occurred during the Dec. 10, 2015, meeting. See Minutes, Bd. of Dir. S.E. Senior Servs. Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland Cnty Council on Aging, Inc., (Dec. 10, 2015, 12:30 pm).

CONCLUSIONS

1. The Southeast Senior Services Council, Inc., Wahpeton Harmony Senior Citizens Club, Inc., and Richland County Council on Aging, Inc., violated open meetings law when they failed to post notice of their November 20, 2015, special meetings.
2. The minutes of the November 20, 2015, special meetings of the organizations failed to meet the requirements of N.D.C.C. § 44-04-21.

STEPS NEEDED TO REMEDY VIOLATIONS

To remedy the lack of notice and inadequate minutes, the organizations must create detailed minutes of both meetings held on November 20, 2015, that are consistent with N.D.C.C. § 44-04-21. The meeting minutes must be provided to Mr. Eckre, free of charge. The organizations are also urged to access the Attorney General's website for education and information regarding their responsibilities under the State of North Dakota's open records and meetings law.

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. § 44-04-21.2.¹⁶ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁷

Wayne Stenehjem
Attorney General

sld
cc: Bruce Eckre (via email only)

¹⁶ N.D.C.C. § 44-04-21.1(2).

¹⁷ Id.