

**OPEN RECORDS AND MEETINGS OPINION
2016-O-09**

DATE ISSUED: May 2, 2016

ISSUED TO: Kensal 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 Shane Ede asking whether the Kensal School Board violated N.D.C.C. § 44-04-20 by failing to notice committee meetings and N.D.C.C. § 44-04-21(2) by failing to take minutes of the committee meetings.

FACTS PRESENTED

The Kensal School Board (Board) has been exploring options for consolidating its school district with the neighboring school district of Midkota.¹ During a Board meeting on December 15, 2015, the Board created a committee in which two members, Chairman Lucas Spitzer and Vice-Chairman Ryan Spitzer, were to begin gathering information about the possibility of the merger and to reach out to Midkota's School Board.² At the January 17, 2016, meeting, the Board again discussed the school merger and appointed another committee consisting of Chairman Spitzer, Vice-Chairman Spitzer, the superintendent, and the school's business manager, to work on obtaining information regarding the financial components of the proposed merger.³ The committees met several times.⁴

ISSUE

Whether the Kensal School Board violated open meetings law by failing to provide notice or take minutes of committee meetings.

¹ Letter from Lucas Spitzer, Chairman, Kensal Sch. Bd., to Att'y Gen.'s office (Mar. 10, 2016).

² *Id.*, see also Minutes, Kensal Sch. Bd. Dec. 15, 2015.

³ Minutes, Kensal Sch. Bd. Jan. 17, 2016.

⁴ Letter from Lucas Spitzer, Chairman, Kensal Sch. Bd., to Att'y Gen.'s office (Mar. 10, 2016).

ANALYSIS

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.⁵ A “meeting” is defined as a “formal or informal gathering or a work session...of [a] quorum of the members of the governing body of a public entity regarding public business.”⁶ A “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.⁷ Under this definition, when a governing body delegates authority to two or more people, to perform any function on its behalf, including fact gathering, reporting, or recommending or taking action, a “committee” is formed that is subject to open meetings law.⁸ When a quorum of the committee gathers to perform the function delegated to them, it is holding a “meeting” that must be noticed in compliance with N.D.C.C. § 44-04-20, and minutes must be taken in compliance with N.D.C.C. § 44-04-21.

The Kensal School Board created two committees, one composed of two individuals, assigned to obtain information on the possibility of a school merger, and the other, composed of four individuals, to gather financial information on merging the school districts. The Board admits that it did not notice any of the meetings held by the committees because it was unaware of the application of the open meetings law to committees. It also failed to take minutes of the committee meetings.

CONCLUSION

The Kensal School Board violated open meetings law when it failed to provide notice or take minutes of committee meetings.

STEPS NEEDED TO REMEDY VIOLATION

A member of my staff contacted Chairman Spitzer to discuss the School Board’s responsibilities under the open meetings law and this information was relayed to the entire Board during its meeting on March 15, 2016. Additionally, I would urge the School Board members to review the resources available on the Attorney General’s website regarding its responsibilities under open meetings law.

⁵ N.D.C.C. § 44-04-19.

⁶ N.D.C.C. § 44-04-17.1(9)(a).

⁷ N.D.C.C. § 44-04-17.1(6).

⁸ N.D.A.G. 2014-O-05, N.D.A.G. 2009-O-12.

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Members of the committees must provide written statements detailing their recollection of any discussions with other committee members regarding the topics assigned to the respective committees. Meeting minutes must be created from the statements. These minutes should be provided to Mr. Ede, along with any reports made or obtained by the committees, 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. § 44-04-21.2.⁹ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁰

Wayne Stenehjem
Attorney General

sld

cc: Shane Ede (via email only)

⁹ N.D.C.C. § 44-04-21.1(2).

¹⁰ Id.