

**OPEN RECORDS AND MEETINGS OPINION  
2016-O-14**

DATE ISSUED: July 26, 2016

ISSUED TO: McKenzie County Ambulance Service Board of Directors

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Megan Brown asking whether the McKenzie County Ambulance Service Board of Directors violated N.D.C.C. § 44-04-20 by failing to properly post notice of a meeting.

**FACTS PRESENTED**

The McKenzie County Ambulance Service Board of Directors (Board) is comprised of seven members and holds meetings every month at the Good Shepard Nursing Home.<sup>1</sup> A schedule of its yearly meetings is posted at the nursing home main office, provided on the monthly call schedule, and given or emailed to each member of the ambulance staff.<sup>2</sup> The Board held a meeting on March 23, 2016.<sup>3</sup> Unaware that the Board was subject to open meeting law requirements, the Board only provided notice of this meeting by posting an agenda on the March calendar at the Good Shepard Home and emailing the agenda to Board members and administrators.<sup>4</sup>

**ISSUE**

Whether the McKenzie County Ambulance Service Board of Directors provided notice of a meeting held on March 23, 2016, in substantial compliance with N.D.C.C. § 44-04-20.

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<sup>1</sup> Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016). Two members are appointed by the McKenzie County Commission, two members are appointed by the City of Watford City Commissioners, two members are appointed by the McKenzie County Healthcare Systems, and one member is appointed by the McKenzie County Ambulance Service Squad.

<sup>2</sup> Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016)

<sup>3</sup> *Id.*, see also Minutes, McKenzie Cnty. Ambulance Bd. (Mar. 23, 2016).

<sup>4</sup> Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016); Agenda, McKenzie Cnty. Ambulance Bd. (Mar. 23, 2016).

## ANALYSIS

All meetings of a "public entity" must be open to the public unless otherwise specifically provided by law.<sup>5</sup> The definition of "public entity" includes entities created by state statute to perform a governmental function and organizations supported in whole or in part by public funds.<sup>6</sup> 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 government function.<sup>7</sup> In addition, the McKenzie County Ambulance Service receives public funding from Watford City and McKenzie County.<sup>8</sup> It is therefore a public entity subject to the state's open records and meetings laws.

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.<sup>9</sup> For regularly scheduled meetings, the notice must be posted at the principal office of the governing body, if one exists, at the location of the meeting on the day of the meeting, and for county-level bodies, either filed with the county auditor's office or posted on the public entity's website.<sup>10</sup> For emergency or special meetings, notice must be given to the public entity's official newspaper,<sup>11</sup> and to any representatives of the news media who requested to be notified of the special meetings.<sup>12</sup> Finally, notice must be given for all regular or special meetings to anyone requesting such information.<sup>13</sup>

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<sup>5</sup> N.D.C.C. § 44-04-20.

<sup>6</sup> N.D.C.C. § 44-04-17.1(13) (definition of "public entity").

<sup>7</sup> N.D.A.G. 2015-O-12; N.D.A.G. 2013-O-01; N.D.A.G. 2011-O-03; N.D.A.G. 2010-O-14, N.D.A.G. 2005-O-10. N.D.C.C. ch. 11-28.3 provides the process for creating, maintaining, and dissolving rural ambulance service districts and also provides for the election of a board of directors.

<sup>8</sup> Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016). The Board received funding in the past from the McKenzie County general fund, as approved by the McKenzie County Commissions. Currently, the Board receives funding from the Watford City general fund, approved by the City Commissioners; from the City of Watford City for Oil Impact funds from the State Land Board, and a building permit charge that is distributed to the Watford City Fire Department and the McKenzie County Ambulance Service.

<sup>9</sup> N.D.C.C. § 44-04-20.

<sup>10</sup> N.D.C.C. § 44-04-20(4).

<sup>11</sup> N.D.C.C. § 44-04-20(6). If the 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.

<sup>12</sup> N.D.C.C. § 44-04-20(6). Regular meetings are those meetings which the public entity

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The Board posted the agenda for its March 23, 2016, meeting on the March calendar at the Good Shepard Home, which is where the main office of the Board is located and where meetings are held.<sup>14</sup> It appears that the Board was not trying to hold secret meetings because it did provide some of the notice required by law, and did welcome guests who attended the March 23, 2016, meeting, but the Board failed to post the notice with the McKenzie County Auditor or provide the notice to its official newspaper.<sup>15</sup> It is my opinion, therefore, that the Board violated open meetings law when it failed to post notice of the meeting in substantial compliance with N.D.C.C. § 44-04-20.

### CONCLUSION

The Board violated open meetings law when it failed to provide notice of its March 23, 2016, special meeting in substantial compliance with N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATION

The Board should review the March 23, 2016, meeting minutes, and add any additional information based on recollections of conversations had at the meeting that are not already contained within the minutes. The updated minutes should be provided to Ms. Brown, 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

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has filed a schedule in January with either the county auditor (for county-level bodies) or on the public entity's website. N.D.C.C. § 44-04-20(3). Since the schedule of the Board's meetings was not filed at either of these locations, all meetings of the Board are considered "special" meetings that must comply with the laws governing special meetings. See N.D.A.G. 2005-O-10 (monthly meeting of ambulance board treated as a special meeting because board does not file an annual schedule of regular meetings with the county auditor).

<sup>13</sup> N.D.C.C. § 44-04-20(5). The Board has not received a request from any person requesting to be notified of any upcoming meetings. Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016).

<sup>14</sup> Letter from James Johnsrud, President, Bd. of Dir., McKenzie Cnty. Ambulance Serv., to Sandra L. DePountis, Asst. Att'y Gen. (Apr. 29, 2016).

<sup>15</sup> The purpose of requiring the notice to be filed with the auditor is to have a central location for people to find out about public meetings affecting the county. N.D.A.G. 2015-O-12.

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reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>16</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>17</sup>

Wayne Stenehjem  
Attorney General

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cc: Megan Brown (via email only)

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<sup>16</sup> N.D.C.C. § 44-04-21.1(2).

<sup>17</sup> *Id.*