

**OPEN RECORDS AND MEETINGS OPINION  
2016-O-18**

DATE ISSUED: August 26, 2016

ISSUED TO: Center 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 Delwayne Hoefs asking whether the Center Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to provide proper notice for two meetings.

**FACTS PRESENTED**

The Center Township Board of Supervisors (Board) does not hold regular meetings but holds meetings as deemed appropriate and necessary.<sup>1</sup> The Board held one such meeting on March 2, 2016.<sup>2</sup> Prior to this meeting, the Board published notice in the Wahpeton Daily News that it was soliciting bids for river bank repair along the Wild Rice River in Center Township.<sup>3</sup> The advertisement gave notice that bids would be reviewed at a meeting on March 2, 2016, at the office of Interstate Engineering.<sup>4</sup> The Board reviewed five bids at the meeting.<sup>5</sup>

The Board held its Annual Meeting on March 15, 2016.<sup>6</sup> During the meeting, Delwayne Hoefs presented a petition, signed by 22 individuals, who wanted to receive personal notice by email or text message of upcoming township meetings.<sup>7</sup> The Board, after consulting with the Richland County State's Attorney, deemed the request not "feasible" and decided it would therefore not provide personal notice of upcoming meetings to the petitioners.<sup>8</sup>

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<sup>1</sup> Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

<sup>2</sup> Id., see also Agenda, Center Twp. (Mar. 2, 2016); Minutes, Center Twp. (Mar. 2, 2016).

<sup>3</sup> See Affidavit of Publ'n, Wahpeton Daily News (publ'n Feb. 7, 14, and 21, 2016).

<sup>4</sup> Id.

<sup>5</sup> Minutes, Center Twp. (Mar. 2, 2016).

<sup>6</sup> Minutes, Center Twp. (Mar. 15, 2016, 7:00 pm).

<sup>7</sup> Id., see also Petition to Receive Public Notice.

<sup>8</sup> Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

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The Board held another meeting on May 2, 2016, in which the Board continued to discuss the repairs of the river bank and signed a Notice of Award and a Cost Share Reimbursement Agreement.<sup>9</sup>

ISSUES

1. Whether Center Township provided notice of its March 2, 2016, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether Center Township provided notice of its May 2, 2016, special meeting 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.<sup>10</sup> Meetings of a governing body of a public entity are required to be open to the public unless otherwise provided by law.<sup>11</sup> 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.<sup>12</sup>

Notice of the Board's meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20, which requires notice to be posted at the public entity's office, if there is one,<sup>13</sup> filed with the county auditor or posted on the public entity's website,<sup>14</sup> and posted at the location of the meeting on the day of the meeting.<sup>15</sup> Because the Board does not hold regular meetings,<sup>16</sup> all meetings of the Board are considered

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<sup>9</sup> Minutes, Center Twp. (May 2, 2016).

<sup>10</sup> N.D.C.C. § 44-04-17.1(13)(b) (definition of “public entity” includes a “governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state”), N.D.C.C. § 44-04-17.1(11) (definition of “political subdivision” includes townships). See also N.D.A.G. 2015-O-03, N.D.A.G. 2015-O-02.

<sup>11</sup> N.D.C.C. § 44-04-19.

<sup>12</sup> Id.

<sup>13</sup> Like most townships, Center Township does not have an office and so this requirement does not apply. Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

<sup>14</sup> Center Township does not have its own website. Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

<sup>15</sup> N.D.C.C. § 44-04-20(4), (6), (9).

<sup>16</sup> Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

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“special” meetings.<sup>17</sup> Under the general open meetings law, if a meeting is a special meeting, notice must be provided to the official newspaper, but is not required to be published.<sup>18</sup>

Finally, open meetings law expressly requires the governing body of a public entity to provide personal notice to any individual asking to receive notice of meetings.<sup>19</sup> The law is silent as to the method for providing the notice but past opinions from this office indicate that public entities must provide notice in whatever way is agreed upon by the person and the public entity or in a manner that is practical.<sup>20</sup>

Notice of special meetings must include the date, time, location, and topics to be considered.<sup>21</sup> This list of topics is also referred to as an agenda. 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.<sup>22</sup> The law requires a level of specificity from a special meeting agenda that is not required for regular meetings because a governing body may only discuss topics during the special meeting that are listed on the notice.<sup>23</sup> General terms and phrases that could have numerous meanings

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<sup>17</sup> N.D.A.G. 2016-O-05 (because the committee did not file a schedule in January with either the Secretary of State’s office or on the public entity’s website, all meetings are treated as special meetings); N.D.A.G. 2005-O-10 (monthly meetings of ambulance board treated as special meetings because the board does not file an annual schedule of regular meetings with the county auditor).

<sup>18</sup> N.D.C.C. § 44-04-20(6). Meeting notices only have to be published if a statute specifically requires publication. For example, when the township electors meet for either the annual or special meetings as set forth in N.D.C.C. ch. 58-04, notice is required to be published in a legal newspaper published in the township, or, if none exists, in the county’s official newspaper. Since the meetings at issue in this opinion were not an annual or special meeting of the township electors, the meetings were not subject to the publication requirements of N.D.C.C. ch. 58-04.

<sup>19</sup> N.D.C.C. § 44-04-20(5). Unless a different time period is agreed to, a request for notice of meetings is effective for one year.

<sup>20</sup> N.D.A.G. 2009-O-16 (a governing body cannot refuse to provide individual notice arguing that it is cost prohibitive and a strain on the City’s resources); N.D.A.G. 2009-O-13 (even though personal notice was not received exactly as requested, the individual still received notice of all relevant information to enable the requestor to attend the meeting); N.D.A.G. 2009-O-04 (request to receive notice by mail must still occur even if meeting is called on short notice), but see N.D.A.G. 2009-O-10 (there is no obligation to provide personal notice of meetings that took place before an individual submitted a request for notice of meetings)

<sup>21</sup> N.D.C.C. § 44-04-20(2).

<sup>22</sup> N.D.A.G. 2014-O-13, N.D.A.G. 2014-O-01.

<sup>23</sup> N.D.C.C. § 44-04-20(6); N.D.A.G. 2014-O-13, N.D.A.G. 2010-O-11.

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are not appropriate for a special meeting notice because they lack the specificity required to give the public meaningful notice of what will be discussed during the special meeting.<sup>24</sup>

### Issue One

The Board provided notice of the March 2, 2016, meeting to the County Auditor, which included the date, time, location of the meeting, and the agenda topic of "Bid Opening."<sup>25</sup> This agenda was also placed at the location of the meeting on the day of the meeting.<sup>26</sup> Finally, the Wahpeton Daily News published notice of the meeting on three occasions providing information that the Board would be reviewing bids for river bank repair along the Wild Rice River in Center Township.<sup>27</sup> The Board does not have a central office, does not have a website, and, at this time, had not received any request for personal notice of upcoming meetings.<sup>28</sup>

It is my opinion that the March 2, 2016, special meeting, was noticed in substantial compliance with N.D.C.C. § 44-04-20.

### Issue Two

The Board provided notice of the May 2, 2016, special meeting to the County Auditor, which included the date, time, and location of the meeting, and referenced "Grant

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<sup>24</sup> N.D.A.G. 2014-O-13 (notice of special meeting for "conducting an advisory visit" was general, vague, and could have numerous meanings and was not detailed enough to apprise the public of the topics to be considered during the visit); N.D.A.G. 2013-O-01 (the use of the phrase "special policy meeting" on a special meeting agenda was not specific enough to comply with N.D.C.C. § 44-04-20 because the phrase could have several meanings and did not adequately apprise the public of the topics to be discussed); N.D.A.G. 2010-O-11 (general phrase of "end of the year recap" did not provide sufficient notice that committee would be discussing the superintendent's salary and contract for the upcoming year).

<sup>25</sup> Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016) and attached Notice provided to the County Auditor and Calendar maintained by the County Auditor.

<sup>26</sup> Agenda, Center Twp. (Mar. 2, 2016).

<sup>27</sup> Affidavit of Publ'n, Wahpeton Daily News. The advertisement ran in the paper on Feb. 7, 14, and 21, 2016, provided information on solicitation for bids, and information on the bid opening process to occur on Mar. 2, 2016, at the Interstate Engineering office.

<sup>28</sup> Letter from Don Krassin, Att'y at Law, to Sandra DePountis, Asst. Att'y Gen. (June 1, 2016).

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Approval – Wild Rice Bank Stabilization” as the agenda item.<sup>29</sup> The agenda prepared for the meeting gave the date, time, and location of the meeting and listed “Cost Share Agreement” as the agenda item.<sup>30</sup> The Board did not provide notice of the special meeting to the newspaper and failed to post the agenda at the location of the meeting on the day of the meeting.<sup>31</sup>

In addition, the Board did not provide notification to the 22 residents who previously requested to receive notice of any upcoming Board meetings.<sup>32</sup> The Board provided the following explanation for its failure to provide individual notice:

The Township Supervisors consulted Richland County State’s Attorney Ronald McBeth who advised that if the Township does not have cell phones or a Township computer, that notice would not have to be provided to individuals who asked for the notice to be made by a method that isn’t readily available to the Township. The request or petition was therefore not deemed feasible.<sup>33</sup>

In past opinions this office explained that a governing body cannot refuse to provide individual notice because it is cost prohibitive or a strain on its resources.<sup>34</sup> If the Township does not have a computer or cell phone, individual notice should still be provided in some practical manner. Although personal notice does not have to be provided in exactly the manner requested, a governing body still has an obligation to provide personal notice containing the relevant information contained in the agenda to those requesting.<sup>35</sup>

In my opinion, the May 2, 2016 meeting was not noticed in substantial compliance with N.D.C.C. § 44-04-20 because the Board failed to provide notice to the official

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<sup>29</sup> Letter from Don Krassin, Att’y at Law, to Sandra DePountis, Asst. Att’y Gen. (June 1, 2016) and attached Notice provided to the County Auditor and Calendar maintained by the County Auditor.

<sup>30</sup> Agenda, Center Twp. (May 2, 2016).

<sup>31</sup> Letter from Don Krassin, Att’y at Law, to Sandra DePountis, Asst. Att’y Gen. (June 1, 2016).

<sup>32</sup> Letter from Don Krassin, Att’y at Law, to Sandra DePountis, Asst. Att’y Gen. (June 1, 2016 and June 8, 2016); see also Mar. 15, 2016, meeting minutes. The petition stated: “The undersigned residents of Center Township are requesting that they be notified of any impending meeting of the Center Township Board via E-Mail or Text Message” and was presented to the Board at the Mar. 15, 2016, annual meeting.<sup>32</sup>

<sup>33</sup> Letter from Don Krassin, Att’y at Law, to Sandra DePountis, Asst. Att’y Gen. (June 1, 2016).

<sup>34</sup> N.D.A.G. 2009-O-16; N.D.A.G. 2009-O-13; N.D.A.G. 2009-O-04.

<sup>35</sup> N.D.A.G. 2009-O-04.

newspaper, post notice at the location of the meeting, and provide notice to individuals who requested personal meeting notices.

#### CONCLUSIONS

1. The Board of Township Supervisors provided notice of its March 2, 2016, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. The Board of Township Supervisors did not notice the May 2, 2016, special meeting in substantial compliance with N.D.C.C. § 44-04-20 because the Board failed to provide notice to the official newspaper, post the notice at the location of the meeting, and provide notice to the individuals requesting to receive personal notice of upcoming meetings.

#### STEPS NEEDED TO REMEDY VIOLATION

The Board must immediately begin providing notice of any upcoming meeting to the 22 individuals requesting such notice. The notice should be provided in an agreed upon, practical way. In addition, the Board must provide minutes to each of the 22 individuals, of any meeting held after March 15, 2016, up to the date the Board begins providing personal notice, 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.<sup>36</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>37</sup>

Wayne Stenehjem  
Attorney General

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cc: Delwayne Hoefs (via email only)

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<sup>36</sup> N.D.C.C. § 44-04-21.1(2).

<sup>37</sup> Id.