

**OPEN RECORDS AND MEETINGS OPINION
2018-O-09**

DATE ISSUED: May 17, 2018

ISSUED TO: New Rockford - Sheyenne Public 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 Sheri Anderson asking whether the New Rockford-Sheyenne Public School Board violated N.D.C.C. § 44-04-20 for failing to properly post notice of committee meetings.

FACTS PRESENTED

The New Rockford-Sheyenne Public School Board has a standing Building Committee, which is “formed to prioritize building and grounds projects and to make recommendations to the [school] board on how and when these projects are proposed to be completed.”¹ The Building Committee does not publish a schedule of annual meetings, but meets as needed. When a meeting is needed, the Building Committee generally creates an agenda that it posts on the school bulletin board, faxes to the county auditor, and emails to the official newspaper, *The Transcript*. Ms. Anderson alleges the Building Committee fails to properly post notice of its meetings.²

ISSUE

Whether the New Rockford-Sheyenne Public School Board posted notice of its Building Committee meetings in compliance with N.D.C.C. § 44-04-20.

¹ Letter from John McKnight, President, New Rockford-Sheyenne Pub. Sch. Bd., to Office of Att’y Gen. (Feb. 23, 2018).

² Ms. Anderson also alleges that another committee of the School Board, the Expanded Building Committee, also failed to post notice of its meetings. This office is authorized to review alleged violations of open meetings law for failure to properly post notice of public meetings occurring within ninety days of the request for an opinion pursuant to N.D.C.C. § 44-04-21.1(1). The School Board said that no meetings of the Expanded Building Committee were held during this time. This office must base its opinion on the facts provided by the public entity. N.D.C.C. § 44-04-21.1(1). This opinion will therefore only focus on the meetings of the Building Committee.

ANALYSIS

School board meetings must be open to the public unless otherwise specifically provided by law.³ 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.”⁴ A “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.⁵ Under this definition, when a governing body delegates authority to two or more people to perform any function on its behalf, including gathering information, reporting, or recommending or taking action, a “committee” is formed that is subject to open meeting laws.⁶ When a quorum of the committee gathers to perform the function delegated, it is holding a “meeting” that must be noticed in compliance with N.D.C.C. § 44-04-20.⁷

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity, which includes meetings of the full governing body and meetings of any committee thereof.⁸ For regularly scheduled meetings, the notice must be posted at the principal office of the governing body or committee, if one exists, at the location of the meeting on the day of the meeting, given to anyone requesting to receive notice of upcoming meetings, and, for school boards and its committees, either filed with the county auditor or posted on the school’s website.⁹ For emergency or special meetings, notice must also be given to the public entity’s official newspaper and to any representatives of the news media requesting to be notified of the special meeting.¹⁰

Notice of public meetings must include the date, time, and location of the meeting, an agenda with topics to be considered, and notice of any expected executive session.¹¹

³ N.D.C.C. § 44-04-19; N.D.A.G. 2010-O-11; N.D.A.G. 2005-O-21; N.D.A.G. 2000-O-09; N.D.A.G. 2000-O-05.

⁴ N.D.C.C. § 44-04-17.1(9)(a).

⁵ N.D.C.C. § 44-04-17.1(6).

⁶ N.D.A.G. 2016-O-15; N.D.A.G. 2014-O-05; N.D.A.G. 2009-O-12. A governing body does not need to make a formal motion to create a committee. Rather, if the governing body of a public entity consents, authorizes, or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed. N.D.A.G. 2016-O-15.

⁷ N.D.A.G. 2016-O-15. Minutes must also be taken in compliance with N.D.C.C. § 44-04-21.

⁸ N.D.C.C. § 44-04-20.

⁹ N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2016-O-15.

¹⁰ N.D.C.C. § 44-04-20(6).

¹¹ N.D.C.C. § 44-04-20(2).

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The topics that may be considered at an emergency or special meeting are limited to those specifically included in the notice.¹²

Regular meetings are those meetings in which the public entity has filed a schedule with, in the case of a school board or its committee, the county auditor or on the school's website.¹³ The Building Committee does not file an annual schedule of upcoming meetings¹⁴ so all meetings of the Building Committee are considered "special" meetings that must comply with laws governing special meetings.¹⁵

The Building Committee met on November 8, 2017, November 13, 2017, and February 6, 2018.¹⁶ Each agenda for the meetings specified the date, time, and location of the meetings, and listed topics to be discussed.¹⁷ The November 8, 2017, and February 6, 2018, agendas were posted on the school's bulletin board, which serves as the principal office and location of the meetings, faxed to the county auditor, and emailed to *The Transcript*.¹⁸ Ms. Anderson submitted a request on December 18, 2017, to receive personal notice of upcoming meetings, including committee meetings, and she was thereafter provided notice of the February 6, 2018, meeting.¹⁹ It is my opinion that the November 8, 2017, and February 6, 2018, meeting notices complied with the requirements of N.D.C.C. § 44-04-20.

The November 13, 2017, meeting notice and agenda, however, was only posted on the school's bulletin board.²⁰ Therefore, it is my opinion that the New Rockford-Sheyenne Public School Board violated open meetings law when it failed to post notice of its November 13, 2017, Building Committee meeting in substantial compliance with

¹² N.D.C.C. § 44-04-20(6).

¹³ N.D.C.C. § 44-04-20(3).

¹⁴ Letter from John McKnight, President, New Rockford-Sheyenne Pub. Sch. Bd., to Office of Att'y Gen. (Feb. 23, 2018). No executive sessions were expected nor entered into at any of the meetings. *Id.*

¹⁵ N.D.A.G. 2016-O-04; N.D.A.G. 2005-O-17; N.D.A.G. 2005-O-10.

¹⁶ Letter from John McKnight, President, New Rockford-Sheyenne Pub. Sch. Bd., to Office of Att'y Gen. (Feb. 23, 2018).

¹⁷ Agendas, New Rockford-Sheyenne Pub. Sch. Bd., Bldg. Comm. (Nov. 8, 2017; Nov. 13, 2017; and Feb. 6, 2018).

¹⁸ Letter from John McKnight, President, New Rockford-Sheyenne Pub. Sch. Bd., to Office of Att'y Gen. (Feb. 23, 2018).

¹⁹ Email from Janet Heskin, Bus. Manager, to Office of Att'y Gen. (Mar. 2, 2018, 2:17 pm), with attached email from Ms. Anderson requesting notice, sent Dec. 18, 2017, 1:12 pm). Ms. Anderson was provided the agenda via email at the same time members of the committee received the agenda.

²⁰ Letter from John McKnight, President, New Rockford-Sheyenne Pub. Sch. Bd., to Office of Att'y Gen. (Feb. 23, 2018).

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N.D.C.C. § 44-04-20, as the agenda was not provided to the county auditor or to the official newspaper.

CONCLUSION

The New Rockford-Sheyenne Public School Board failed to post notice of its November 13, 2017, Building Committee meeting in compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

The New Rockford-Sheyenne Public School Board Building Committee should review its November 13, 2017, meeting minutes and update them, adding in any recollection of discussions or comments made during this meeting. A copy of the updated minutes must be provided to Ms. Anderson, and anyone else requesting them, 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

Wayne Stenehjem
Attorney General

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cc: Sheri Anderson (via email only)

²¹ N.D.C.C. § 44-04-21.1(2).

²² *Id.*