

**OPEN RECORDS AND MEETINGS OPINION
2018-O-12**

DATE ISSUED: July 2, 2018

ISSUED TO: Kenmare 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 Donna Schmit asking whether Kenmare Public School Board violated N.D.C.C. § 44-04-20 by holding meetings without providing notice.

FACTS PRESENTED

The Kenmare Public School Board (School Board) held a special meeting on February 27, 2018, regarding the resignation of its superintendent.¹ School Board members were notified of the meeting date and time through a group text.² Ms. Donna Schmit questions whether this special meeting was properly noticed, and also alleges the School Board holds improper discussions through text messages that result in a public meeting being held without proper notice.

ISSUES

1. Whether notice of the February 27, 2018, special meeting of the Kenmare Public School Board complied with N.D.C.C. § 44-04-20.
2. Whether the Kenmare School Board's use of text messaging triggered open meetings law.

ANALYSIS

Issue One

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

¹ Letter from Doug Miller, Pres., Kenmare School Board, to Office of Att'y Gen. (Apr. 6, 2018), with attached agenda for Feb. 27, 2018, special meeting.

² Letter from Doug Miller, Pres., Kenmare School Board, to Office of Att'y Gen. (Apr. 6, 2018).

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.

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session . . . of [a] quorum of the members of the governing body of a public entity regarding public business."⁴

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.⁵ 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, given to anyone requesting to receive notice of upcoming meetings, and, for school boards, either filed with the county auditor or posted on the school's website.⁶ 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.⁷

The School Board admits it mistakenly failed to post notice for the February 27, 2018, special meeting.⁸ Rather, the agenda was just handed out at the beginning of the meeting. The School Board therefore violated N.D.C.C. § 44-04-20 by failing to post notice of its February 27, 2018, special meeting.

Issue Two

Except as otherwise specifically provided by law, all "meetings"⁹ of a governing body of a public entity must be open to the public, preceded by sufficient public notice in compliance with N.D.C.C. § 44-04-20, and minutes must be taken in compliance with N.D.C.C. § 44-04-21.¹⁰ This office recently issued an opinion on the definition of "meeting" and its evolution over time adapting to changes in communication and technology utilized by governing bodies.¹¹ This opinion analyzed how the definition of "meeting" applies to the use of emails and text messages when they include a "quorum" of the governing body and "public business" is considered or discussed.¹² However, emails and text messages can be used for ministerial purposes, such as to set a

⁴ N.D.C.C. § 44-04-17.1(9)(a).

⁵ N.D.C.C. § 44-04-20.

⁶ N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2016-O-09.

⁷ N.D.C.C. § 44-04-20(6).

⁸ Letter from Doug Miller, Pres., Kenmare School Board, to Office of Att'y Gen. (Apr. 6, 2018).

⁹ N.D.C.C. § 44-04-17.1(9) (definition of "meeting").

¹⁰ N.D.C.C. § 44-04-19.

¹¹ N.D.A.G. 2018-O-10.

¹² N.D.A.G. 2018-O-10; *see also* N.D.A.G. 2017-O-04; N.D.A.G. 2015-O-14; N.D.A.G. 2015-O-12; N.D.A.G. 2014-O-12, N.D.A.G. 2013-O-07; N.D.A.G. 2010-O-09; N.D.A.G. 2008-O-22; N.D.A.G. 2007-O-14; N.D.A.G. 98-O-05.

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meeting date and time, or to provide information to review before its next meeting, and such ministerial uses do not trigger open meetings law.¹³

In preparing this opinion, I asked each member of the School Board to provide a copy of any text message(s) between any board member(s), individually or by group text, since January 14, 2018.¹⁴ If text messages were deleted, Board members were to provide a detailed overview of the content of the texts. Board members were to individually submit signed statements that, to the best of his or her knowledge, he or she provided all text messages, or a detailed overview of any deleted texts, regarding any matters of school board business during this time frame.

A review of the statements and text messages provided by members of the School Board show a widespread practice of utilizing group texts to set meeting dates and times, and to remind Board members about upcoming meetings.¹⁵ Another group text provided a reminder for School Board members to fill out evaluations online.¹⁶ Such uses of text messaging are permissible as they are considered ministerial in nature. Therefore, based on my review of the texts and sworn statements, the School Board did not violate open meetings law.¹⁷

CONCLUSIONS

1. The Kenmare Public School Board failed to post notice of its February 27, 2018, special meeting in compliance with N.D.C.C. § 44-04-20.
2. The Kenmare Public School Board's use of text messaging for ministerial purposes is permissible under open meetings law.

STEPS NEEDED TO REMEDY VIOLATION

The Kenmare Public School Board should review its February 27, 2018, special meeting minutes and update them to be as detailed as possible to include all comments and

¹³ N.D.A.G. 2018-O-10; N.D.A.G. 2015-O-12; N.D.A.G. 2014-O-12; N.D.A.G. 2013-O-07; N.D.A.G. 2013-O-01; N.D.A.G. 2012-O-02; N.D.A.G. 2007-O-14; N.D.A.G. 2007-O-08.

¹⁴ Pursuant to N.D.C.C. § 44-04-21.1, 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.

¹⁵ Letter from Doug Miller, Pres., Kenmare School Board, to Office of Att'y Gen. (Apr. 6, 2018); see also sworn statements from School Board members and copies of text messages.

¹⁶ *Id.*

¹⁷ Opinions issued by this office pursuant to N.D.C.C. § 44-04-21.1 must be based on the facts of the public entity.

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conversations that can be recalled by the Board members. The updated, detailed meeting minutes should be provided to Ms. Schmit, 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. § 44-04-21.2.¹⁸ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁹

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sld

cc: Donna Schmit (via email only)

¹⁸ N.D.C.C. § 44-04-21.1(2).

¹⁹ *Id.*