

**OPEN RECORDS AND MEETINGS OPINION  
2018-O-19**

DATE ISSUED: November 14, 2018

ISSUED TO: TGU School District #60

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jessica and Jeff Kuntz asking whether TGU School District #60<sup>1</sup> violated N.D.C.C. § 44-04-20 by failing to post notice of meetings.

**FACTS PRESENTED**

On October 17, 2017, the TGU School Board - District #60, created a Community Committee to “provide input from the community on building issues faced by the district, and assist in gauging public opinion on possible building projects.”<sup>2</sup>

A google account was set up for the Community Committee that was used to “hold a digital copy of the Capital Maintenance report” discussed at meetings.<sup>3</sup> The report was made available to the public.<sup>4</sup> “There was no further use of the account following the first meeting.”<sup>5</sup>

On July 11, 2018, the Community Committee held a meeting with the agenda item listing “Discussion with Trevor Huffakor (EngTech) & Jim Parras [sic], (Consolidated Construction Co.)”<sup>6</sup> The notice provided the date, time, and location of the meeting,

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<sup>1</sup> TGU School District is the combined Towner and Granville School Districts.

<sup>2</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018). See also Min., Sch. Bd., TGU Sch. Dist. (Oct. 17, 2017) (accepting the recommended committee members for the community committee). At the time at issue in this opinion, there were fourteen members on the committee. Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018).

<sup>3</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Notice, TGU Sch. Bd. Community Comm. (July 9, 2018).

OPEN RECORDS AND MEETINGS OPINION 2018-O-19

November 14, 2018

Page 2

and was posted on the school's website, Facebook page, at the school district office, and at the location of the meeting.<sup>7</sup>

The Building Committee met on July 23, 2018, with the same agenda item for "Discussion with Trevor Huffakor (EngTech) & Jim Perras, (Consolidated Construction Co.)."<sup>8</sup> Although the notice provided the date, time, and location of the meeting, the notice incorrectly identified the committee that was meeting as the Community Committee, although no members of the Community Committee were notified of the meeting or attended.<sup>9</sup> The notice was posted on the school's website, Facebook page, at the school district office, and at the location of the meeting.<sup>10</sup>

The Community Committee was formally decommissioned at the August 8, 2018, School Board meeting.<sup>11</sup> The Community Committee held no other meetings, through any other means, during the times at issue in this opinion.<sup>12</sup>

In addition to the above meetings, the Superintendent of the School District initiated and organized town hall meetings on August 6 and 7, 2018, which were "intended to inform community members of potential building projects of TGU, and provide the public with a platform to provide input to administration and the board."<sup>13</sup> Notice of the town hall meetings were posted on the School's website, Facebook page, at the school district office, and also a flyer with information was direct mailed to every home in the district.<sup>14</sup>

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<sup>7</sup> Email from Billy Seright, President, Bd of Educ., TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 30, 2018, 9:34 PM); letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018). The meeting was held at the Towner High School Library.

<sup>8</sup> Notice, TGU Sch. Bd. Community Comm. (July 20, 2018).

<sup>9</sup> *Id.*; Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018).

<sup>10</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018).

<sup>11</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018).

<sup>12</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018). 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.

<sup>13</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Atty Gen.'s Office (Sept. 20, 2018).

<sup>14</sup> *Id.*

Finally, on August 23, 2018, the Superintendent was asked to meet with members of the construction company “to discuss strategies to generate public support for a potential building referendum.”<sup>15</sup> A member of the Community Committee, which at this time had been disbanded, was asked to attend this meeting “due to his background working with nonprofit organizations and community activism.”<sup>16</sup> The member, on his own initiative, invited some other former Community Committee members to attend.<sup>17</sup>

### ISSUE

Whether the TGU School Board posted notice of its meetings in compliance with N.D.C.C. § 44-04-20.

### ANALYSIS

School board meetings must be open to the public unless otherwise specifically provided by law.<sup>18</sup> 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.”<sup>19</sup> A “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.<sup>20</sup> 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 meetings law.<sup>21</sup> 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.<sup>22</sup>

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<sup>15</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018).

<sup>16</sup> *Id.*

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

<sup>18</sup> 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.

<sup>19</sup> N.D.C.C. § 44-04-17.1(9)(a).

<sup>20</sup> N.D.C.C. § 44-04-17.1(6).

<sup>21</sup> 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.

<sup>22</sup> N.D.A.G. 2016-O-15. Minutes must also be taken in compliance with N.D.C.C. § 44-04-21.

OPEN RECORDS AND MEETINGS OPINION 2018-O-19

November 14, 2018

Page 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.<sup>23</sup> 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.<sup>24</sup> For emergency or special meetings, notice must also be given to the public entity's official newspaper<sup>25</sup> and to any representatives of the news media requesting to be notified of the special meeting.<sup>26</sup>

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.<sup>27</sup> The Community Committee and Building Committee do not file annual schedules of upcoming meetings<sup>28</sup> so all meetings of the committees are considered "special" meetings that must comply with laws governing special meetings.<sup>29</sup>

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.<sup>30</sup> The topics that may be considered at an emergency or special meeting are limited to those specifically included in the notice.<sup>31</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>32</sup> General terms or phrases that could have numerous meanings 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>33</sup>

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<sup>23</sup> N.D.C.C. § 44-04-20.

<sup>24</sup> N.D.C.C. § 44-04-20(4), (5); N.D.A.G. 2016-O-15.

<sup>25</sup> The School Board's official newspaper is the *Mouse River Journal*. Email from Billy Seright, President, TGU Bd. of Educ., to Att'y Gen.'s Office (Sept. 30, 2018, 9:34 PM).

<sup>26</sup> N.D.C.C. § 44-04-20(6).

<sup>27</sup> N.D.C.C. § 44-04-20(3).

<sup>28</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018).

<sup>29</sup> N.D.A.G. 2016-O-04; N.D.A.G. 2005-O-17; N.D.A.G. 2005-O-10.

<sup>30</sup> N.D.C.C. § 44-04-20(2).

<sup>31</sup> N.D.C.C. § 44-04-20(6).

<sup>32</sup> N.D.C.C. § 44-04-20(6); N.D.A.G. 2018-O-07; N.D.A.G. 2014-O-13; N.D.A.G. 2010-O-11; N.D.A.G. 2003-O-20.

<sup>33</sup> N.D.A.G. 2014-O-13; N.D.A.G. 2013-O-06; N.D.A.G. 2013-O-01; N.D.A.G. 2009-O-03.

OPEN RECORDS AND MEETINGS OPINION 2018-O-19

November 14, 2018

Page 5

The School Board failed to provide notice of the July 11, 2018, Community Committee meeting and the July 23, 2018, Building Committee meeting to the official newspaper.<sup>34</sup> The agendas for the meetings generally referring to “Discussion with Trevor Huffakor (EngTech) & Jim Parras [sic], (Consolidated Construction Co.)” also lacked the level of specificity required of special meeting notices. Finally, the July 23, 2018, agenda failed to properly identify the committee that was meeting. It is therefore my opinion that the notice and agendas of the School Board committees’ July 11, 2018, and July 23, 2018, special meetings failed to comply with the requirements of N.D.C.C. § 44-04-20.

The town hall meetings on August 6 and 7, 2018 were initiated by the superintendent and not the School Board.<sup>35</sup> However, two School Board members were present at the August 6, 2018, town hall meeting, and the other three School Board members were present at the August 7, 2018, town hall meeting.<sup>36</sup> The topics discussed at the meetings directly related to the School Board’s public business including issues with current facilities at the school sites and to provide information to, and receive input from, community members about the upcoming school building projects.<sup>37</sup> Past opinions recognize that even if members of a governing body do not call a meeting or participate, if a quorum is present and its public business is being considered or discussed, it is a meeting of the governing body subject to open meetings law.<sup>38</sup> These town hall meetings were therefore subject to open meetings law. Although notice of the town hall meetings were posted on the school’s website, Facebook page, at the school, and provided in a flyer with information directly mailed to every home in the district, the notice did not specify that this was a meeting of the School Board and a copy of the notice was not provided to the official newspaper.<sup>39</sup> It is therefore my opinion that the

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<sup>34</sup> Email from Billy Seright, President, TGU Bd. of Educ., to Att’y Gen.’s Office (Oct. 11, 2018, 6:30 PM). At the time of this meeting, no one had requested to receive individual notice of Community Committee meetings.

<sup>35</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018); email from Billy Seright, President, TGU Bd. of Educ., to Att’y Gen.’s Office (Sept. 30, 2018, 9:34 PM). See *generally* N.D.A.G. 98-O-02 and N.D.A.G. 97-O-02 (recognizing the cabinet of the superintendent is not a “governing body” of a public entity and therefore not subject to open meetings law).

<sup>36</sup> Email from Billy Seright, President, TGU Bd. of Educ., to Att’y Gen.’s Office (Sept. 30, 2018, 9:34 PM).

<sup>37</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018).

<sup>38</sup> N.D.A.G. 2016-O-23; N.D.A.G. 2014-O-13; N.D.A.G. 2013-O-14; N.D.A.G. 2008-O-10.

<sup>39</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att’y Gen.’s Office (Sept. 20, 2018).

## OPEN RECORDS AND MEETINGS OPINION 2018-O-19

November 14, 2018

Page 6

August 6 and 7, 2018, town hall meetings failed to comply with the requirements of N.D.C.C. § 44-04-20.

The August 23, 2018, meeting was between the contractors and superintendent and not a meeting of the School Board. No member of the School Board attended the meeting. The meeting was therefore not subject to open meetings law as the meeting did not include a governing body of a public entity.<sup>40</sup>

Finally, this office recognized in past opinions that emails only providing information for a governing body to review before its next meeting is a ministerial function that does not trigger open meetings law.<sup>41</sup> Committee members utilized a Google account to access a digital copy of a Capital Maintenance Report, but did not utilize the account in any other way.<sup>42</sup> Such ministerial uses of an account, without any correlating substantive discussions, is permissible under the open meetings law. It is therefore my opinion that the School Board did not violate open meetings law by utilizing a Google Account to disseminate a report for members to review prior to a meeting.

### CONCLUSION

The TGU School Board failed to properly notice its July 11 and 23, 2018, special committee meetings, and its August 6 and 7, 2018, special town hall meetings, in compliance with N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATION

The TGU School Board should review its July 11 and 23, 2018, committee minutes and add any additional information regarding discussions that members recall having at the meetings. The School Board must also create minutes of the August 6 and 7, 2018, special town hall meetings. The minutes must be provided to Mr. and Mrs. Kuntz, 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

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<sup>40</sup> While members of the Community Committee were present, at the time of the meeting, the Community Committee was disbanded. The attendees of the meeting did not include a governing body of the School Board.

<sup>41</sup> N.D.A.G. 2018-O-12; N.D.A.G. 2015-O-14; N.D.A.G. 2015-O-12; *but see* N.D.A.G. 2014-O-12 (use of emails that go beyond ministerial matters and instead delve into the substantive issues of matters of public business violate open meetings law).

<sup>42</sup> Letter from Erik Sveet, Superintendent, TGU Sch. Dist., to Att'y Gen.'s Office (Sept. 20, 2018).

reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>43</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>44</sup>

Wayne Stenehjem  
Attorney General

sld  
cc: Jessica & Jeff Kuntz (via email only)

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<sup>43</sup> N.D.C.C. § 44-04-21.1(2).

<sup>44</sup> *Id.*