

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-16

Date Issued: June 8, 1998

Requested by: Dan Gaustad, Attorney, Walsh County Water Resource
District Board

- QUESTIONS PRESENTED -

I.

Whether an on-site investigation by a water resource district board of the area that is the subject of a complaint to the board under N.D.C.C. §§ 61-16.1-53 or 61-32-07 is a "meeting" required to be open to the public under N.D.C.C. § 44-04-19 and preceded by public notice under N.D.C.C. § 44-04-20.

II.

If an on-site investigation is a "meeting," does that conclusion extend to inspections by individual board members that collectively involve a quorum?

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that an on-site investigation by a water resource district board of an area that is the subject of a complaint to the board is a "meeting" under N.D.C.C. §§ 44-04-19 and 44-04-20.

II.

It is my further opinion that on-site inspections by individual board members, but collectively involving a quorum, are not a "meeting" as long as those inspections are not organized and deliberately conducted in groups of less than a quorum to avoid the requirements in N.D.C.C. § 44-04-19.

- ANALYSES -

I.

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"Meetings" of a water resource district board, as governing body of a public entity, are required to be open to the public unless otherwise provided by law. N.D.C.C. §§ 44-04-17.1(6), (10), (12); 44-04-19. A "meeting" is defined as any gathering of a quorum of the members of a governing body regarding the public business of the entity. N.D.C.C. § 44-04-17.1(8)(a)(1). Action need not be taken at a gathering for it to be a "meeting." See Peters v. Bowman Public School Dist., 231 N.W.2d 817 (N.D. 1975); Letter from Attorney General Allen Olson to Myron Atkinson (March 5, 1976). Rather, the definition of "meeting" covers all stages of the decision-making process, including the gathering of information by the governing body. 1998 N.D. Op. Att'y Gen. 0-45 [May 4 opinion to Bob Dykshoorn]; 1996 N.D. Op. Att'y Gen. 38, 43. The definition of "meeting" also is not limited to gatherings held in a governing body's usual meeting room.

An investigation of a complaint to a water resource district board under N.D.C.C. §§ 61-16.1-53 or 61-32-07 pertains to the board's public business. N.D.C.C. § 44-04-17.1(11). Thus, it is my opinion that an on-site investigation by a quorum of the members of a water resource district board of an area that is the subject of a complaint to the board is a "meeting" under N.D.C.C. § 44-04-19 and is required to be preceded by sufficient public notice under N.D.C.C. § 44-04-20.

II.

Whether the conclusion in Issue One applies to on-site investigations by individual board members is a more difficult question. The definition of a meeting is not limited to gatherings of a quorum of a governing body's members at the same time, but also includes a series of gatherings of less than a quorum "if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19." N.D.C.C. § 44-04-17.1(8)(a)(2) (emphasis added).

This office recently issued an opinion on the conduct a single member of a governing body may engage in without running afoul of N.D.C.C. § 44-04-19.

By adopting the "quorum rule," the Legislature impliedly exempted from the open meetings law most conversations between [less than a quorum of a] Board's members. Individual Board members are generally not prohibited from gathering information on their own or from talking to another Board member, even regarding public business. However, there is a threshold at which multiple

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conversations (in person or over the telephone) on a particular subject, each involving two or three Board members, collectively involve enough Board members (a quorum) that the conversations have the potential effect of forming consensus or furthering the Board's decision-making process on that subject. At the point the conversations on a particular subject collectively involve a quorum of the Board, the "quorum rule" is satisfied and the topic of discussion must be considered.

1998 N.D. Op. Att'y Gen. 0-27, 0-31 to 0-32 (footnotes omitted) (emphasis added).

As discussed in Issue One, an on-site investigation of the area that is the subject of a complaint to the board pertains to the board's public business. If each board member investigates the site of the complaint on his or her own, that by itself is not a meeting. It is simply the way the board members educate themselves on the facts of a situation before making a decision on the complaint. However, if these individual investigations are an organized, deliberate effort by the board for a quorum of its members to obtain information regarding the complaint, the smaller gatherings replace in effect the kind of group information-gathering that is required to occur in an open meeting. Whether individual inspections have this effect is a question of fact that must be decided on a case-by-case basis.

In conclusion, it is further opinion that on-site inspections by individual board members, but collectively involving a quorum, are not a "meeting" as long as those inspections are not organized and deliberately conducted in groups of less than a quorum to avoid the requirements in N.D.C.C. § 44-04-19.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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