

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 99-O-08**

DATE ISSUED: September 9, 1999

ISSUED TO: Cameron Sillers, Attorney, Cavalier County Water Resource District

CITIZEN'S REQUEST FOR OPINION

On June 11, 1999, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jeff Amoth asking whether the Cavalier County Water Resource District Board violated N.D.C.C. § 44-04-19 by discussing Mr. Amoth's complaints to the Board after he had left the meeting.

FACTS PRESENTED

The Cavalier County Water Resource District Board (Board) held a regular monthly meeting on May 13, 1999. The Board's minutes state: "Meeting adjourned to hold a special hearing on two complaints filed by Jeff Amoth. . . ." The Board's attorney indicated the Board did not conclude its meeting but simply recessed its regular meeting to conduct a hearing on two drainage complaints submitted to the Board by Mr. Amoth, one of which involved a ditch. Mr. Amoth received notice of the hearing and was in attendance. Following the conclusion of the hearing, Mr. Amoth left and the regular meeting of the Board resumed.

An agenda was prepared before the meeting that listed the special hearing on the Amoth complaints in approximately the middle of the agenda. Apparently, Mr. Amoth did not see a copy of the agenda. The first item on the Board's agenda after the hearing was a culvert request from one of the parties to the hearing who was also a township supervisor. According to the Board's attorney, the township supervisor volunteered the fact that the township board of supervisors would voluntarily fill in up to three inches of the ditch which was the subject of one of Mr. Amoth's complaints. The Board's minutes state: "Water Board approached [the township supervisor] about filling in some dirt back into drain cleaned out with patrol and other equipment." (Emphasis added.)

According to Mr. Amoth, this statement in the minutes indicates that the Board intentionally waited until he was no longer in attendance before initiating further discussion of his complaints with the township supervisor. This is a reasonable concern considering the use of the term "approached" in the Board's minutes. However, in response to an inquiry from this office, the Board's attorney clarified this statement in the minutes. According to the Board's attorney, in response to the supervisor's offer, the Board suggested that he discuss the proposal further with the other members of the township board. At the advice of its attorney, the Board refrained from further discussion of the Amoth complaints until another hearing could be held and notice of the hearing could be provided to Mr. Amoth. A second hearing was held on June 3, 1999.

ISSUE

Whether the Cavalier County Water Resource District Board violated N.D.C.C. § 44-04-19 by discussing the complaints submitted by Mr. Amoth during the continuation of its regular meeting, which occurred after the hearing on those complaints had concluded and after Mr. Amoth had left the meeting.

ANALYSIS

All meetings of a water resource district board must be open to the public unless otherwise specifically provided by law. N.D.C.C. § 44-04-19. N.D.A.G. 98-F-16. The open meetings law is violated when any person is denied access to a meeting or if the door to the meeting room is locked. N.D.C.C. § 44-04-19(1). See, e.g., N.D.A.G. 98-O-17 (meeting room door was locked). Generally, a person is denied access when the person is required to leave the meeting room. However, this office has concluded that the open meetings law is also violated when deliberate action is taken to conceal a meeting or to allow a member of the public to believe that a meeting was over. N.D.A.G. 98-O-16.

The Board expressly denies any intention to mislead Mr. Amoth into believing that its meeting was over. It notes that the offer to fill in the ditch was volunteered by the township supervisor, and that further discussion was quickly postponed until a second hearing could be convened and notice of the further discussion could be provided to Mr. Amoth.

The situation presented in this opinion is easily distinguishable from cases in which a member of the public is asked to leave a meeting, is unable to attend the meeting because the meeting room door is locked, or is deliberately misled into believing the meeting was over. Mr. Amoth voluntarily left after his hearing was concluded, despite the fact that the hearing was held in the middle of a regular meeting of the Board. Mr. Amoth could have asked to see a copy of the agenda to become informed about how long the meeting would last. N.D.C.C. § 44-04-19 does not restrict the topics which may be discussed at a regular meeting. Thus, while it may not be advisable to discuss a pending complaint outside of a properly noticed hearing, and may raise questions about the validity of the hearing process, it is not a violation of N.D.C.C. § 44-04-19 to hold such a discussion during a continuation of a regular meeting after the hearing, even if the topic was not included in the public notice of the meeting or the agenda of the meeting.

Although Mr. Amoth does not claim there was any deficiency in the notice of the regular meeting, it is helpful to note that under N.D.C.C. § 44-04-20(2), a regular meeting need not be restricted to the agenda topics included in the notice. Rather, from the time a

ATTORNEY GENERAL OPEN RECORDS AND MEETINGS OPINION

Cavalier County Water Resource District

September 9, 1999

Page 3

regular meeting is convened until the meeting is adjourned, a governing body of a public entity is free to discuss any item of public business regarding that entity. The Board need only include in the notice of a regular meeting the topics it expects to discuss, where practicable. N.D.C.C. § 44-04-20(2).

Under N.D.C.C. § 44-04-20(2), a person who attends a regular meeting of a governing body to listen to the body's discussion on a particular topic, but leaves before the meeting is adjourned, does so at his or her own risk. Unless a governing body has failed to include in the notice of a regular meeting a topic it plans ahead of time to discuss during the meeting, or has affirmatively represented to an interested person that it will not be discussing a specific topic at a particular regular meeting, the body does not violate N.D.C.C. §§ 44-04-19 or 44-04-20 by discussing that topic after the person has left the meeting. Accord KCOB/KVLN, Inc. v. Jasper County Bd. of Supervisors, 473 N.W.2d 171, 174 (Iowa 1991) (topic may not be discussed during regular meeting if deliberately omitted from the tentative agenda).

This office will not dispute the Board's statement that it did not mislead Mr. Amoth into thinking that the Board's meeting was over or that the Board would not further discuss his complaints during its regular meeting. N.D.C.C. § 44-04-21.1 (open meetings opinions are based on facts provided by the public entity). Accordingly, it is my opinion that the Board's brief discussion of Mr. Amoth's complaints with the township supervisor during the continuation of its regular meeting on May 13 was not a violation of N.D.C.C. § 44-04-19, even though the discussion was held after a hearing on those complaints and after Mr. Amoth had left the meeting.

CONCLUSION

It is my opinion that the Cavalier County Water Resource District Board did not violate N.D.C.C. § 44-04-19 by discussing Mr. Amoth's complaints at a regular meeting after he left the meeting.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: James C. Fleming
Assistant Attorney General

vkk