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OPEN RECORDS AND MEETINGS OPINION
2023-O-01

DATE ISSUED: July 27, 2023

ISSUED TO: Devils Lake Park Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Shane Hamre asking whether the Devils Lake Park Board violated N.D.C.C. § 44-04-20 by failing to properly notice a meeting.

FACTS PRESENTED

The Devils Lake Park Board (Board) held a regular meeting on December 15, 2021.¹ The meeting notice was posted on a bulletin board outside the Board's offices located inside the Burdick Arena.² The agenda was sent to the Devils Lake Journal prior to the meeting.³ Shane Hamre alleged the Board's website incorrectly stated the meeting was held on November 18, 2021, and was therefore improperly noticed.⁴

ISSUE

Whether the Devils Lake Park Board provided notice of its December 15, 2021, regular meeting in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

Public notice must be given before each meeting of a public entity.⁵ Notice of the meeting must be posted at the principal office of the governing body and at the location of the meeting on the day of the meeting.⁶ For city-level entities, the meeting notice also must be filed, with the city

¹ E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Dec. 28, 2021, 11:39 AM).

² E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Sept. 29, 2022, 3:56 PM).

³ E-mail from Terry Wallace, Supt. Of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Dec. 28, 2021, 11:39 AM). As this was a regular meeting, the Board was not required to notify their newspaper, but they did so.

⁴ E-mail from Shane Hamre to Off. of Atty Gen. (Dec. 20, 2021, 9:40 AM).

⁵ N.D.C.C. § 44-04-20; *see also* N.D.A.G. 2022-O-12.

⁶ N.D.C.C. § 44-04-20(4).

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auditor, or posted on the public entity's website.⁷ Notices of special meetings must be sent to the public entity's official newspaper.⁸ Opinions issued by this office must be based on the facts given by the public entity.⁹

The Board provided the notice, agenda, and meeting minutes to this office.¹⁰ The meeting materials provided had the correct meeting date.¹¹ According to the Board, notice for the December 15, 2021, meeting was posted outside the Board's office, which was also the location of the meeting.¹² In response to a question from this office, asking whether notice was posted on the website before the meeting, the Board stated it "thinks [notice] was put on the website for that meeting as we do for all our meetings but . . . is not 100% sure."¹³ Mr. Hamre alleged notice for the December 15, 2021, meeting was posted on the website with an incorrect date.¹⁴ The Board was aware of Mr. Hamre's allegation that the notice was posted with the incorrect date¹⁵ and did not otherwise disagree.¹⁶ It was only after additional follow up that the Board acknowledged they were not sure the notice was posted on the website.¹⁷ For purposes of this opinion, it is presumed that the Board did post the meeting notice on the website with the incorrect meeting date.

The Board posted notice of the meeting at their office, which is located inside the meeting location, notified the newspaper of the meeting, and posted notice on their website, albeit with an incorrect meeting date. The Board took the additional step of notifying its newspaper even though this was a regular meeting, and that notice was not required. Therefore, it is my opinion the public was notified of the meeting and the Board substantially complied with the notice requirements of N.D.C.C. § 44-04-20.

⁷ N.D.C.C. § 44-04-20(3).

⁸ N.D.C.C. § 44-04-20(6).

⁹ N.D.C.C. § 44-04-21.1.

¹⁰ E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Dec. 28, 2021, 11:39 AM).

¹¹ Notice, Devils Lake Park Bd. (12-15-21); Minutes, Devils Lake Park Bd. (12-15-21).

¹² E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Dec. 28, 2021, 11:39 AM).

¹³ E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Sept. 29, 2022, 3:56 PM).

¹⁴ E-mail from Shane Hamre to Off. of Atty Gen. (Dec. 20, 2021, 9:40 AM).

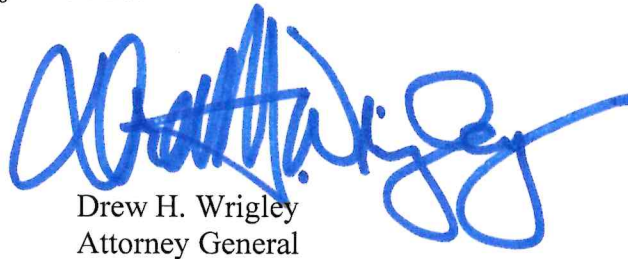
¹⁵ Letter from Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office to Jamie Beck, President, Devils Lake Park Bd. (Dec. 22, 2021).

¹⁶ E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Dec. 28, 2021, 11:39 AM).

¹⁷ E-mail from Terry Wallace, Supt. of Parks and Rec., Devils Lake Park Bd., to Annique M. Lockard, Asst. Atty Gen., Atty Gen.'s Office (Sept. 29, 2022, 3:56 PM).

CONCLUSION

The Devils Lake Park Board provided notice of its December 15, 2021, regular meeting in substantial compliance with N.D.C.C. § 44-04-20.



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cc: Shane Hamre