

**OPEN RECORDS AND MEETINGS OPINION
2009-O-11**

DATE ISSUED: July 14, 2009

ISSUED TO: Garrison 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 Cory Volk asking whether the Garrison School Board violated the open meetings law by holding a meeting prior to the regular School Board meeting on March 17, 2009.

FACTS PRESENTED

There were two meetings scheduled for the Garrison School Board (Board) on March 17, 2009. The Buildings & Grounds Committee (Committee) was scheduled to meet at 6 p.m., followed by the regular Board meeting at 8 p.m. After the Committee meeting ended at 7:17 p.m., Board President Duane Hummel and Vice President Daryl Engel went into the business manager's office to ask the business manager for the correct North Dakota statute to cite in order to hold an executive session at the upcoming meeting. No discussion was held regarding the executive session, but while in the business manager's office, Mr. Hummel and Mr. Engel discussed a variety of other topics.

As members of the public began to assemble for the regular Board meeting, Board member Jerry Saylor also went into the business office and discussed a range of topics unrelated to school board business with Mr. Hummel and Mr. Engel. After Board member Steve Seidler arrived, the regular meeting of the Board was called to order at 8:08 p.m.

Cory Volk, who attended the regular school board meeting, saw board members enter the business manager's office and alleges that they discussed public business.

ISSUE

Whether a quorum of the Garrison School Board met in the business manager's office prior to the regular meeting on March 17, 2009, and discussed public business.

ANALYSIS

All meetings of a public entity must be open to the public¹ and must be preceded by sufficient public notice.² For a gathering to be considered a “meeting,” two primary elements must be considered: the presence of a quorum and the topic of discussion.³ A formal or informal gathering constitutes a meeting when a quorum of the members of the governing body is present at the gathering regarding public business.⁴ A “quorum” means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.⁵ “Meeting” does not include chance or social gatherings where public business is not considered.⁶

Mr. Volk alleges that four Board members were in the business manager’s office prior to the Board meeting. The Board has seven members so four Board members constitute a quorum.⁷ According to the Board, only three members were in the business manager’s office prior to the regular Board meeting, thus, no quorum was present.⁸

Even if a quorum was present, in order for a gathering to constitute a meeting that requires public notice, the discussion must be about public business.⁹ Here, although two Board members were present when the business manager looked up a legal citation, there was no discussion about public business or the executive session. The topics that were discussed primarily included private business, employment, the farm economy, calving, and skid steers. An open meetings opinion must be based on the facts given by the public entity.¹⁰ Therefore, it is my opinion that there was no violation of the open meetings law.

¹ N.D.C.C. § 44-04-19.

² N.D.C.C. § 44-04-20.

³ N.D.C.C. § 44-04-17.1(8)(a); N.D.A.G. 2008-O-24; N.D.A.G. 2008-O-10.

⁴ N.D.C.C. § 44-04-17.1(8)(a)(1); N.D.A.G. 2007-O-08.

⁵ N.D.C.C. § 44-04-17.1(14).

⁶ N.D.C.C. § 44-04-17.1(8)(b)(1); N.D.A.G. 2005-O-07; N.D.A.G. 2004-O-08.

⁷ N.D.C.C. § 44-04-17.1(14) (definition of “quorum”).

⁸ Mr. Volk stated that Board Member Steve Seidler was also present in the business manager’s office; however, according to information provided by the Board, Mr. Seidler was attending a meeting at another location and did not arrive for the regular meeting until 8:08 p.m. when the Board meeting was called to order.

⁹ See N.D.C.C. § 44-04-17.1(8)(a) (definition of “meeting”).

¹⁰ N.D.C.C. § 44-04-21.1(1).

CONCLUSION

The Board did not violate N.D.C.C. §§ 44-04-19 or 44-04-20 prior to its regular meeting on March 17, 2009, because no more than three of the seven members of the school board were present and there was no discussion of public business.

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