

**OPEN RECORDS AND MEETINGS OPINION
2011-O-03**

DATE ISSUED: January 26, 2011

ISSUED TO: Towner County Ambulance Service Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from David Sullivan asking whether the Towner County Ambulance Service Board violated N.D.C.C. § 44-04-20 by holding a meeting that was not preceded by public notice.

FACTS PRESENTED

The Towner County Ambulance Service Board (Board) is comprised of eight members and does not hold regularly scheduled meetings. The Board met on April 14, 2010, and discussed replacing the current manager of the Towner County Ambulance Service (TCAS). At the April 14 meeting, the Board appointed a committee of two Board members to handle the matter of replacing the current manager. On August 6, 2010, this committee met with the current manager and informed him of the Board's decision to replace him. No notice of the August 6 committee meeting was posted.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by holding a meeting that was not preceded by public notice.

ANALYSIS

The open meetings law applies to rural ambulance service districts and the boards that serve them because the districts are created by statute to exercise public authority or perform a governmental function.¹ They are therefore public entities subject to the state's open records and meetings laws.² TCAS was set up as a rural ambulance

¹ See N.D.A.G. 2010-O-14; see also N.D.C.C. §§ 11-28.3-06 and 11-28.3-07

² See N.D.C.C. § 44-04-17.1(12)(b); see also N.D.A.G. 2010-O-14 and N.D.A.G. 2005-O-10.

service district and both TCAS and its Board are subject to the state's open records and meetings laws.³

All meetings of a public entity must be open to the public unless otherwise provided by law.⁴ A governing body includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."⁵ Numerous past opinions have explained that the definition of governing body includes a committee delegated authority to perform any function on behalf of a governing body.⁶ The committee appointed by the Board is subject to the open meetings law.

Unless otherwise provided by law, public notice must be provided in advance of all meetings governed by the open meetings laws.⁷ The notice must be posted in the governing body's main office, at the meeting location on the meeting day, and filed with the county auditor.⁸ Notice must also be provided to anyone requesting such information.⁹ In addition, for special or emergency meetings, the public entity must notify its official newspaper, if any, and all representatives of the media who have requested to be notified.¹⁰

Mr. Sullivan alleges that the Board held a secret meeting on August 6, 2010, that was not noticed to the public and that he was denied the opportunity to attend this meeting. According to information received from the Board, the meeting held on August 6, 2010, was not a meeting of the Board, but rather was a meeting of the committee created by the Board during the April meeting. The Board does not dispute that notice of the committee meeting was not provided. The Board explained that it was unaware that it was required to post notice of any of its meetings and has indicated that in the future all meetings will be noticed.

CONCLUSION

A committee of the Board violated N.D.C.C. § 44-04-20 by holding a meeting that was not preceded by public notice.

³ E-mail from TCAS Attorney J. Bruce Gibbens to Assistant Attorney General Mary Kae Kelsch, October 28, 2010.

⁴ N.D.C.C. § 44-04-19.

⁵ N.D.C.C. § 44-04-17.1(6) (definition of governing body).

⁶ See N.D.A.G. 2009-O-05; N.D.A.G. 2008-O-21; N.D.A.G. 2007-O-13; N.D.A.G. 2005-O-02.

⁷ N.D.C.C. § 44-04-20(1).

⁸ N.D.C.C. § 44-04-20(4).

⁹ N.D.C.C. § 44-04-20(5).

¹⁰ N.D.C.C. § 44-04-20(6).

STEPS NEEDED TO REMEDY VIOLATION

To remedy for the lack of notice for the August 6, 2010, meeting, a notice listing the date, time, location, and topics which were considered at that meeting should be provided to the requester, posted at the Board's principal office, filed in the county auditor's office, and given to the official newspaper of the county and any other person who has requested to receive notices of Board meetings. Minutes must also be created regarding the public business and providing details of the discussions conducted at the August 6, 2010, meeting and must be provided at no cost to the requester and any other person who requests copies.

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 reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.¹¹ It may also result in personal liability for the person or persons responsible for the noncompliance.¹²

Wayne Stenehjem
Attorney General

lsm/vkk

¹¹ N.D.C.C. §44-04-21.1(2).

¹² Id.