

**OPEN RECORDS AND MEETINGS OPINION
2011-O-06**

DATE ISSUED: May 26, 2011

ISSUED TO: Cass County Board of Commissioners

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Duke Schempp, Organizer for The People's Press Project, asking whether the Cass County Board of Commissioners violated N.D.C.C. § 44-04-20 by discussing issues that were not included in the notice posted prior to the March 21, 2011, regular meeting.

FACTS PRESENTED

The Cass County Board of Commissioners (Commission) holds regular meetings on the first and third Mondays of every month. The Commission has a written policy that requires the submission of agenda items by noon on Friday, 10 days before Commission meetings.¹ Thus the deadline for the March 21, 2011, meeting was March 11, 2011.

On March 15 the Commission posted the agenda for the March 21 regular meeting. After March 15, additional agenda items were submitted for consideration at the March 21 Commission meeting.

During the "order of agenda," portion of the March 21 meeting, the Commission voted to consider the additional items and subsequently discussed them at the meeting.

ISSUE

Whether the Commission violated N.D.C.C. § 44-04-20 by discussing additional items at its March 21, 2011, regular meeting, when these items were not included in the notice and agenda posted prior to the meeting.

¹ Cass County Commission Policy Manual 13.40 (1989).

ANALYSIS

Public notice must be given in advance of all meetings of a public entity.² Notice of a regular meeting must contain the date, time, and location of the meeting and, if practicable, the topics to be considered.³ “[T]he lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat.”⁴

The requester complains that the Commission discussed issues at the regular meeting that were not included on the posted notice and agenda. The Cass County state’s attorney explains that when the agenda and notice were prepared on March 15, the additional items had not been submitted for consideration for the March 21 regular meeting. He stated the notice posted on March 15 included all of the agenda items known at that time and met the requirements of N.D.C.C. § 44-04-20(2). In any opinion issued under N.D.C.C. § 44-04-21.1, the attorney general shall base the opinion on the facts given by the public entity.⁵

This office has explained “the purpose of providing advance notice of topics to be discussed at a meeting is to provide information to interested members of the public concerning the governing body’s anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate.”⁶ However, in the case of regular meetings, the requirement to include topics to be considered is not inflexible, but rather, only requires inclusion of topics “if practicable.” This office has previously interpreted the language “if practicable, the topics to be considered” to require the governing body to include in its notice a list of all topics the governing body expects to discuss at the time the notice is prepared.⁷

In a 2003 opinion involving the Fargo City Commission, the City Commission discussed a management contract that was not included in the notice and agenda during a regular meeting.⁸ As I explained in that opinion, if an agenda item is submitted after the notice is prepared, a governing body may prepare an amended notice and agenda but it is not

² N.D.C.C. § 44-04-20(1).

³ N.D.C.C. § 44-04-20(2) (emphasis added).

⁴ N.D.C.C. § 44-04-20(2).

⁵ N.D.C.C. § 44-04-21.1(1).

⁶ N.D.A.G. 2008-O-23; N.D.A.G. 2007-O-04; N.D.A.G. 2006-O-07.

⁷ N.D.C.C. § 44-04-20(2); N.D.A.G. 2008-O-23; N.D.A.G. 2006-O-07; N.D.A.G. 2006-O-05; N.D.A.G. 2003-O-12.

⁸ See N.D.A.G. 2003-O-12.

legally required to do so in the case of a regular meeting.⁹ There is always a likelihood that discussions will take place during a regular meeting that were not included on the meeting notice. Therefore, if the public, including the media, does not attend regular meetings, it does so at its own risk.¹⁰

If a public entity deliberately omits a topic that it knows will be discussed at the time it prepares the notice, it would violate the law. In past opinions, this office has found a violation when a public entity knew at the time the notice was prepared that a topic would be discussed at a regular meeting but did not include it on the notice.¹¹

The requirement to include the topics expected to be discussed when the notice is prepared does not preclude a governing body from discussing issues at a regular meeting that arise after the notice is posted.¹²

CONCLUSION

It is my opinion that the Commission did not violate N.D.C.C. § 44-04-20 by discussing topics at its regular meeting that were not included on the notice and agenda posted prior to the meeting.

Wayne Stenehjem
Attorney General

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⁹ A notice and agenda would have to be amended in the case of a special meeting because a governing body may only discuss the agenda items listed on the notice at a special meeting. See N.D.C.C. § 44-04-20(6).

¹⁰ See N.D.A.G. 2003-O-12; N.D.A.G. 99-O-08.

¹¹ N.D.A.G. 2009-O-16.

¹² N.D.A.G. 2008-O-23.