

**OPEN RECORDS AND MEETINGS OPINION
2012-O-03**

DATE ISSUED: February 24, 2012

ISSUED TO: North Dakota State University Research and Technology Park

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion from Mr. Rob Port asking whether the North Dakota State University Research and Technology Park (Research Park) violated N.D.C.C. § 44-04-19 by holding its annual meeting out of state.

FACTS PRESENTED

On September 22 and 23, 2011, the Research Park held its annual meeting in Minneapolis, Minnesota. The Research Park is a nonprofit corporation created pursuant to the authority set forth in N.D.C.C. § 15-10-17(8).¹ It is located on 55 acres adjacent to the North Dakota State University campus. It is governed by a 10-member board of directors consisting of the NDSU president, two NDSU officials, and seven private sector members. The Research Park publicly noticed the annual meeting and does not dispute that it has an obligation to comply with the open meetings law.² Mr. Port requested an Attorney General's opinion because he was concerned that a meeting held in another state, some 250 miles from Fargo, effectively made the annual meeting inaccessible to North Dakota citizens and therefore constituted a violation of the open meetings law.

ISSUE

Whether the location of the Research Park's 2011 annual board meeting made the meeting inaccessible to the public in violation of N.D.C.C. § 44-04-19.

¹ Entities created pursuant to N.D.C.C. § 15-10-17(8) are created and operated under the authority of the State Board of Higher Education to encourage university system entities to enter into arrangements with "private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer."

² N.D.A.G. 2010-O-04; N.D.A.G. 2006-O-01.

ANALYSIS

The open meetings law requires all meetings of a public entity to be open to the public unless otherwise specified by law.³ A meeting must be accessible to the public to be considered open.⁴ The law specifically states “the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.”⁵ Mr. Port contends that the Research Park denied public access to its annual meeting by holding the meeting in Minneapolis, Minnesota.

The Research Park explained that typically meetings are held in Fargo, but because the NDSU football team was playing a game in Minneapolis, it presented an opportunity for the annual meeting to be held in conjunction with the other events surrounding the game. This provided an opportunity for everyone affiliated with the Research Park, including the board, to make contacts and gain business leverage with alumni and CEO’s from corporations that would also be in Minneapolis at the same time.⁶

In 2002, a Minot resident argued that Minot residents were denied access to a meeting of the State Board of Higher Education (SBHE) because the meeting was held in Williston, North Dakota.⁷ Because N.D.C.C. § 44-04-19 does not address the proximity of the public entity’s meeting place to the people affected by the public entity’s decisions, I considered the following factors to analyze whether the location of the meeting denied access: the jurisdiction of the public entity; the proximity of the meeting place to the persons affected by the public entity’s decisions; and the purpose behind the choice of location to determine whether the meeting location violated the open meetings law.⁸

Here, in response to questions from this office, the Research Park explains that the location of the annual meeting is consistent with the Research Parks “jurisdiction” because it is authorized to actively pursue partnerships that bring out-of-state businesses into North Dakota.⁹ It further explains that in order to expand the economic base of North Dakota it must develop partnerships with international, national, and regional centers of excellence and technology based businesses.¹⁰ In the context of

³ N.D.C.C. § 44-04-19.

⁴ N.D.C.C. § 44-04-19(2).

⁵ Id.

⁶ Id.

⁷ N.D.A.G. 2002-O-12. The SBHE discussed a matter that involved Minot State University at that meeting.

⁸ N.D.A.G. 2002-O-12.

⁹ Letter from Lowell Bottrell, NDSU, RTP Corporate Counsel, to Janylyn Murtha, Asst. Att’y Gen., Oct. 17, 2011.

¹⁰ Id.

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the open records and meetings law, the “jurisdiction” of a public entity does not necessarily refer to physical boundaries, but often refers to the scope of its authority or the “public business” of the public entity.¹¹ The location of the Research Park board’s annual meeting was related to the “public business” of the Research Park: to facilitate business relationships. Thus, the location was within the jurisdiction of the Research Park.

The Research Park also explains that holding the annual meeting in the Minneapolis, Minnesota, area, where NDSU alumni were attending events surrounding the NDSU football game, put the board members and the meeting in close proximity to potential business contacts. As explained above, persons affected by the decisions of the Research Park board are not confined within North Dakota’s boundaries. By holding the meeting in Minneapolis, it allowed affected persons to attend who otherwise may not have an opportunity to attend the board meetings of the Research Park when held in Fargo.

Finally, according to the Research Park, in addition to advancing the mission of the Research Park, the location of the annual meeting was practical for speakers and board members. The board president¹² had to be in Minneapolis for meetings in advance of the sporting event with alumni, potential donors, and businesses;¹³ the Executive Director and another board member had to be in Minneapolis to speak at another advisory board meeting for NDSU;¹⁴ and one of the speakers at the board meeting was an associate director of another research park traveling from Wisconsin.¹⁵

It is my opinion, therefore, that the location of the Research Park’s board’s annual meeting was consistent with the “public business” of the Research Park and consequently the location of the meeting in Minneapolis, Minnesota, was not in violation of North Dakota’s open meeting laws. Although individual or infrequent meetings, such as Research Park’s annual meeting in this case, do not violate the open meetings laws, I might come to a different conclusion if the board consistently met out of state, or it appeared the board was doing so with the intent of avoiding our open meetings laws. Business contacts are important for governing bodies such as the Research Park, but in

¹¹ See N.D.C.C. § 44-04-17.1(12)(definition of public business means all matter that relate or may foreseeably relate in any way to the performance of the public entity’s functions).

¹² Bylaws of the NDSU Research & Technology Park, Inc., Art. VI, Section 6.01 requires the Board President be the President of NDSU.

¹³ Attachment to Letter from Lowell Bottrell, NDSU, RTP Corporate Counsel, to Janilyn Murtha, Asst. Att’y Gen., Oct. 17, 2011.

¹⁴ Id.

¹⁵ Agenda, NDSU Research & Technology Park, Inc., Sept. 22-23, 2011.

scheduling such meetings, public entities should keep in mind the transparency required by the North Dakota Open Meetings law.

CONCLUSION

The Research Park's annual meeting was accessible to the public in compliance with N.D.C.C. § 44-04-19 even though it was held in Minneapolis, Minnesota.

Wayne Stenehjem
Attorney General

jkm/vkk