

**OPEN RECORDS AND MEETINGS OPINION
2008-O-24**

DATE ISSUED: October 10, 2008

ISSUED TO: Mandan 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 Susan Beehler asking whether the Mandan School Board (School Board) violated the open meetings law when one member of the School Board attended a meeting that included members and staff of other governing bodies regarding the construction of sidewalks to the new middle school in the city of Mandan.

FACTS PRESENTED

On April 2, 2008, a meeting was held to discuss a recommendation by an administrative law judge. The topic of the meeting was whether it would be possible for the School Board, Mandan City Commission, Mandan Park District, and Morton County Commission to work together to develop a plan that would allow pedestrians to safely walk to the newly constructed Mandan middle school. The meeting was planned by Kirsten Baesler, chair of the Mandan School Board, and Dick Tokach, chair of the Morton County Commission.

Ms. Baesler was the only member of the School Board present at the meeting, although Mandan School District Superintendent Wilfred Volesky and Mandan School District Business Manager Joe Lukach also attended the meeting.

Additional attendees included Mandan City Administrator Jim Neubauer, Mandan City Commissioners Tim Helbling and Jerome Gangl, Mandan City Planner Dave Bechtel, Dick Tokach, Morton County Auditor Paul Trauger, Morton County Road Supervisor Chuck Morman, and Mandan Park District Director Cole Higlin. None of the public entities gave public notice of the meeting.¹

¹ Although Ms. Beehler limited her request to the obligation of the Mandan School Board to provide public notice of the April 2, 2008, meeting, after a cursory review of the records, it does not appear that the other governing bodies were obligated to give notice of the meeting.

ISSUE

Whether attendance by one member of the Mandan School Board at the meeting held April 2, 2008, constituted a “meeting” under the open meetings law that was required to be preceded by public notice.

ANALYSIS

All meetings of the board of a public school district are required to be open to the public and preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.² For this gathering to be a meeting under the open meetings law, two of the primary elements must be considered: whether a quorum was present and the topic of discussion.³ A formal or informal gathering constitutes a meeting when a quorum⁴ of the members of the governing body is present at the gathering regarding public business.⁵ “Public business” is defined as:

[A]ll matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity’s governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity’s use of public funds.⁶

A gathering of less than a quorum of a governing body may be a meeting under the open meetings law if the members were acting pursuant to authority delegated to them by the governing body.⁷

School Board Chairperson Kirsten Baesler was the only School Board member to attend the meeting. According to Superintendent Wilfred Volesky, who responded on behalf of the School Board, Ms. Baesler was not delegated any authority by the School Board. Even if she had been delegated authority, the open meetings law would still not

² N.D.C.C. § 44-04-19; N.D.A.G. 2001-O-05. Ms. Beehler was aware of and attended the meeting.

³ N.D.C.C. § 44-04-17.1(8)(a)(1); N.D.A.G. 2007-O-08.

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. N.D.C.C. § 44-04-17.1(14).

⁵ N.D.C.C. § 44-04-17.1(8)(a)(1).

⁶ N.D.C.C. § 44-04-17.1(11).

⁷ N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

apply because a delegation of authority from a governing body must be to more than one person.⁸ As I explained in past opinions, a governing body can legally delegate authority to a single member to attend meetings without violating the open meetings laws.⁹

In addition to Ms. Baesler, the school district's superintendent and business manager attended the meeting. However, the School Board did not appoint these three people as a committee of the School Board to attend the meeting on its behalf. Thus, although the topic of the meeting was clearly public business, without the presence of a quorum or committee of the School Board, one element required for a meeting as defined in N.D.C.C. § 44-04-17.1(8) was missing. Thus, it is my opinion that the School Board was not required to provide public notice of the meeting.

CONCLUSION

Attendance by one member of the Mandan School Board at a meeting held April 2, 2008, was not a "meeting" under the open meetings law required to be preceded by public notice.

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⁸ N.D.A.G. 2005-L-14. See also N.D.A.G. 2005-O-15; N.D.A.G. 2004-O-12.

⁹ N.D.A.G. 2005-O-15; N.D.A.G. 2005-L-14; N.D.A.G. 2004-O-12.