

November 1, 1999

Mr. Arden Haner  
Chairman  
Ward County Water Resource Board  
34491 72nd St SW  
Douglas, ND 58735-9410

Dear Mr. Haner:

Thank you for your letter inquiring on behalf of the Ward County Water Resource Board whether the vice chairman of a water resource board may call an emergency meeting without the chairman's knowledge, in a case where the chairman has apparently withdrawn from participation in the matter due to a conflict of interest. Based on conversations a member of my staff had with you, vice chairman Maurice Foley, and secretary-treasurer Nancy Ali, it appears that you and the board disagree on whether you had in fact recused yourself at the time the vice chairman called the emergency meeting. You have also asked whether the chairman is entitled to notice of the emergency meeting and at what point the vice chairman could declare an emergency.

Vice chairman Maurice Foley states that he believed you had recused yourself from participation in the matter that was the subject of the emergency meeting. He states that he called the meeting, acting in the capacity of chairman, on the advice of the board's legal counsel, in order for the board to respond to imminent excavation activity affecting water flow that was the subject of a pending complaint.

You state that you had not recused yourself, because the matter was a new matter, and not a continuation of past matters in which you had recused yourself from participation in board action. I am not in a position to resolve this factual dispute, as you acknowledged in your telephone conversation with my staff. You and the board agree that by its present inquiry, the board seeks general guidance for future emergency meetings.

N.D.C.C. § 61-16-09 addresses special meetings of water resource boards as follows:

Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting shall be mailed to each member of the board at least five days before any such meeting; provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

An emergency meeting is a type of special meeting. N.D.C.C. § 61-16-09 permits the calling of a special or emergency meeting by the secretary on the order of the chairman, or upon written request of two members of the board.

N.D.C.C. § 61-16-09 requires that notice of a special meeting be mailed to each member of the board at least five days before any such meeting; "provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing." In an emergency, the provisions of the statute may be met by the secretary calling a meeting on the order of the chairman; or by two board members making a written request and delivering it by expedited means to the secretary; or by all members of the board convening or consenting to the meeting in writing. In any of these instances, some type of notice must be given to each member of the board, including the chairman, even where the chairman has temporarily vacated the chair and the vice chairman is acting as temporary chairman. Also, notice to the public must be given as required by N.D.C.C. § 44-04-20f and the topics discussed at the emergency or special meeting are limited to those included in the notice to the media. N.D.C.C. § 44-04-20(6).

The chapters of the North Dakota Century Code that deal with water resource boards, N.D.C.C. chs. 61-16 and 61-16.1, do not refer to a vice chairman of the board. N.D.C.C. § 61-16-09 refers to the chairman, and to the secretary and treasurer, who may be one person. N.D.C.C. § 61-16-09 is unlike other statutes that specifically authorize another person to assume the duties of the chairman. Consequently, the term "chairman" in N.D.C.C. § 61-16-09 means only the chairman. This limitation need not create a problem for the board, however, because the statute authorizes the calling of a special meeting without the chairman's participation, i.e. upon the written request of two members of the board. Where time does not permit mailing of the written request, it may be made by fax or personal delivery.

Thus, for example, if the chairman of the board goes away on vacation and an emergency situation arises, two board members may make a written request to the secretary to call an emergency meeting. The secretary would then notify all board members of the meeting, which the secretary may do by telephone or fax or other expedited means. Since there is not time to give the statutory five-day notice, all board members must be present at the meeting, either in person or by speakerphone; or, if a member cannot be present by speakerphone or in person, that member must give written consent to holding the meeting. Such written consent could be communicated by fax. Also, the chairman, before leaving on vacation, could provide a written consent for the board to hold emergency or special meetings without the chairman, during the time the chairman is gone on vacation. Keep in mind that the absent board member is, at this point, giving consent only to the holding of a meeting without that board member's presence.

You have asked at what point the vice chairman could declare an emergency. It is important to remember that it is not necessary to declare an emergency in order to have an emergency or special meeting. An emergency or special meeting is simply one that is held on a day different from the regular meeting day.

For your information, N.D.C.C. § 61-16-08.1, Appointment of alternate board member due to conflict of interest or illness, provides a mechanism for having a full board if there

is a conflict of interest resulting in disqualification of a board member. This mechanism may be useful to the board for future conducting of the affairs of the district.

I hope this discussion will be helpful to you and the board.

Sincerely,

Heidi Heitkamp  
Attorney General

mnh/vkk  
cc: Ward County Water Resource Board