

February 15, 2001

Mr. Ronald Jacobson
Director, NDASCD
PO Box 267
Crosby, ND 58730-0267

Dear Mr. Jacobson:

Thank you for your February 1, 2001, letter asking for my assistance with the roll-call voting requirements of North Dakota Century Code (N.D.C.C.) § 44-04-21(1). Although I am not authorized to give you an official Attorney General's opinion, I hope you will find the suggestions in this letter helpful.

All meetings of a "governing body" of a "public entity" are required to be open to the public. N.D.C.C. § 44-04-19. For reasons explained in 1998 N.D. Op. Att'y Gen. O-21, the Association is a "public entity." The phrase "governing body" is defined as "the multimember body responsible for making a collective decision on behalf of a public entity." N.D.C.C. § 44-04-17.1(6). 1998 N.D. Op. Att'y Gen. O-21 identifies the Association's board of directors as a "governing body" of the Association. In addition, because some decisions on behalf of the Association are made by the members of the Association (hereafter "members") rather than the Board, the members as a group also fall under the definition of "governing body." Thus, all meetings of the members regarding public business are required to be open to the public under the open meetings law.

Although allowing the public to attend meetings of the Association members is simple by itself, the application of the open meetings law to those meetings also subjects the Association to the voting requirements of N.D.C.C. § 44-04-21(1):

Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.

This statute requires that all nonprocedural votes of the members be conducted through a recorded roll-call vote.

Having explained the legal basis for applying N.D.C.C. § 44-04-21(1) to votes of the members, let me suggest some ways to minimize the time consumed by the roll-call voting process.

1) Determine whether there are decisions which are currently presented to the full membership of the Association for a vote which could instead be handled by the Association's board of directors.

2) Consider implementing a consent agenda consisting of substantive decisions for the members which are not anticipated to be debated or controversial. Unless a procedural motion is adopted removing an item from the consent agenda (which can be voted on by voice vote unless a member asks for a roll-call vote), a single roll-call vote could be held to vote on all the items listed on the consent agenda.

3) The purpose of N.D.C.C. § 44-04-21(1) is to make a record of the vote of each member of a governing body for the benefit of those attending the meeting as well as those who are reviewing the minutes of the meeting. When the final vote on motions presented to the members is expected to be lopsided in favor or against the motion, consider using a roll-call voting process in which the presiding officer calls for all votes in the minority. After the minority votes are announced by name of the voter and recorded in the minutes, the presiding officer may then announce that the remaining voters who are present are deemed to have voted with the majority. For this voting method to comply with N.D.C.C. § 44-04-21(1), it will be necessary to keep an accurate record of the members who are present when the vote is taken and to include that record in the minutes. As long as a member of the public attending the meeting or reviewing the minutes of the meeting can identify the vote of each member of the Association, I believe the Association has sufficiently complied with N.D.C.C. § 44-04-21(1).

4) For motions on which the members are expected to be closely divided, I see no alternative to proceeding with a recorded roll-call vote in the traditional fashion. However, to the extent feasible, you might consider grouping such votes together at the end of the discussion on all pending motions so the members are otherwise free to come and go from the meeting room during the discussion.

Attorneys in this office have met on multiple occasions with Gary Puppe, Don Roen, and with your Board in an effort to streamline the voting process for your association yet comply with the roll-call requirements of N.D.C.C. § 44-04-21(1). In case you are not fully aware of those discussions, you should know that many of the suggestions in this letter have

Mr. Ronald Jacobson
February 15, 2001
Page 3

previously been made to Gary Puppe and other representatives of the Association. It would appear to be the decision of the Board of Directors or the Association members whether to implement any or all of these suggestions.

I hope this information is helpful in complying with state law in the most efficient manner. You are also free at any time to offer an amendment to the laws pertaining to the Association which would allow the members to vote by voice rather than a recorded roll-call vote.

Sincerely,

Wayne Stenehjem
Attorney General

jcf/vkk