

**LETTER OPINION  
2006-L-34**

October 20, 2006

The Honorable Tom Seymour  
State Senator  
1104 14th Avenue SW  
Minot, ND 58701-5768

The Honorable Eliot Glassheim  
State Representative  
619 North 3rd Street  
Grand Forks, ND 58203-3203

The Honorable Lee Kaldor  
State Representative  
PO Box 215  
Mayville, ND 58257-0215

Dear Senator Seymour and Representatives Glassheim and Kaldor:

Thank you for your letter asking whether the faculty adviser to the North Dakota State Board of Higher Education is a member of the State Board. If the adviser is not a member of the State Board, you ask whether the adviser has the right to attend executive sessions of the State Board. It is my opinion the adviser is not a member of the State Board. It is my further opinion the adviser has the right to attend executive session of the State Board.

**ANALYSIS**

Article VIII, § 6 of the North Dakota Constitution creates an eight-member State Board of Higher Education. Seven of the board members must be qualified electors and taxpayers of the state and must have resided in this state at least five years immediately preceding their appointments. The eighth member must be a full-time resident student in good academic standing at an institution under the jurisdiction of the state board.<sup>1</sup> The Governor appoints all board members. All the appointments, except for the appointment of the student member, are subject to confirmation by the senate.<sup>2</sup>

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<sup>1</sup> N.D. Const. art. VIII, § 6.

<sup>2</sup> Id.

The position of the faculty advisor is not provided for in the Constitution, but rather by state statute. Section 15-10-02, N.D.C.C. states:

The council of college faculties shall annually appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.<sup>3</sup>

The advisor position is distinguished from the position of board member by method of appointment; the advisor is appointed by the Council of College Faculties rather than by the Governor.<sup>4</sup> The statute does not establish the position as that of a board member; rather, the appointment is for an adviser to the State Board.<sup>5</sup> Words used in statutes are to be understood in their ordinary sense.<sup>6</sup> As ordinarily understood, an adviser is someone who offers advice, recommendations, or suggestions.<sup>7</sup> Accordingly, based upon article VIII, § 6 and N.D.C.C. § 15-10-02, it is my opinion the adviser is not a member of the State Board.

You also ask whether the adviser has the right to attend an executive session of the State Board. The open meetings law in chapter 44-04 provides that “[a] governing body may hold an executive session to consider or discuss closed or confidential records.”<sup>8</sup> The State Board is a governing body since it is a “multimember body responsible for making a collective decision on behalf of a public entity.”<sup>9</sup> Generally, only the members of the governing body have an inherent right to attend executive sessions of that body.<sup>10</sup> While the adviser is not a member of the Board, N.D.C.C. § 15-10-02(2) provides that “[t]he adviser may attend and participate in all meetings of the state board but may not vote.”<sup>11</sup>

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<sup>3</sup> N.D.C.C. § 15-10-02(2).

<sup>4</sup> N.D.C.C. § 15-10-02(2).

<sup>5</sup> *Id.*

<sup>6</sup> See N.D.C.C. § 1-02-02.

<sup>7</sup> See The American Heritage Dictionary 82 (2d coll. ed. 1991).

<sup>8</sup> N.D.C.C. § 44-04-19.2; see N.D.C.C. § 44-04-17.1(4) (executive session” is “all or part of a meeting that is closed or confidential).

<sup>9</sup> N.D.C.C. § 44-04-17.1(6); see N.D.A.G. 98-O-05 n.1.

<sup>10</sup> N.D.A.G. 2006-L-22 (one exception to the right of a member to attend executive sessions is when the subject of the executive session is litigation involving the excluded member); N.D.A.G. 99-L-115. Section 44-04-17.1, N.D.C.C., authorizes other people to attend an executive session if in governing body’s discretion, they are necessary to carry out or further the purposes of the executive session. N.D.C.C. § 44-04-17.1(1).

<sup>11</sup> Emphasis added.

An “executive session” is “all or part of a meeting that is closed or confidential.”<sup>12</sup> The term “all” is defined as “[t]he total entity or extent of . . . [t]he entire or total number, amount, or quantity of . . . [t]he utmost possible of . . . [e]very . . . [a]ny whatsoever . . . [e]ach and every one . . . [e]ach and every thing . . . [e]verything one has . . . the whole number; totality . . . [w]holly, entirely; completely. . .”<sup>13</sup> While N.D.C.C. § 15-10-01(2) does not specifically mention executive sessions, it is my opinion that the terms “all meetings” includes the meetings or portions of meetings in which executive sessions are conducted. Accordingly, the adviser has the right to attend executive sessions of the State Board.<sup>14</sup>

In conclusion, it is my opinion the adviser is not a member of the State Board. It is my further opinion the adviser has the right to attend executive sessions of the State Board.

Sincerely,

Wayne Stenehjem  
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>15</sup>

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<sup>12</sup> N.D.C.C. § 44-04-17.1(4).

<sup>13</sup> The American Heritage Dictionary 94 (2d coll. ed. 1991).

<sup>14</sup> The faculty advisor is subject to any restrictions imposed by law or the Board with regard to disclosing confidential or exempt information.

<sup>15</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).