

**OPEN RECORDS AND MEETINGS OPINION
2006-O-06**

DATE ISSUED: March 30, 2006

ISSUED TO: North Dakota Judicial Conference

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Roland Riemers asking whether the North Dakota Judicial Conference violated N.D.C.C. § 44-04-20 by failing to include the location of a meeting in the meeting notice.

FACTS PRESENTED

The North Dakota Judicial Conference met November 21 and 22, 2005 in Bismarck. The notice of the meeting was posted on the North Dakota Supreme Court website and stated that the meeting would be held in Bismarck, but did not state the exact location.

The North Dakota Supreme Court staff advised this office that the specific location of the meeting was intentionally omitted from the notice due to concerns about the safety of the Conference's membership, which is comprised mainly of judges. Due to past verbal and physical assaults on judges, the Court attempts to balance the public's right to know with ensuring the physical safety of judges. Except for the specific meeting location, all other pertinent information concerning Conference meetings is posted on the North Dakota Supreme Court website. Although the public is not told exactly where the meeting will be held, the Conference has never prevented a member of the public or the media from attending. In fact, the Conference did not prohibit Mr. Riemers from attending the November meeting.

Mr. Riemers asked this office whether the policy of omitting the specific location from the notice violated the notice requirements of the open meetings law.

ISSUES

1. Whether the Judicial Conference a public entity subject to the open meetings laws.

2. Whether the Judicial Conference violated the notice requirements for open meetings by failing to include the location of its meeting in its November meeting notice.

ANALYSES

Unless otherwise provided by law, the open meetings laws apply to all meetings of a public entity.¹ A public entity includes “[p]ublic or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by . . . state statute . . . to exercise public authority or perform a governmental function.”²

The Judicial Conference was created by chapter 27-15 of the North Dakota Century Code. The Conference is made up of all the judges in the state, including surrogate judges and two municipal judges, the attorney general, the dean of the law school, five attorneys, and the clerk of the Supreme Court.³

State law provides that the Judicial Conference shall:

1. Solicit, receive, and evaluate suggestions relating to the improvement of the administration of justice.
2. Consider and make recommendations to the supreme court for changes in rules, procedures, or any matter pertaining to the judicial system.
3. Coordinate continuing judicial education efforts for judges and support staff.
4. Establish methods for review of proposed legislation which may affect the operation of the judicial branch.⁴

These duties have evolved since 1927 when the Judicial Conference was created. Its original duties were to study the operation of the judicial system of the state, gather statistics relating to crime and criminal and civil litigation, and submit a report to the governor every other year concerning the state’s judicial system.⁵ It also was authorized to recommend to the Governor or the Legislative Assembly such measures as it deemed advisable.⁶

¹ See N.D.C.C. § 44-04-19.

² N.D.C.C. § 44-04-17.1(12)(a), emphasis added.

³ N.D.C.C. § 27-15-01.

⁴ N.D.C.C. § 27-15-05.

⁵ 1927 N.D. Sess. Laws ch. 124, §§ 5,7, and 8.

⁶ *Id.*, at § 8.

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There are three relevant Attorney General opinions regarding the application of the open records or open meetings laws to judiciary-related bodies. These opinions are insightful when examining the application of the open records and meetings laws to statutorily created entities.

The first opinion determined that the open meetings law applied to the State Bar Board.⁷ The State Bar Board, now called the State Board of Law Examiners, was created by the Legislature. Article VI, § 3 of the North Dakota Constitution gives the Supreme Court authority to regulate the admission of persons to practice law “unless otherwise provided by law.”⁸ The opinion determined that the open meetings law was a requirement “otherwise provided by law,” and that the State Bar Board’s meetings must be open.⁹

The second opinion determined that the records of the Judicial Conduct Commission and Disciplinary Board of the North Dakota Supreme Court were not subject to the open records law.¹⁰ The Judicial Conduct Commission was created by the Legislature. The statute creating the Commission specifically states that “[t]he supreme court shall make rules implementing this chapter and providing for confidentiality of proceedings.”¹¹ In contrast to the Judicial Conduct Commission, the Legislature did not give the Supreme Court the authority to create rules regarding the confidentiality of meetings of the Judicial Conference.

The third opinion determined that the Supreme Court’s Gender Fairness Implementation Committee was not subject to the open meetings laws.¹² The Gender Fairness Implementation Committee was created by the Supreme Court rather than the Legislature. This was a key factor in determining that the open meetings law did not apply to the Supreme Court’s Gender Fairness Implementation Committee.¹³

To summarize, the Legislature created both the State Bar Board and the Judicial Conduct Commission. The first opinion determined the State Bar Board meetings are

⁷ N.D.A.G. 90-04. After the opinion was issued, the Supreme Court adopted Admission to Practice R.12, which provides that “[a]ll records maintained by the Board regarding applications for admission to practice, all examination materials, and all proceedings by the Board shall be confidential except as provided by these rules.”

⁸ N.D. Const. art. VI, § 3.

⁹ N.D.A.G. 90-04.

¹⁰ N.D.A.G. 2003-O-06.

¹¹ N.D.C.C. § 27-23-03(5).

¹² N.D.A.G. 2005-O-19.

¹³ N.D.A.G. 2005-O-19.

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open. In the case of the Judicial Conduct Commission, the Legislature specifically gave the Supreme Court authority to pass rules regarding the confidentiality of its proceedings. Because the Supreme Court adopted such rules, the second opinion determined that the Judicial Conduct Commission's records were not open to the public. The Gender Fairness Implementation Committee was not created by the Legislature and so the third opinion determined that its meetings could be closed. In the current case, the Legislature created the Judicial Conference and did not specify that the Supreme Court could pass rules regarding the openness of its meetings.

Florida's open meetings law, is similar to ours. It is applicable to agencies that are "created or established by law."¹⁴ This is similar to our open meetings law's application to "any entity created or recognized by . . . state statute . . . to exercise public authority or perform a governmental function."¹⁵ The Florida Attorney General was asked whether a Circuit Conflict Committee was subject to the state's sunshine law. Florida's Conflict Committee, like the North Dakota Judicial Conference, was created by the state legislature. It approved attorneys to handle conflict cases.¹⁶ The Florida opinion concluded that the Conflict Committee was subject to the open meetings law, stating:

There would appear to be little doubt that such committees, established by and subject to the control of the Legislature are covered by the terms of . . . [the open meetings law]. While a substantial question exists as to whether the Legislature could subject the judiciary or a judicially created committee to the requirements of the Sunshine Law because of the separation of powers doctrine and because the Supreme Court is constitutionally vested with the power to adopt rules for the practice and procedure in all courts . . . such is not the case in the instant inquiry. The circuit conflict committees are created by the Legislature, subject to its dominion and control.¹⁷

It is my opinion the North Dakota Judicial Conference was created by the Legislature and is governed by the law set forth by the Legislature to apply to all bodies it creates; the open meetings law.

¹⁴ Fla. Stat. § 119.011(2).

¹⁵ N.D.C.C. § 44-04-17.1(12)(a).

¹⁶ See Fla. AGO 83-97

¹⁷ Fla. AGO 83-97 (citations omitted).

Issue Two:

"Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity . . ." ¹⁸ The notice must include "the date, time, and location of the meeting and, where practicable, the topics to be considered." ¹⁹ The location of a meeting is a material requirement of N.D.C.C. § 44-04-20(2). ²⁰

As mentioned at the beginning of this opinion, the court attempts to balance the very real security issues facing the judiciary with the public's right to have notice of meeting locations. In this instance, the notice gave the general location of "Bismarck," but failed to state specifically where the meeting was to be held. Simply put, that notice was not sufficient to comply with legislative requirements. As such, it is my opinion that the Judicial Conference violated the open meetings law when it failed to state the specific location of the meeting in its meeting notice.

CONCLUSIONS

The Judicial Conference is a public entity created by state statute and is subject to the open meetings laws. The Conference violated the notice requirements for open meetings when it failed to state the specific location of its meeting in the notice.

STEPS NEEDED TO REMEDY VIOLATION

The requestor did attend the November meeting of the Judicial Conference so there is no remedy necessary for the requestor.

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Assisted by: Mary Kae Kelsch
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¹⁸ N.D.C.C. § 44-04-20(1).

¹⁹ N.D.C.C. § 44-04-20(2).

²⁰ See N.D.A.G. 2005-O-04.