

**LETTER OPINION
2007-L-09**

June 15, 2007

The Honorable George Keiser
State Representative
422 Toronto Drive
Bismarck, ND 58503-0276

Dear Representative Keiser:

Thank you for your letter asking me whether the Insurance Commissioner's (the "Commissioner") participation in the National Association of Insurance Commissioners ("NAIC") violates North Dakota's open meetings law,¹ whether the Insurance Department has spending authority to pay membership dues to the NAIC if the Commissioner and his staff participate in executive sessions, and whether the Commissioner or his staff may participate in the open portion of NAIC meetings if the NAIC makes decisions in executive sessions. For the reasons set forth below, it is my opinion that neither the Commissioner, nor the Commissioner and his staff, are in violation of the open meetings law if they participate in both public and nonpublic sessions at NAIC meetings. It is my further opinion that a state agency may pay membership dues to a national association such as the NAIC.

ANALYSIS

North Dakota's open meetings law provides that all meetings of a public entity must be open to the public except as otherwise specifically provided by law.² Section 44-04-17.1(8) defines a "meeting" as a formal or informal gathering of a "quorum of the members of the governing body of a public entity regarding public business" or "[l]ess than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19."³ "Governing body" is defined as "the multimember body responsible for making a collective decision on behalf of a public entity."⁴

¹ The letter refers to the open records law, but it is clear from the context of the letter that your question relates to the open meetings law. See N.D.C.C. § 44-04-19.

² N.D.C.C. § 44-04-19.

³ N.D.C.C. § 44-04-17.1(8)(a) and (b).

⁴ N.D.C.C. § 44-04-17.1(6).

You ask whether it is a violation of the North Dakota open meetings law for the Commissioner to participate in NAIC executive sessions⁵ on policy or regulatory issues. The NAIC is the organization of insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories.⁶ The North Dakota Insurance Department is a dues-paying member of the NAIC. The NAIC usually holds four meetings per year,⁷ which consist of dozens of committee, task force, and plenary sessions.⁸ The Commissioner and his staff participate in NAIC meetings and activities.

Although the Insurance Department is a public entity,⁹ the Commissioner is a single elected official, not a governing body.¹⁰ In N.D.A.G. 98-F-12, this office explained that “[a] director of a state administrative agency, as a single individual, does not constitute a ‘governing body.’”¹¹ Thus, the Commissioner’s participation in a meeting or executive session does not make the session a “meeting” for purposes of N.D.C.C. § 44-04-19.¹² In addition, there is nothing in the law that makes an elected official’s participation in a national association’s executive session a violation of North Dakota’s open meetings law. Even if an elected official were considered a governing body, the definition of “meeting” in N.D.C.C. ch. 44-04 “does not include the attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.”¹³ In addition, since the Commissioner or his staff may participate in executive sessions, they may also participate in the public portions of NAIC meetings.

You also ask whether the state of North Dakota may pay membership dues to belong to and participate in policy and regulatory discussions and decisions of the NAIC if those discussions and decisions occur in executive session of the NAIC not open to the public. A state agency may pay membership dues to an organization as long as a state agency’s

⁵ North Dakota’s open meetings law defines executive session as “all or part of a meeting that is closed or confidential.” N.D.C.C. § 44-04-17.1(4).

⁶ The NAIC’s History and Background, found at http://www.naic.org/index_about.htm (last viewed May 30, 2007).

⁷ See NAIC Meetings and Events, found at http://www.naic.org/meetings_home.htm, then select “National Meetings Schedule” (last viewed June 1, 2007).

⁸ See NAIC Meetings and Events, found at http://www.naic.org/meetings_home.htm. (last viewed June 1, 2007).

⁹ See generally N.D.C.C. § 44-04-17.1(12).

¹⁰ N.D. Const. art. V, § 2.

¹¹ N.D.A.G. 98-F-12.

¹² *Id.*

¹³ N.D.C.C. § 44-04-17.1(8)(b).

expenditures are within the terms of its appropriation¹⁴ and otherwise comply with state law.¹⁵ Neither the Commissioner's appropriation nor state law prohibit membership in an association that holds executive sessions.

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.¹⁶

¹⁴ The North Dakota Constitution requires that "[a]ll public moneys . . . shall be paid out and disbursed only pursuant to appropriation first made by the legislature." N.D. Const. art. X, § 12(1).

¹⁵ The appropriation for the Insurance Commissioner for the 2007-2009 biennium includes an appropriation of \$2,178,377 for operating expenses. S.B. 2010, § 3, 2007 N.D. Leg. The Office of the Insurance Commissioner, Budget Account No. 401, [Budget] Request Detail, shows a budget request of \$80,000 for "professional development," which is one budget category (Budget Account No. 611000) within the total budget request for operating expenses. North Dakota's NAIC dues, which are currently \$7,725 per year, are clearly within the Insurance Commissioner's appropriation for operating expenses.

¹⁶ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).