

N.D.A.G. Letter to Wheelihan (March 12, 1986)

March 12, 1986

Mr. David M. Wheelihan
Diemert & Wheelihan, P.C.
Attorneys for the City of Ellendale
19 First Avenue South
P.O. Box 39
Ellendale, ND 58436-0039

Dear Mr. Wheelihan:

Thank you for your letter of February 6, 1986, in which you inquire whether a petition of qualified electors requesting the state auditor to perform a financial audit of the city of Ellendale is a public record subject to review by the public.

Access to public records is governed by N.D.C.C. §44-04-18 which states as follows:

44-04-18. ACCESS TO PUBLIC RECORDS - PENALTY.

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

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Although the general requirements of N.D.C.C. §44-04-18 may be restricted by specific exemptions in other parts of the Century Code, there is no such exemption for the petition in question. See generally, N.D.C.C. Ch. 54-10. In the absence of statutory authority, the state auditor may not adopt internal rules requiring that the petition or "audit work papers" remain confidential.

It is my opinion, therefore, that the petition of qualified electors requesting the state auditor to perform a financial audit of the City of Ellendale is a public record that must be made available for public scrutiny.

Sincerely,

Nicholas J. Spaeth

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