

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-32

Date issued: December 31, 1990

Requested by: Wayne O. Solberg, City Attorney, Fargo, North
Dakota

- QUESTION PRESENTED -

Whether field notes of the city assessor are public records and open to public inspection.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the field notes of a city assessor are public records and must be open to public inspection.

- ANALYSIS -

"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." N. D. C. C. ' 44-04-18.

A prior opinion of this office concluded that field notes and work product of a city assessor were not public records and were not required to be open to public inspection. Letter from Assistant Attorney General Gerald W. VandeWalle to Hugh McCutcheon (January 10, 1973). That letter opinion relied upon N. D. C. C. ' 40-19-03 as providing an exception for the field notes and work product of the city assessor from N. D. C. C. ' 44-04-18. The state of the law regarding North Dakota Open Records Act has changed since 1973, thereby requiring a different result.

N. D. Const. Art. XI, ' 6 was approved by the voters on November 7, 1978. That section provides "[u]nless otherwise 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 part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours." N. D. Const. art. XI, ' 6. The March 7, 1977 minutes of the Joint Committee on Constitutional Revision point out that the purpose of the amendment was to make the right to open records more meaningful. The minutes specified that some exceptions to open records currently existed under the statutes for the

Department of Health, Workmens Compensation and Employment Security Bureau and that those exceptions would stand. The commentary further revealed the expectation that any future exceptions would be made by the Legislature. Hearing on SCR 4024 Before the Joint Comm. on Constitutional Revision, 45th ND Log. (March 7, 1977).

The North Dakota Supreme Court has looked at N.D.C.C. ' 44-04-18 and Article XI, Section 6, N.D. Const. on several occasions. In City of Grand Forks v. Grand Forks Herald, 307 N.W.2d 572 (N.D. 1981) the court reviewed the legislative history of N.D.C.C. ' 44-04-18 in determining that the Legislature intended to give an expansive meaning to the term "record." The court rejected the suggestion that public records should be limited to those records which are required by law to be kept and maintained. In the later opinion of Forum Publishing Company v. City of Fargo, 391 N.W.2d 169 (N.D. 1986) the court reiterated its opinion that, in the absence of a specific statutory exemption, records would be subject to the open record law and noted that N.D.C.C. ' 44-04-18 was to be given a broad and expansive reading.

The North Dakota Supreme Court went even further in its 1988 opinion in Hovet v. Hebron School District, 419 N.W.2d 189 (N.D. 1988). The court placed much emphasis on the statute's provision "except as otherwise specifically provided by law."

Thus, because the open-records law provides that governmental records are to be open to the public "Except as otherwise specifically provided by law," an exception to the open-records law may not be implied. In order that a record may be excepted from the open-records law the Legislature must specifically address the status of that type of record - e.g., statements that a certain type of record is confidential or that it is not open to the public.

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Thus, for an exception to the open-records law to exist under our constitutional and statutory provisions, it must be specific, i.e., the Legislature must directly address the status of the record in question, for specific exception, by the plain terms of those provisions, may not be implied.

Id. at 191.

Analyzing N.D.C.C. " 40-04-18 and 40-19-03 in the manner required by the North Dakota Supreme Court in the cases discussed above, I must conclude that section 40-19-03 which specifies that the assessment roll shall be open for public inspection but does not mention any other documents would not meet the criteria set forth by the court. It is my opinion that because the statute does not specifically address the status of the field notes they are public documents open for public inspection.

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- EFFECT -

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.

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