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Government in the Sunshine: The Status of Open Meetings and Open Records Laws in North Dakota

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GOVERNMENT IN THE SUNSHINE: THE STATUS OF OPEN MEETINGS AND OPEN RECORDS LAWS IN NORTH DAKOTA

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I. HISTORICAL ASPECTS

Early Dakotans appreciated the concept of the public's right to know. For example, an 1872 law provided for posting and publication of notices of regular and special township meetings,[1] and in 1874 county commissioners were directed to publish board proceedings.[2]

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The authors wish to acknowledge the assistance of Karen Klein, third year law student at the University of North Dakota, in research for this article.
1. Ch. 51 [1872] General Laws and Memorials and Resolutions of the Territory of Dakota ———.
2. Ch. 25 [1874] General Laws and Memorials and Resolutions of the Territory of Dakota ———.

Closed door sessions were clearly in the minds of 1887 lawmakers who passed a law that city councils "shall sit with open doors and shall keep a journal of their own proceedings."[3]

This appreciation and respect of the public's right to know was also evidenced at the initial meeting of the Joint Commission in Bismarck, North Dakota, on July 16, 1889. The Commission, composed of delegates from the North Dakota and South Dakota constitutional conventions, was responsible for handling the technical problems of dividing Dakota Territory into two states. At the meeting North Dakotans successfully resisted a motion to hold Commission meetings behind closed doors.[4]

The North Dakota Constitution, as approved by the voters on October 1, 1889, contained the following provision dealing with the state legislature:

> The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.[5]

While hardly a manifesto for openness, the constitutional provision nevertheless indicated a general intent for open legislative meetings. It would, unfortunately, be eighty-five years before this language was changed and legislative committee meetings were fully opened.[6]

Various provisions for open meetings and open records gradually crept into North Dakota law as the state's body of statutes grew,[7] but there was no single statute to cover all meetings or records.

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3. Ch. 73, art. 3, § 11 [1887] Laws of the Legislative Assembly of Dakota Territory

4. N.D. CONST. CONVENTION OF 1889, PROCEEDINGS AND DEBATES 662-66 (1889). These debates contain several interesting views on the importance of open meetings.

5. N.D. CONST. art. II, § 50.

6. Executive or closed committee sessions were a common part of North Dakota's legislative procedure until 1973 when a joint rule was recommended by the North Dakota Legislative Council's Legislative Procedure and Arrangements Committee, *see* REP. OF THE N.D. LEG. COUNCIL 99 (1973), and adopted by the 1973 legislature. SENATE AND HOUSE RULES AND COMM'S JOINT RULE 22; OPEN LEG. MEETINGS (1973 & 1975). Joint Rule 22 states:

> All meetings of the Legislative Assembly and its committees, shall be open to the public and the press at all times when pending or proposed legislation is being considered.

This rule was designed to still allow closed or executive sessions for considering non-legislative matters, such as appointments by the Governor. Although the rule allows closed or executive sessions by the North Dakota Senate when considering certain gubernatorial appointments, *see* SENATE RULES 73, 74, the Senate abandoned the use of closed sessions for this purpose in the 1973 legislature and there have been no such sessions since.

The legislature now conducts all of its business in open meetings, including the various political party caucuses. *See, e.g., Political Parties Differ on Steps for Making Legislature "Open,"* Grand Forks Herald, Dec. 5, 1974; *Legislators Won't Close Caucuses,* The Fargo Forum, Feb. 2, 1975. The four-to-one vote by North Dakotans in 1974 on the constitutional amendment mandating open meetings, N.D. CONST. art. 92, would seem to militate against any change in this "open" policy by the legislature. Ch. 604 [1975] Laws of N.D. 1580.

7. For examples of such statutes, *see* A DIGEST OF NORTH DAKOTA LAWS PERTAINING TO ACCESS TO PUBLIC MEETINGS AND INFORMATION, compiled by Rep. Ralph Beede, Republi-

In the early 1950's, Sigma Chi Delta, a national journalism association,[8] prepared model open meetings and open records statutes, and encouraged its state chapters to seek state enactment. The North Dakota chapter endorsed these model laws at its 1956 meeting, as did the North Dakota Press Association.

Open meetings[9] and open records[10] measures were introduced to the legislature on February 1, 1957, by a bi-partisan group of legislators.[11] The bills were referred to the House Committee on Political Subdivisions where they met some opposition. The Committee gave a "do pass" recommendation for the opening meetings bill,[12] but voted to recommend "indefinite postponement" for the open records measure.[13] In spite of this recommendation, the North Dakota House unanimously passed both measures on February 14, 1957.[14]

The two bills were then assigned to the Senate General Affairs Committee, which reported both bills out on February 27, 1957, and these recommendations were adopted by the senate.[15] Both bills, however, were re-referred to committee[16] and came back a second time with committee reports. The committee reports were adopted and placed on the calendar without recommendation.[17] The North Dakota Senate passed the open records bill on March 6, 1957,[18] and two days later it also passed the open meetings bill.[19]

Thus, after communication between legislators and the press

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can, Elgin, North Dakota, and presented at the annual meeting of the North Dakota chapter of Sigma Delta Chi in Valley City, North Dakota in April 1954.

8. The organization is now officially called "The Society of Professional Journalists Sigma Delta Chi."

9. H.B. 694, 35th Leg. Assem. of N.D. (1957).

10. H.B. 695, 35th Leg. Assem. of N.D. (1957).

11. H.R. JOUR., 35th Leg. Assem. of N.D. 181 (1957). There were five sponsors of the bill. The two Democrats were Rep. Walter O. Burk, Williston, and Rep. Arthur A. Link, Alexander. The three Republicans were Rep. Norbert Muggli, Dickinson; Rep. Hjalmer Nygaard, Enderlin; and Rep. Murry Baldwin, Fargo.

12. H.R. JOUR. 35th Leg. Assem. of N.D. 332 (1957) (passed by a vote of 16 to 2).

13. *Id.* (passed by a vote of 19-8). Rep. R. W. Wheeler, Republican, Bismarck, an attorney and a committee member, objected to the blanket public access afforded to both statutes, but said he had no objections to access by the news media. Reps. Burk and Muggli, also committee members, countered his arguments. The Fargo Forum, Feb. 13, 1957.

14. There were identical votes of 111 to 0. H.R. JOUR., 35th Leg. Assem. of N.D. 398-99 (1957). Passage of the bills in the North Dakota House must be credited in great part to the man who played a major role in the "right to know" movement in North Dakota, Rep. Ralph Beede, Republican, Elgin, a newspaper publisher-lawyer. *See* his report note 7 *supra* and his REPORT ON STATE BOARDS AND DEPARTMENTS (1954), which discussed agencies' open meetings-open records policies.

15. S. JOUR. 35th Leg. Assem. of N.D. 570 (1957).

16. The re-referral was spurred by Sen. Ralph Erickstad, Republican, Devils Lake. When the open records bill came before the North Dakota Senate for a vote on March 6, 1957, there was considerable debate. Sen. Erickstad agreed with the bill's general concepts, but said it was overly broad. Sen. Harvey B. Knudson, Republican, Mayville, joined Sen. Erickstad in criticizing the bill. *See* The Fargo Forum, Mar. 7, 1957. Both senators later became justices of the North Dakota Supreme Court.

17. S. JOUR., 35th Leg. Assem. of N.D. 681 (1957).

18. *Id.* at 724 (1957) (passed by a vote of 29 to 18).

19. *Id.* at 877 (1957) (passed by a vote of 30 to 13). When the open meetings bill came before the North Dakota Senate, Sen. Erickstad said that as long as the open records bill had already passed, the open meetings bill should also probably pass. S. JOUR., 35th Leg. Assem. of N.D. 876 (1957). He also said that while he did not object quite as much to the open meetings bill, he still thought both bills were too broad in scope. *Id.*

through letters to the editor, public statements, and editorials,[20] North Dakota finally had two comprehensive statutes dealing with open meetings[21] and open records.[22] Neither of these statutes have been amended since they were passed.

II. OPEN MEETINGS

A. INTRODUCTION

The common law did not recognize the right of a member of the public to attend meetings of governmental bodies.[23] In fact, the United States Congress meets in public only through custom and actually conducts most of its business in committee meetings, approximately one-third of which are usually closed to the public.[24] Thus, without a statute or constitutional provision, any "right" is a qualified one, based solely on grace, custom, public opinion, or common practice.[25]

The democratic belief that people have a right to know and be informed of the activities of their governmental bodies has asserted itself recently in the passage of legislation establishing the public's right to attend meetings of public bodies.[26] A total of forty-nine states have now adopted some form of open meeting requirements.[27]

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20. For a compilation of these comments, *see* N.D. PRESS ASS'N, THE NORTH DAKOTA FREEDOM OF INFORMATION STORY (1957).

21. Ch. 306 [1957] Laws of N.D. 590 (codified in N.D. CENT. CODE § 44-04-19 (1960)).

22. Ch. 305 [1957] Laws of N.D. 590 (codified in N.D. CENT. CODE § 44-04-18 (1960)).

23. H. CROSS, THE PEOPLE'S RIGHT TO KNOW, xiv-xv (1955).

24. *Id.*

25. *Id.*

26. For a discussion of state and proposed federal open meetings laws, *see Project: Government Information and the Rights of Citizens*, 73 MICH. L. REV. 971 (1975). For an overview of case law on state open meetings laws, *see* FREEDOM OF INFORMATION CENTER REP. NO. 354, *The Case of Open Meetings Laws* (School of Journalism, U. of Mo. 1976).

27. ALA. CODE tit. 14, §§ 393-394 (1959); ALASKA STAT. § 44.62.310 (1967), *as amended*, (Cum. Supp. 1975); *id.* §§ 44.62.311 to .312 (Cum. Supp. 1975); ARIZ. REV. STAT. ANN. §§ 38-431 to -431.08 (1974). *as amended*, (Supp. 1975); ARK. STAT. ANN. §§ 6-602, -604 (1956), *as amended*, (Supp. 1976); *id.* §§ 12-2801 to -2803, -2805 to -2807 (1968); CAL. GOV'T CODE §§ 54950-54960 (West 1966), *as amended*, (West Supp. 1976); COLO. REV. STAT. ANN. §§ 24-6-401 to -402 (1974); CONN. GEN. STAT. ANN. §§ 1-21 to -21a (1969), *as amended*, (Supp. 1976); DEL. CODE ANN. tit. 29, § 5109 (1975); FLA. STAT. ANN. § 286.011 (1975); GA. CODE ANN. §§ 23-802, -0012 (1971); *id.* §§ 40-3301 to -3303, -9911 (1975); HAWAII REV. STAT. §§ 92-1 to -3 (1968), *as amended*, (Supp. 1975); *id.* §§ 92-4 to -13, -41 (Supp. 1975); IDAHO CODE §§ 67-2340 to -2346 (Cum. Supp. 1976); ILL. ANN. STAT. ch. 102, §§ 41-46 (Smith-Hurd Supp. 1976); IND. ANN. STAT. §§ 5-14-1-1 to -2, -4 to -6 (Burns 1974); IOWA CODE ANN. §§ 28A.1 to 8 (Supp. 1976); KAN. STAT. ANN. §§ 75-4317 to -4320 (Supp. 1975); LA. REV. STAT. ANN. §§ 42:5 to :8 *as amended*, (Supp. 1976); *id.* § 42:9 (Supp. 1976); ME. REV. STAT. ANN. tit. 1, §§ 401-406 (1964), *as amended*, (Supp. 1976); *id.* § 410 (Supp. 1976); MD. ANN. CODE art. 23A, § 8 (1973) (municipal); *id.* art. 25, § 5 (1973) (county); *id.* art. 41, § 14 (1971) (state) (A new, more encompassing bill, Senate Bill 289, was passed by the Maryland General Assembly in 1976, but was vetoed by the Governor. However, the Governor has issued an executive order, effective July 1, 1976, implementing the bill's expressed policy of openness by providing for public notice of meetings and minutes of proceedings of all state executive agencies. A designation limiting the purposes for which executive sessions may be held supplements the existing open meetings law. The executive order is on file at the University of North Dakota School of Law). MASS. GEN. LAWS ANN. ch. 30A, § 11A (1966), *as amended*, (Supp. 1976) (state), *id.* ch. 34, § 9G (Supp. 1976) (counties), *id.* ch. 39, §§ 23A-23C (Supp. 1976) (municipal); MICH. COMP. LAWS ANN. §§ 15.251 to .253 (Supp. 1976); MINN. STAT. ANN. § 471.705 (1963), *as amended*, (Supp. 1976); MO. ANN. STAT. §§ 610.010 to .030 (Vernon Supp. 1976); MONT. REV. CODE ANN. §§ 82-3401 to -3403 (1966), *as amended*, (Cum. Supp. 1975); NEB. REV. STAT. §§ 84-1408 to -1414 (Supp. 1975); NEV. REV. STAT. §§ 241.010 to .040 (1973); N.H. REV. STAT. ANN. §§

Before analyzing the situation in North Dakota, the rationale of the open meeting principle itself would be helpful for background and perspective:

> The basic argument for open meetings is that public knowledge of the considerations upon which governmental action is based is essential to the democratic process. The people must be able to "go beyond and behind" the decisions reached and be apprised of the "pros and cons" involved if they are to make sound judgments on questions of policy and to select their representatives intelligently. . . . [D]ecisions which result in the expenditure of public funds ought to be made openly so that the people can see how their money is being spent; publicity of expenditures further serves to deter misappropriations, conflicts of interest, and all other forms of official misbehavior. Several other considerations support the principle of open meetings. Government will be more responsive to the governed if officials are able to ascertain public reaction to proposed measures. Public meetings also may operate to provide officials with more accurate information; individual citizens will be able to correct factual misconceptions, particularly in local government where the public is apt to have greater knowledge of the issues involved. . . . Then too, as people better understand the demands of government and the significance of particular issues, they will be better prepared "to accept necessary, and perhaps difficult and unpalatable, measures essential to the public good." Finally open meetings foster more accurate reporting of governmental activities.[28]

The public's right to know, however, must be balanced against the need for public officials to hold sessions in which their viewpoints may be candidly discussed without the fear of becoming locked into a position that may have been taken in the early stages of deliberation on a particular issue.[29]

91-A:1 to :8 (Supp. 1975); N.J. STAT. ANN. §§ 10:4-6 to -21 (Supp. 1976); N.M. STAT. ANN. §§ 5-6-23 to -26 (Supp. 1975); N.C. GEN. STAT. §§ 143.318.1 to .7 (1974); N.D. CENT. CODE § 44-04-19 (1960); OHIO REV. CODE ANN. § 121.22 (Page 1969), *as amended*, (Page Supp. 1975); OKLA. STAT. ANN. tit. 25, §§ 201-202 (Supp. 1975); ORE. REV. STAT. §§ 192.610 to .710 (1975); PA. STAT. ANN. tit. 65, §§ 251-254 (Purdon 1959); *id.* §§ 261-269 (Purdon Supp. 1976); S.C. CODE ANN. §§ 1-20 to -20.1, -20.3 to -20.4 (Cum. Supp. 1975); S.D. COMP. LAWS ANN. §§ 1-25-1 to -5 (1974); TENN. CODE ANN. §§ 8-4401 to -4406 (Cum. Supp. 1975); TEX. REV. CIV. STAT. ANN. art. 6252-17 (Vernon 1970), *as amended*, (Vernon Supp. 1976); UTAH CODE ANN. §§ 52-4-1 to -4 (1970); VT. STAT. ANN. tit. 1, §§ 311-14 (1972), *as amended*, (Cum. Supp. 1975); VA. CODE ANN. §§ 2.1-340 to -341, -343 to -346.1 (1973), *as amended*, (Cum. Supp. 1976); WASH. REV. CODE ANN. §§ 42.30.010 to .920 (1972), *as amended*, (Supp. 1976); WIS. STAT. ANN. § 66.77 (Supp. 1975); WYO. STAT. ANN. §§ 9.692.10 to .16 (Cum. Supp. 1975).

After this article was prepared for publication, the authors learned that three other states have enacted open meeting laws: Kentucky, KY. REV. STAT. § 61.805 (Cum. Serv. 1976); Mississippi, MISS. CODE ANN. ch. 25-41 (Cum. Supp. 1976); and New York, ch. 511, [1976] N.Y. Laws (McKinney).

West Virginia is now the only state without an open meetings provision.

28. Note, *Open Meeting Statutes: The Press Fights for the "Right to Know,"* 75 HARV. L. REV. 1199, 1200-01 (1962) (footnotes omitted).

29. *Id.* at 1202. The note also sets forth the basic objections to the principle of open meetings:

B. NORTH DAKOTA OPEN MEETINGS PROVISIONS

The North Dakota open meetings statute provides:

> Except as otherwise specifically provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.[30]

A related statute on municipal government succinctly provides that "all meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept."[31]

On September 3, 1974, the voters of North Dakota overwhelmingly approved an amendment to the North Dakota Constitution, article 92, which provides:

> Unless otherwise provided by law, all meetings 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 open to the public.[32]

The constitutional measure also amended and re-enacted section 50 to read as follows:

> All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open to the public.

C. DEFINITION OF "MEETING"

North Dakota's statutory and constitutional provisions seem to be clear and direct, but they encompass some problem areas. To begin, what is meant by the word "meeting"? The issue has been addressed as follows:

> There is a spectrum of gatherings of agency members

> Granting the virtue of open meetings in general, substantial objections can be made to enacting the principle as a legal requirement. Publicizing proposed governmental action may benefit citizens whose interests are adverse to the general community or harm individual reputations. In some cases, particularly when sharply conflicting interests must be accomodated, freedom from the pressure of public opinion may be desirable. . . . [I]t appears that officials are often reluctant to request information at open meetings less they create a public image of ignorance. In addition, public officals are prone to waste time making speeches for the benefit of an audience, while in a closed meeting they "are less on their dignity, less inclined to oratory". . . . And publicity of proposals put forth during preliminary discussions may frustrate ultimate agreement, for an official hesitates to abandon a view that he has publicly advocated. A final objection to an open meeting requirement arises from the tendency of the press toward "sensational" reporting.

Id.

30. N.D. CENT. CODE § 44-04-19 (1960).
31. *Id.* § 40-06-02 (1968).
32. The amendment became effective on July 1, 1975. Ch. 604 [1975] Laws of N.D. 1580.

> that can be called a meeting, ranging from formal convocations to transact business to chance encounters where business is discussed. However, neither of these two extremes is an acceptable definition of the statutory word "meeting." Requiring all discussion between members to be open and public would preclude normal living and working by officials. On the other hand, permitting secrecy unless there is formal convocation of a body invites evasion. In formulating a definition of "meeting" the public's need for access to information must be balanced against the official's need to act in an administratively feasible manner.
>
> Public officials must be able to become acquainted with community problems in depth, to test ideas without becoming publicly committed to them, and to feel out opposition and begin compromise. The problem of the courts, legislature and executive department is to find a definition of "meeting" that can accommodate officials and still protect the public's access to information.[33]

The North Dakota Supreme Court has twice reached the issue of what constitutes a legal public meeting. In *School Dist. No.* 35 *of Cass County v. Shinn*,[34] the court held that where the public body, a school board, was confronted by a situation requiring immediate action, the school board could act without complying with the provisions of the open meetings statute.[35] The emergency confronting the school board was that the school building at the opening of the new term had twice the number of students that it could accommodate.[36] As a result of this decision, it is probable that a bona fide emergency meeting due to fire, flash flood or the like would constitute a judicial exception to the requirement of open meetings.

The second case, *Green v. Beste*,[37] involved a statute providing that all meetings of a city council shall be open to the public.[38] The court held that a city council meeting which was conducted on a date fixed by oral arrangement of council members, without public notice thereof, was not a legal public meeting of the council, so that all action taken at the meeting was void.[39]

A recent Minnesota case, *Channel* 10, *Inc. v. Independent School District No.* 709[40] is also of interest here since the Supreme Court of Minnesota construed a statute[41] very similar to North Dakota's open meetings law. The opinion is realistic in suggesting that a social gathering or event may not be used as a ruse to conduct business

33. Comment, *Access to Governmental Information in California*, 54 CALIF. L. REV. 1650, 1651 (1966).
34. 64 N.D. 20, 250 N.W. 23 (1933).
35. *Id.* at 28-29, 250 N.W. at 26-27.
36. *Id.* at 29, 250 N.W. at 26.
37. 76 N.W.2d 165 (N.D. 1956).
38. N.D. CENT. CODE § 40-06-02 (1960).
39. 76 N.W.2d 165, 168-69 (N.D. 1956).
40. 298 Minn. 306, 215 N.W.2d 814 (1974).
41. MINN. STAT. ANN. § 471.705 (1963).

which otherwise should be considered only at an open meeting.[42] Thus the Minnesota Supreme Court would look through any camouflage to the substance of the situation.

D. NOTICE REQUIREMENTS

Providing notice to the public is perhaps one of the most necessary elements in the open meeting concept. As the Minnesota Supreme Court noted in *Channel 10, Inc. v. Independent School District No. 709*,[43] the open meeting concept is hollow if meetings can be held anytime and anywhere without some obligation of notice to the press and the public.[44] An open meeting is "open" only in theory if the public is unaware of it; yet the North Dakota Constitution and open meetings statute make no provision for such notice. As the North Dakota Attorney General has noted, several statutes require certain groups to give adequate notice of their meetings, but there is no general provision for notice of meetings which are open to the public.[45] A bill which would have specifically required such notice was defeated in the 1973 legislature.[46]

If there is a need for any specific provisions in an open meeting statute, the question of notice is probably the most pressing. Many state open meeting laws include "reasonable" notice requirements,[47] with a specific twenty-four hour notice requirement being common for emergency or special situations.[48]

Although notice to the public is important, it must be weighed against the need for immediate action in emergency situations. Arkansas seems to have successfully balanced these two factors in its open meetings provision which states:

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42. 298 Minn. 306, 325, 215 N.W.2d 814, 827 (1974).

43. *Id.* at 316, 215 N.W. at 822.

44. Several changes in Minnesota's open meeting law, MINN. STAT. ANN. § 471.705 (1963), *as amended*, (Supp. 1976), were proposed in 1976, and the Governmental Operations Committee held hearings on such changes.

> The mass media representatives were the strongest opponents to any change in the open meeting law. However, several local units of government did state that they had no drastic problem with the law and felt that its purpose was good.
>
> The House Governmental Operations Committee rejected all but one of the proposed changes to Minnesota's open meeting law. The one change in the law deals with requirements for meeting notices. The change requires "timely and reasonable" notice before meetings. The bill went through the House Governmental Operations Committee and passed the Minnesota House of Representatives but died in the Minnesota State Senate.

Letter from Harry A. Sieben, Jr., Chairperson, Minnesota House Governmental Operations Committee, to *North Dakota Law Review*, June 18, 1976, on file with the *North Dakota Law Review*.

45. Letter from Attorney General to Mrs. Merrill Kuster, Dec. 12, 1975.

46. S.B. 2346, 43rd Leg. Assem. of N.D. (1973).

47. *E.g.*, HAWAII REV. STAT. §§ 92-97 (1968), *as amended*, (Supp. 1975); IOWA CODE ANN. § 28A.4 (Supp. 1976); NEB. REV. STAT. § 84-1411 (Supp. 1975).

48. *E.g.*, ILL. ANN. STAT. ch. 102, § 42.02 (Smith-Hurd Supp. 1976); OHIO REV. CODE ANN. § 121.22(2) (Page Supp. 1976); PA. STAT. ANN. tit. 65, § 253B (Purdon 1959).

> The time and place of each regular meeting shall be furnished to anyone who requests the information.
>
> In the event of emergency, or special meetings the person calling such a meeting shall notify the representatives of the newspapers, radio stations and television stations, if any, located in the county in which the meeting is to be held and which have requested to be so notified of such emergency or special meetings, of the time, place and date at least two [2] hours before such a meeting takes place in order that the public shall have representatives at the meeting.[49]

The Arkansas provision seems to be a quite workable notice requirement. It allows public bodies to act quickly in emergency situations, yet it protects the public from being unaware of the meeting by requiring notice to the media.

As long as no notice provision exists in North Dakota, a "rule of reason" should be applied by the courts to prevent circumvention of the laws. The North Dakota Supreme Court has already indicated that it will do so by holding in *Green v. Beste*[50] that action taken at a meeting without public notice will be void.

E. STATUTORY EXCEPTIONS

Meetings of public bodies which are specifically excluded from application of the North Dakota open meetings law include the following:[51]

The general public is excluded from hearings conducted by a court under the Uniform Juvenile Court Act,[52] which usually involve delinquency or termination of parental rights.[53]

Grand jury sessions are closed to everyone except the witnesses under examination, the judge while advising the grand jury, the state's attorney, the attorney general, and the court reporter.[54]

The State Board of Higher Education is authorized to meet in executive session to appoint and remove employees of the institutions under its control, and to fix their salaries, terms of office, and duties, unless the employees involved request that the meeting shall be open to the public.[55]

Executive sessions are also authorized when a teacher requests a hearing upon notification by the school board that it is contemplating discharge or non-renewal of the teacher's contract:

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49. ARK. STAT. ANN. § 12-2805 (1968).
50. 76 N.W.2d 165, 168-69 (N.D. 1956).
51. Since the exceptions to the North Dakota open meetings law are scattered throughout the North Dakota Century Code under provisions relating to specific agencies, this list is not complete, but provides examples only.
52. N.D. CENT. CODE § 27-20-24(4) (1974).
53. *See* N.D. CENT. CODE § 27-20-03(1) (1974).
54. N.D. CENT. CODE § 29-10.1-28 (1974).
55. *Id.* § 15-10-17(1) (1971).

> The meeting shall be an executive session of the board unless both the school board and the teacher requesting such meeting shall agree that it shall be open to other persons of the public.[56]

F. RECENT COURT DECISIONS

A series of recent North Dakota Supreme Court cases focusing on teacher-school board disputes have explored the status of open meetings. *Hennessy v. Grand Forks School Dist. No. 1*[57] involved a teacher appealing from an adverse judgment of the district court with respect to the refusal of the school board to renew his contract as head football coach.[58] The court held that the executive session allowed by statutory exception calls only for an informal, informational meeting and does not intend a decision-making meeting of the school board.[59] All other meetings of a school board must be open to the public, however.[60]

The supreme court again discussed the statutory exception allowing executive sessions when a school board contemplates non-renewal of a teacher's contract in the case of *Dathe v. Wildrose School Dist. No. 91*.[61] In the course of its opinion, the court considered the nature of an "executive session" and stated:

> An "executive session" is one from which the public is excluded and at which only such selected persons as the board may invite are permitted to be present.[62]

The most recent and important North Dakota Supreme Court holding on this exception is *Peters v. Bowman Public School Dist. No. 1*.[63] The case involved a teacher-counselor at the high school who brought an action for an injunction to restrain the school district from denying him a teaching contract.[64] The school board conducted an executive session on March 4, 1975, for the purpose of evaluating the teacher's performance. The minutes of the meeting and the testimony at the trial clearly indicated that this official board meeting was closed and that its purpose was "teacher evaluation."[65] Although the superintendent and the principal made recommendations on rehiring and stated their reasons, no formal action was taken at the March 4th meeting. The first official action taken upon these re-

56. *Id.* § 15-47-38(2) (Supp. 1975).
57. 206 N.W.2d 876 (N.D. 1973).
58. *Id.* at 878.
59. *Id.* at 882.
60. *Id.*
61. 217 N.W.2d 781 (N.D. 1974).
62. *Id.* at 787.
63. 231 N.W.2d 817 (N.D. 1975).
64. *Id.* at 817.
65. *Id.* at 818.

commendations occurred when the board met in an open meeting on March 18, 1975. The trial court indicated that it could void a school board action only when it is taken at an invalid board meeting.[66] In reversing the trial court, the supreme court held that the action of the school district was a "clear attempt to evade" the state's open meetings law.[67] The court further stated:

> When the official action of the school district is clearly the product of an illegal meeting, . . . such official action is invalid even though such official action is taken at an otherwise legal meeting.[68]

The decision not to renew the teacher's contract was thus illegal and void where, although the formal action to send the letter of nonrenewal was taken at the open meeting of March 18th, the deliberations and reasons for the contemplated nonrenewal were discussed at the invalid executive session of March 4th. In holding that deliberations as well as formal actions are governed by the open meetings law, the North Dakota Supreme Court indicated that it will look through form to the substance of the matter.

Another teacher-school board dispute, based on alleged violations of the fourteenth amendment, was appealed from the United States District Court for the District of North Dakota in *Buhr v. Buffalo Public School Dist. No.* 38.[69] This federal holding is of interest primarily because it recognizes the policies behind the exception for meetings concerning discharge of teachers or non-renewal of teaching contracts. In affirming the trial court's dismissal of the plaintiff's complaint, the appellate court stated:

> In the instant case, the reasons for non-renewal were never publicized. Ms. Buhr was confidentially informed of the reasons only upon her request and then only at a closed meeting of the school board. The confidential nature of these charges was respected even during the trial court proceedings. . . . We fail to discover any suggestion in the undisputed facts contained in the record that the defendants prejudiced Ms. Buhr's ability to secure another teaching position.[70]

G. NORTH DAKOTA ATTORNEY GENERAL OPINIONS

The attorney general's office has issued several opinions and letters concerning North Dakota's open meetings law.

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66. *Id.* at 819.
67. *Id.* at 820.
68. *Id.*
69. 509 F.2d 1196 (8th Cir. 1975).
70. *Id.* at 1199.

1. *School Boards and Committees*

Like the North Dakota Supreme Court, most of the attorney general opinions on the open meetings law focus on school boards and committees.

In an opinion to the State Commissioner of Higher Education,[71] the attorney general declared that when the University of North Dakota Faculty Senate exercises jurisdiction delegated to it by the State Board of Higher Education, it assumes the color of a public body and thus its meetings must be open to the public.[72] In other words, when the Faculty Senate considers matters concerning the university, its meetings must be open.

Perhaps the most important part of this opinion, however, was the policy statement of the attorney general's office:

> We would further note the position of this office has consistently been that meetings of groups connected with public agencies or institutions or groups assuming quasi-public functions should, as a matter of policy, be open to the public except in the most unusual circumstances.[73]

The attorney general later noted that the rationale of this opinion applies to other university committees as well.[74]

Although the open meetings law applies to school board meetings, the attorney general has stated that it does not authorize a person who is not a board member, or who is not recognized by the board, to speak during the meeting or to interrupt the proceedings in any manner not authorized by the board.[75]

The attorney general has recognized that there might be a question as to the status of informal discussions outside regular meetings.[76] On the other hand, the attorney general has also indicated that the only executive sessions a school board can hold are hearings with teachers concerning the nonrenewal of their contracts.[77]

One of the major questions concerning school boards involves meetings of school board committees. The attorney general has stated:

> There is no doubt that any meeting of any governmental agency, including school boards, *at which formal action is taken* is open to the public unless another statute speci-

71. [1966-68] REP. OF ATT'Y GEN. OF N.D. 244 [OP. ATT'Y GEN., Jan. 4, 1967].
72. *Id.* at 246.
73. *Id.*
74. Letter from Attorney General to Gary Thune, June 7, 1974.
75. Letter from Attorney General to Mrs. Reuben Wagner, Nov. 22, 1968.
76. Letter from Attorney General to H. C. Kiehn, June 21, 1973.
77. Letter from Attorney General to Donald Holler, May 21, 1972; Letter from Attorney General to Gary Thune, June 7, 1974. Both letters construed the statutory exception found in N.D. CENT. CODE § 15-47-38(2) (Supp. 1975).

> fically provides that such meetings may be closed to the public. There is some question whether it extends to all meetings of school board committees since such committees are not specified by statute and ordinarily such committees cannot take any formal action with regard to a matter. . . . I would assume the same question would arise with respect to the so-called 'work sessions,' although in such instances, if the school board were using such sessions to determine policy and merely using the regular board meetings for the formal motions necessary to enact such policy, it would be a circumvention of the law which I do not believe would be upheld by the courts.[78]

School board-teacher contract negotiations present one of the most difficult problems in this area. While the teachers' respresentatives usually consider the offers in private, the school board must consider the offers in public where teachers can be present.[79] Where the entire school board negotiates with the teachers, the attorney general has declared that the negotiating sessions as well as the formal consideration of the offers must probably be open.[80]

However, the answer is not as clear when only a committee represents the board in negotiations. The attorney general's office has recognized that in many cases some of the negotiators may not even be school board members.[81] The fact that "the statutes on negotiation are not precise and various [school] districts have adopted various methods of negotiating"[82] further complicates the problem.

The attorney general has also noted that in negotiating sessions it is not uncommon for the two parties to discuss the various propositions in private, and provisions for private discussions are usually included in the negotiation ground rules.[83]

If the committee has the power to bind the board without fur-

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78. Letter from Attorney General to John Dvorak, Feb. 6, 1974 (emphasis added). This was a bit of very accurate estimation on the part of the attorney general's office. This was the exact point made almost one and one-half years later by the North Dakota Supreme Court in Peters v. Bowman School Dist., 231 N.W.2d 817 (N.D. 1975). In an amicus curiae brief filed by the attorney general's office in that case, the attorney general said,

> [I]f, in fact, a governmental body is permitted to meet in executive session contrary to the open meeting law, to discuss the merits of a matter, and then, in open meeting, merely go through the formalities of taking action without discussion, we would agree that the purpose of the opening meeting law as contained in 44-04-19 has been emasculated.

The brief concluded by pleading:

> [I]f the Court holds that the board, although violating the open meeting law, was in accordance with law since they took the formal action at our open meeting, there is little incentive for governing bodies to adhere to the open meeting law.

Brief for Attorney General of North Dakota as Amicus Curiae at ——, Peters v. Bowman School Dist., 231 N.W.2d 817 (N.D. 1975).

79. A bill that would have permitted school boards to consider teacher negotiation offers in closed meetings was defeated in the 1975 legislature. *See* H.B. 1493, 44th Leg. Assem. of N.D. (1975).

80. Letter from Attorney General to David Little, July 21, 1975.

81. Letter from Attorney General to J. B. Graham, Mar. 22, 1976.

82. *Id.*

83. Letter from Attorney General to M. F. Peterson, Jan. 11, 1974.

ther action, the attorney general's office has taken the position that its meetings are probably subject to the open meetings law.[84] But, where the committee must report back to the board for approval, the attorney general has noted that there "is some sentiment that the open meeting law does not apply,"[85] and therefore the negotiating sessions might not have to be open.[86]

Since this matter has not been finally determined by the state courts, the attorney general has suggested that it might be best for the school board to consider the committee as "in effect acting for the board and as such [the negotiating sessions are] a board function which must be conducted in an open meeting unless otherwise provided by law. . . ."[87]

Finally, in response to the question whether the head of a teacher's negotiating team could be forced to leave a school board meeting while the board was discussing matters other than negotiations, the attorney general has stated that the board has no right to request that anyone leave a public meeting.[88]

2. *State Water Commission—Informal Gatherings*

The most recent attorney general opinion on the open meetings law concerned informal meetings of the State Water Commission.[89] This opinion presents a very important statement on the status of informal deliberations by all public bodies in North Dakota.

The question presented was whether the open meetings law "applies to private and informal meetings of public or governmental bodies wherein matters pending before such bodies are discussed."[90]

The opinion reaffirmed the policy of the attorney general's office that "all meetings of public bodies must be open to the public unless a specific statutory or constitutional provision exists which specifies that such meetings may be closed."[91]

On the basis of this policy, the attorney general found that an "informal closed meeting at which no formal action is taken is prohibited" because the open meetings law does "not dintinguish between meetings at which no formal action is taken."[92] The attorney general declared that

> *deliberations as well as formal actions are governed by the open meeting law* and the fact that no formal action is

84. Letter from Attorney General to David Little, July 21, 1975.
85. Letter from Attorney General to J. B. Graham, Mar. 22, 1976.
86. Letter from Attorney General to David Little, July 21, 1975.
87. Letter from Attorney General to J. B. Graham, Mar. 22, 1976. The Bismarck School Board and the Bismarck Education Association, for example, decided in 1976 to hold their negotiating sessions in open meetings.
88. Letter from Attorney General to M. F. Peterson, Jan. 11, 1974.
89. [1974-76] N.D. OP. OF ATT'Y GEN. —— (Mar. 5, 1976).
90. *Id.* at ——.
91. *Id.* at ——.
92. *Id.* at ——.

> taken at a gathering of a public body does not exempt such gathering from the open meeting law if matters of concern to the board in the context of its duties and responsibilities to the public are deliberated at such a gathering.[93]

However, the attorney general concluded that the open meetings law did not necessarily prohibit every gathering at which two or more members of a public body were present.[94] He noted that a blanket prohibition "might well impinge on the constitutional rights of such individuals."[95]

A comparison of this opinion with a recent opinion of the attorney general of Minnesota is of interest on the question of informal gatherings where less than a quorum is involved in the deliberations. A broad interpretation was rendered in the Minnesota opinion:

> To consider a deliberation involving two members of the five member council as significantly different from deliberation of a quorum would be to establish an artificial distinction. . . .
>
> In any event, the purposes of the law could be as effectively subverted by a gathering of two members as by a gathering of three, four or five of the members. . . .
>
> While determining whether a gathering of less than a quorum constitutes a meeting is a more difficult question than that where a quorum is involved, *** we are compelled to conclude that each of the gatherings between two of the five members as described constitutes a meeting. These gatherings, as many others where less than a quorum of a public body meetings, might well subvert the law's purposes just as effectively as a deliberation between a quorum or more, and there is no combination of factors which in our opinion would remove the gatherings from the mandate of the law.[96]

While the recent attorney general's opinion in North Dakota may not be as sweeping as the Minnesota opinion, it may be more realistic. The North Dakota Attorney General stated:

> It is apparent that guidelines can only be applied to factual situations and each factual situation will vary. The spirit of the open meeting law requires that members of public governing bodies do not contrive artificial settings whereby the open meeting law may be circumvented. On the other hand, we cannot conclude that if two or more members of a public governing board are present at a given time and place through circumstances other than to contrive circum-

93. *Id.* at —— (emphasis added).
94. *Id.* at ——.
95. *Id.* at ——.
96. [1974] OP. OF ATT'Y GEN. OF MINN. 39, 42.

vention of the open meeting law, they cannot exchange comments concerning their service on the board.[97]

3. *Other Attorney General Opinions*

In response to an inquiry from an out-of-state group, the attorney general has expressed doubt that North Dakota's open meetings law could be invoked against a state agency by a non-resident.[98]

While most agency meetings must be open to the public, the attorney general's office has taken the position that not all agencies are required to transcribe their meetings, and that if transcripts are made, the agencies are not required to furnish copies to the public.[99]

In reply to a question concerning tape recording of city commission meetings, the attorney general stated that any person should be able to make a verbatim record of what transpires at such meetings unless it would disrupt the meeting.[100] The attorney general later declared that this rule applies to the taping of public meetings in general.[101]

The attorney general has also stated that city council meetings must be open to the public and that he was unaware of any provisions authorizing closed meetings for city council committees dealing with such issues as awarding liquor licenses.[102] He noted that an argument that such meetings should be closed would probably be based on the fact that a committee rather than the entire council is meeting, and that any recommendation of the committee must be presented to the council for approval at an open meeting.[103]

According to the attorney general's office, county civil defense board meetings must be open to the public, including joint meetings with other local governmental bodies.[104]

In an opinion to a county state's attorney,[105] the attorney general declared that a state's attorney's inquest[106] is part of the county coroner's proceedings and therefore must be open to the public. The opinion also noted that rumors resulting from closed hearings can often be more devastating than the actual testimony.[107]

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97. [1974-76] N.D. OP. OF ATT'Y GEN. —— (Mar. 5, 1976).
98. Letter from Attorney General to Wayne K. Tiller, May 13, 1970.
99. *Id.*
100. Letter from Attorney General to Balzer L. Kurtz, Mar. 5, 1971.
101. Letter from Attorney General to John Legenfelder, Sept. 4, 1974.
102. Letter from Attorney General to Mary Vandemark, July 23, 1975.
103. *Id.*
104. Letter from Attorney General to E. H. Krushschwitz, Feb. 5, 1970.
105. [1970-72] REP. OF ATT'Y GEN. OF N.D. 78 [OP. ATT'Y GEN., Feb. 23, 1972].
106. N.D. CENT. CODE § 11-19A-09 (1960) was repealed by ch. 92, § 2 [1973] Laws of N.D. 180, 181 and replaced by the state's attorney's inquiry, ch. 92, § 1 [1973] Laws of N.D. 180 (codified in N.D. CENT. CODE § 11-16-15 (1976)).
107. [1970-72] REP. OF ATT'Y GEN. OF N.D. 78, 83 [OP. ATT'Y GEN., Feb. 23, 1972].

H. ENFORCEMENT

In other jurisdictions, the most common methods by which open meetings are enforced are provisions for criminal penalties[108] and invalidation of action taken at the closed meeting.[109] Many states, including North Dakota, however, do not provide any criminal penalties in their open meeting laws. But, in both *Green v. Beste*[110] and *Peters v. Bowman Public School Dist. No. 1*,[111] the North Dakota Supreme Court declared void all actions taken at an illegal, closed meeting. In fact, in *Peters* it was necessary to invalidate formal actions taken at an open meeting because the deliberations and reasons behind the formal actions were discussed at an earlier, closed, illegal meeting.[112]

Although North Dakota does not provide criminal penalties in its open meetings law, the new criminal code states that "any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor."[113] If North Dakota's open meetings law can be construed to impose a "duty" to hold open meetings, then the criminal penalty would seem to apply.

I. SUMMARY

There remain several rather complex problems relative to the open meeting laws. Public officials are becoming more sophisticated and are not very likely to hold executive sessions at the city hall or school building on meeting nights. Rather, they may hold a "quasi-social" dinner at the home of a member of the board, brief or sound out each other on the controversial issues, then later "adjourn" to the open meeting and engage in "play acting." This circumvention of the law may indeed begin innocently in some cases. As the North Dakota Attorney General states: "[E]ach factual situation will vary."[114] But he then adds that the spirit of the law requires that these officials do not contrive subterfuges to evade the open meeting provisions.[115]

Other complications include the fact that public officials, like other Americans, find it very convenient to discuss matters by telephone; meetings are held at places where it is difficult to attend (after the members of the agency crowd into the designated office, there is no room or standing room only for the public); and meet-

108. *E.g.*, ARK. STAT. ANN. § 12-2807 (1968); IND. STAT. ANN. § 5-14-1-6(a) (Burns 1974); ME. REV. STAT. ANN. tit. 1, § 410 (Supp. 1976).
109. *E.g.*, ARIZ. REV. STAT. ANN. § 38-431.05 (Supp. 1975); IND. STAT. ANN. § 5-14-1-6 (Burns 1974); WYO. STAT. ANN. § 9-692.12 (Cum. Supp. 1975).
110. 76 N.W.2d 165 (N.D. 1956).
111. 231 N.W.2d 817 (N.D. 1975).
112. *Id.* at 820.
113. N.D. CENT. CODE § 12.1-11-06 (1976).
114. [1974-76] N.D. OP. OF ATT'Y GEN. —— (Mar. 5, 1976).
115. *Id.* at ——.

ings are held at times when few members of the public can readily attend.

III. OPEN RECORDS

A. INTRODUCTION

Although there was no common law right of the public to attend meetings of governmental bodies,[116] it is generally recognized that the public had a limited right of access under common law to information contained in the records of public bodies.[117]

This common law right has been supplemented by open records legislation in forty-four states.[118] Since many of these statutes were designed merely to codify the common law right, for the most part they do not define "public record."[119] Therefore, definitions of the common law right still provide direction in the interpretation of the scope of state open records statutes.[120]

In addition, many of the recently enacted state laws[121] have been patterned after the federal Freedom of Information Act.[122]

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116. *See* text accompanying note 23 *supra*.
117. H. CROSS, THE PEOPLE'S RIGHT TO KNOW 55-56 (1953).
118. State open records now in effect are: ALA. CODE tit. 41, §§ 145-147 (1959); ALASKA STAT. § 40.21-030(4) (1971); ARIZ. REV. STAT. ANN. §§ 39-121 to -122 (1974), 39-121.01 to .02 (Supp. 1975). ARK. STAT. ANN. §§ 12-2801 to -2804, -2806 to -2807 (1968); CAL. GOV'T CODE §§ 6250-6261 (West Supp. 1976); COLO. REV. STAT. ANN. §§ 24-72-201 to -206 (1974); CONN. GEN. STAT. ANN. § 1-19 (1969), *as amended*, (Supp. 1976); FLA. STAT. ANN. § 286.011 (1975); GA. CODE ANN. §§ 40-2701 to -2703 (1975); HAWAII REV. STAT. §§ 92-21, -50 to -52 (Supp. 1975); IDAHO CODE §§ 59-1009, -1011 (1976); ILL. REV. STAT. ch. 116, §§ 43.4 to .28 (Supp. 1976); IND. STAT. ANN. §§ 5-14-1-1 to -3, -5 to -6 (Burns 1974); IOWA CODE ANN. §§ 68A.1 to .9 (1973), *as amended*, (Supp. 1976); KAN. STAT. ANN. §§ 45-201 to -203 (1973); LA. REV. STAT. ANN. §§ 44:1 to :7, 44:31 to :39 (West 1950), *as amended*, (Supp. 1976); ME. REV. STAT. ANN. §§ 405-406, *as amended*, (Supp. 1975); *id.* § 405-B (Supp. 1975); MD. ANN. CODE art. 76, §§ 1-5 (1975); MASS. GEN. LAWS ANN. ch. 66, § 10 (1969), *as amended*, (Supp. 1976); MICH. COMP. LAWS ANN. § 750.492 (1968), *as amended*, (Supp. 1976); MINN. STAT. ANN. § 15.17 (1967), *as amended*, (Supp. 1976); MO. ANN. STAT. §§ 610.010 to .030 (Vernon Supp. 1976); MONT. REV. CODES ANN. § 50-512 (1970); NEB. REV. STAT. §§ 84-712 to -712.03 (1971); NEV. REV. STAT. § 239.010 (1975); N.H. REV. STAT. ANN. §§ 91A:4 to :8 (Supp. 1975); N.J. STAT. ANN. §§ 47:1A-1 to -4 (Supp. 1976); N.M. STAT. ANN. §§ 71-5-1 to -3 (1961), *as amended*, (Supp. 1975); N.Y. PUB. OFFICERS LAW §§ 85-89 (McKinney Supp. 1975); N.C. GEN. STAT. §§ 132-1, -6, -9 (1974), *as amended*, (Supp. 1975); N.D. CENT. CODE § 44-04-18 (1960); OHIO REV. CODE ANN. §§ 149.43 to .99 (Page 1969); OKLA. STAT. ANN. tit. 51, § 24 (1962); ORE. REV. STAT. §§ 192.410 to .500 (1975); PA. STAT. ANN. tit. 65, §§ 66.1 to .4 (Purdon 1959), *as amended*, (Purdon Supp. 1976); S.C. CODE ANN. §§ 1-20 to 20.2, 20.4 (Cum. Supp. 1975); S.D. COMP. LAWS ANN. §§ 1-27-1 to -3 (1974); TENN. CODE ANN. §§ 15-304 to -307 (1973), *as amended*, (Cum. Supp. 1975); *id.* § 15-308 (Cum. Supp. 1975); TEX. REV. CIV. STAT. ANN. art. 6252-17a (Vernon Supp. 1975); UTAH CODE ANN. §§ 78-26-1 to -3 (1953), § 63-2-61 (Supp. 1975); VA. CODE ANN. §§ 2.1-340 to -342, -345 to -346 (1973), *as amended*, (Cum. Supp. 1976); *id.* §§ 2.1-341.1 to -346.1 (Cum. Supp. 1976); WASH. REV. CODE ANN. §§ 42.17.250 to .340 (Supp. 1975); WIS. STAT. ANN. §§ 16.80, 19.21 (1972); WYO. STAT. ANN. §§ 9-692.1 to .5 (Cum. Supp. 1975).
119. *See, e.g.*, IDAHO CODE §§ 59-1009, -1011 (1976); MINN. STAT. ANN. § 15.17 (1967), *as amended*, (Supp. 1976); N.D. CENT. CODE § 44-04-18 (1960); WASH. REV. CODE ANN. §§ 42.17.250 to .340 (Supp. 1975).
120. Project, *Government Information and the Rights of Citizens*, 73 MICH. L. REV. 971, 1164 (1975).
121. *E.g.*, ARK. STAT. ANN. §§ 12-2801 to -2807 (1968); N.Y. PUB. OFFICERS LAW §§ 85-89 (McKinney Supp. 1975); S.C. CODE ANN. §§ 1-20 to 20.2, 20.4 (Cum. Supp. 1975); VA. CODE ANN. §§ 2.1-340 to -342, -345 to -346 (1973), *as amended*, (Cum. Supp. 1976).
122. 5 U.S.C. § 552 (1970).

B. NORTH DAKOTA OPEN RECORDS PROVISIONS

The North Dakota open records statute provides:

> Except as otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state, or organizations 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.[123]

In addition to the general provision, there are special provisions which mandate open records for particular governmental bodies. The records of medical county coroners,[124] school districts,[125] the State Highway Department,[126] the Water Conservation Commission,[127] and the state engineer[128] are specifically declared to be public records. In addition, records of charitable organizations which must be filed with the Secretary of State are open to the public.[129] City real property assessment rolls are open for public inspection until the meeting of the city board of equalization.[130] All records of the board of directors of an irrigation district[131] and records of a county board of drainage commissioners are also open for public inspection.[132]

The Secretary of State is designated as the official state records administrator and is charged with maintaining a central microfilm unit to microfilm records for any state body.[133] The personnel of this unit are subject to the same penalties and restrictions regarding open records as the personnel of the agency or department involved.[134]

C. STATUTORY EXCEPTIONS

Records which are closed from public inspection by specific statutory exceptions include the following:[135]

1. *Department of Health*

Records of vital statistics, broadly defined to include "data derived from records of birth, death, fetal death, marriage, divorce, or

123. N.D. CENT. CODE § 44-04-18 (1960).
124. *Id.* § 11-19.1-08 (1976).
125. *Id.* § 15-29-10 (1971).
126. *Id.* § 24-02-11 (1970).
127. *Id.* § 61-02-11 (1960).
128. *Id.* § 61-03-06 (1960).
129. *Id.* §§ 50-22-03 to -04 (1974).
130. *Id.* § 40-19-03 (Supp. 1975).
131. *Id.* § 61-06-21.1 (1960).
132. *Id.* § 61-21-08 (1960).
133. *Id.* § 54-46.1-01 (1974).
134. *Id.* § 54-46.1-07 (1974).
135. This list is not necessarily complete. The exceptions to the open records law are contained within the statutory provisions relating to the public body or agency in question. This apparently was designed to aid persons who may have a question about the records of a particular public or governmental body. An exhaustive list of all statutory exceptions would thus require a perusal of the entire North Dakota Century Code.

other records relating to the health of the populace or the state of the environment,"[136] may not be disclosed to the public or copied unless disclosure is authorized by the regulations of the State Department of Health.[137] The Department may also authorize disclosure for research purposes.[138]

Any information received by the Department of Health through inspection and supervision of addiction hospitals is confidential and may be disclosed only in proceedings involving licensing.[139]

Each state institution must provide the director of institutions with records showing a description of the institutionalized person, dates of entrance and discharge, condition upon discharge, transfer to another institution, and the date and cause of death if death occurs in the institution.[140] This information is not accessible to the public except upon the consent of the director or by the order of the court of record.[141]

Records pertaining to care of the mentally ill and mentally retarded in state institutions are covered separately. All records which directly or indirectly identify a person who is or has been hospitalized because of a mental illness may not be disclosed except to the parent or legal guardian of the patient, a court or mental health board, if disclosure is necessary for proceedings, and a committee of the legislature upon request.[142] A violation of this exception is specifically declared to be a misdemeanor.[143] Records of treatment or care of the mentally retarded are also closed except in a judicial proceeding when ordered by the court, to officers of the law and state agencies, and to the parents or legal guardians.[144]

In addition, all research data obtained in connection with studies by the State Department of Health is confidential,[145] and any information made available to mandatory hospital or extended care facility committees may be used by the committee only for its proper functions.[146]

2. *Social Service Board*

Many records of the North Dakota Social Service Board are also closed to the public. Records concerning persons applying for or receiving aid to dependent children may not be disclosed except for purposes of administering the program and for use in a court proceed-

136. N.D. CENT. CODE § 23-02.1-01(5) (Supp. 1975).
137. *Id.* § 23-02.1-01(5) (Supp. 1975).
138. *Id.* § 23.02.1-27(2) (Supp. 1975).
139. *Id.* § 23-17.1-06 (Supp. 1975).
140. *Id.* §§ 25-01.1-13 (1970), 54-23-19 (1974).
141. *Id.*
142. N.D. CENT. CODE § 25-03-22 (1970).
143. *Id.*
144. N.D. CENT. CODE § 25-16-07 (1970).
145. *Id.* § 23-01-15 (1970).
146. *Id.* § 23-01-02.1 (1970).

ing involving those persons.[147] Reports of the birth of crippled children which must be furnished by the social service board may be used only by that agency in the performance of its duties.[148] Records of foster care homes or licensed institutions may not be disclosed except in judicial proceedings, to officers of the law or state agencies, or to persons who are deemed to have an interest in the welfare of the child.[149] The contents of records of maternity homes for unmarried mothers may also be disclosed only in judicial proceedings upon an order by the court or to law officers and interested state agencies.[150] All information concerning applicants or recipients of aid to the aged, blind or disabled is confidential, except certain information which is open for inspection by elected public officials.[151] Reports of blind persons receiving assistance which must be made to the state highway commissioner are also confidential except in certain judicial proceedings.[152]

The identity of persons reporting incidents of child abuse and neglect is not available to the public or to the person who is the subject of the report.[153] The contents of such a report may be disclosed only to persons authorized to place the child in protective custody, an attending physician, authorized staff of the Social Service Board, any person who is the subject of the report, interested public officials, a court where the information is necessary in proceedings, and persons engaged in bona fide research where the director of social services finds that the information is essential to the purpose of the research.[154]

All records concerning an adoption may be inspected only upon the consent of the court and all interested persons.[155]

3. *Workmen's Compensation Bureau*

Vocational rehabilitation records are confidential,[156] as are employers' reports to the Workmen's Compensation Bureau.[157] Workmen's compensation reports may, however, be published by the Bureau in statistical form for use by state departments and the public.[158]

4. *Employment Security Bureau*

Unemployment compensation records are not open to the pub-

147. *Id.* § 50-09-13 (Supp. 1975).
148. *Id.* § 50-10-08 (Supp. 1975).
149. *Id.* § 50-11-05 (1974).
150. *Id.* § 50-19-10 (1974).
151. *Id.* § 50-24-31 (Supp. 1975).
152. *Id.* § 50-24-31.1 (1974).
153. *Id.* § 50-25.11 (Supp. 1975).
154. *Id.*
155. N.D. CENT. CODE § 14-15-16(2) (1971).
156. *Id.* § 15-20.1-19 (1971).
157. *Id.* § 65-04-15 (Supp. 1975).
158. *Id.*

lic, except to a claimant or his legal representative and then only to the extent necessary for proper presentation of his claim.[159]

5. *Highway Department*

Automobile accident reports may not be disclosed to the public; nor may they be used as evidence in any civil or criminal trial arising out of the accident.[160] Entries on a driver's record or abstract which are more than five years old are not available to the public[161] and such abstracts are never admissible in civil or criminal proceedings arising out of an accident.[162]

6. *Board of Higher Education*

Records kept by institutions under the Board of Higher Education that contain personal information regarding prospective, current, or former students may be disclosed only upon a court order or by the express or implied consent of the student involved.[163]

7. *Other Exceptions*

The contents of state income tax returns are available only to certain state departments, but publication of statistics is not prohibited.[164]

Military discharge papers may be recorded in the district court, and thereafter will be made avilable only to the veteran, his family, and veterans' service officers.[165]

Records of discharge from probation are not available to the public, except upon the written order of a district judge.[166]

Reports by persons operating air contaminant sources and on-site air pollution inspection reports are inaccessible if public disclosure would divulge trade secrets.[167]

Investigation records of the fire marshall are confidential, but other records in the department are open to the public.[168]

Law enforcement records relating to juveniles are to be kept separate from arrest records of adults and may not be opened to public inspection or disclosed to the public.[169] Also court files and records relating to juvenile delinquency and termination of parental rights are closed to the general public.[170]

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159. N.D. CENT. CODE §§ 52-01-02 to -03 (1974).
160. *Id.* § 39-08-14 (1972).
161. *Id.* § 39-16-03.1 (1972).
162. *Id.* § 39-16-03 (1972).
163. *Id.* § 15-10-17(2) (1971).
164. *Id.* § 57-38-57 (1972).
165. *Id.* § 37-01-34 (Supp. 1975).
166. *Id.* § 12-53-18 (1976).
167. *Id.* § 23-25-06 (Supp. 1975).
168. *Id.* § 18-01-28 (1971).
169. *Id.* § 27-20-52 (1974).
170. *Id.* § 27-20-51 (1974).

8. *Penalty for Disclosure*

North Dakota's criminal code provides:

> A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant.[171]

A class C felony carries a maximum penalty of five years imprisonment, a $5,000 fine, or both.[172]

Further penalties are also imposed with respect to certain agencies. For example, anyone convicted of the above crime of disclosing confidential information is disqualified from holding any office or employment in the Workmen's Compensation Bureau.[173]

D. NORTH DAKOTA ATTORNEY GENERAL OPINIONS

Although there are no North Dakota Supreme Court decisions on the scope of exceptions other than those for court records, the attorney general has written opinions and letters concerning open records on a number of occasions. These statements generally favor a policy of openness; yet at the same time they clarify the question of how far an agency must go to make the information available for public inspection.

1. *Records of State Agencies*

In an opinion to the Public Service Commission on the scope of the open records law, the attorney general found that the language of the open records statute includes all records required by law to be kept and filed.[174] These records, he said, could be inspected by the public regardless of the purpose of the inspection. However, the attorney general recognized a need to regulate this inspection by reasonable rules and regulations, saying it was not the intent of the law to convert governmental offices into public libraries through which persons might browse at their leisure.[175] A later opinion stated that the PSC also does not have to present litigation materials to opposing counsel prior to the appropriate time in pending litigation.[176]

Records of the State Highway Department,[177] the Teachers of North Dakota Insurance and Retirement Fund,[178] the North Dakota Soil Conservation Committee,[179] and the State Board of Accountancy[180]

171. *Id.* § 12.1-13-01 (1976).
172. *Id.*
173. N.D. CENT. CODE § 64-04-15 (Supp. 1975).
174. [1956-58] REP. OF ATT'Y GEN. OF N.D. 148 [OP. ATT'Y GEN., June 4, 1958].
175. *Id.*
176. [1966-68] REP. OF ATT'Y GEN. OF N.D. 173, 174 [OP. ATT'Y GEN., May 10, 1967].
177. [1962-64] REP. OF ATT'Y GEN. OF N.D. 152 [OP. ATT'Y GEN., Mar. 9, 1964].
178. Letter from Attorney General to Mrs. C. D. Brown, June 15, 1967.
179. Letter from Attorney General to W. P. Sebens, Oct. 24, 1968.
180. Letter from Attorney General to R. D. Koppenhauer, July 8, 1974.

are open to the public, but the attorney general has held that reasonable regulations may be adopted for public inspection. For example, records must be available for inspection only during reasonable office hours; if copies are furnished upon request, reasonable fees may be charged; and the agency does not have to compile lists of participants.[181]

In addition to the regulations above, the attorney general has stated that the Garrison Conservancy District can also supervise public inspection to maintain the integrity of its financial records.[182]

Records of the state toxocologist's office must be open, with reasonable regulations for copying,[183] but the attorney general has suggested that the office can establish additional ground rules such as refusing all oral requests and sending information only by order of a subpeona.[184]

Lists of appliances purchased by the Jamestown State Hospital[185] and minutes of the Board of Trustees of the State Soldiers' Home[186] are also open records according to the attorney general's office, but again reasonable regulations for inspection and copying may be imposed.

In an opinion to the Tax Department,[187] the attorney general held that the statutory prohibition against divulging certain information "set forth in any report or return required"[188] would not apply if there was no tax return. Therefore, the tax commissioner could disclose, under the authority of the open records law, that his office had not received a particular return.[189]

Employers' records kept by the Workmen's Compensation Bureau are for the Bureau's exclusive use,[190] and therefore the attorney general has found that they are not subject to the open records law.[191]

Hunting license applications are subject to the open records provision according to the attorney general's office, but the State Game and Fish Department does not have to compile lists of applicants.[192] Also state college and university registration records may be used by the Game and Fish Department to determine the residence status of applicants for in-state hunting licenses.[193]

The attorney general has noted that although a specific statu-

181. *See* opinion and letters cited in notes 177-80 *supra*.
182. Letter from Attorney General to Homer Engelhorn, Dec. 12, 1975.
183. Letter from Attorney General to Richard Prouty, Oct. 25, 1963.
184. Letter from Attorney General to Richard Prouty, May 10, 1966.
185. Letter from Attorney General to Leonard Dodgson, Apr. 5, 1972.
186. Letter from Attorney General to F. B. Henderson, Sept. 22, 1965.
187. [1956-58] REP. OF ATT'Y GEN. OF N.D. 149 [OP. ATT'Y GEN. Mar. 21, 1958].
188. N.D. CENT. CODE § 57-38-57(1) (1972).
189. [1956-58] REP. OF ATT'Y GEN. OF N.D. 149 [OP. ATT'Y GEN. Mar. 21, 1958].
190. N.D. CENT. CODE § 65-04-15 (Supp. 1975).
191. [1962-64] REP. OF ATT'Y GEN. OF N.D. 287 [OP. ATT'Y GEN., June 8, 1964].
192. Letter from Attorney General to Wayne K. Tiller, May 13, 1970.
193. Letter from Attorney General to Russ Stuart, Feb. 11, 1970.

tory provision[194] prohibits public access to most records of the Employment Security Bureau, there are some records that are not classified as confidential or privileged.[195] However, an employee-applicant may examine any records or files pertaining to his input into such records, and he can obtain information concerning referrals.[196]

Reports of foreign and domestic corporations filed with the Secretary of State have been held to be open, along with all other records of that office not specifically required by statute to be confidential.[197] In addition, the attorney general has indicated that annual statements furnished by insurance companies to the insurance commissioner are open records;[198] records of the Bank of North Dakota are covered by the open records law;[199] and generally most welfare records are closed.[200]

2. *Records of Local Governmental Bodies*

In an opinion to a county state's attorney, the attorney general has noted that magistrates are required to keep records of traffic convictions,[201] and these records are open to the public.[202] Also the attorney general has held that the open records law would allow a county court to send a copy of its docket concerning traffic violations to another state for use in litigated matters.[203]

The attorney general has stated that a city's water works records are open, although he questioned the status of some of the working papers involved.[204]

Assessment rolls of a municipality are also open to public inspection according to the attorney general.[205] But, he added, the papers and documents used to prepare the assessment role might not have to be available for inspection, since the ordinary work product used in preparation of a public record does not necessarily become a public record itself.[206]

The attorney general has also indicated that generally the records of a county register of deeds are open, but that in some instances the officer in charge might show the records only if a proper interest is shown in them.[207]

Upon a inquiry concerning the status of records of a non-profit

194. N.D. CENT. CODE § 52-01-03 (1974).
195. Letter from Attorney General to Earling Haugland, Feb. 23, 1973.
196. Letter from Attorney General to Sen. Duane Mutch, Mar. 6, 1974.
197. [1960-62] REP. OF ATT'Y GEN. OF N.D. 46 [OP. ATT'Y GEN., May 4, 1962].
198. Letter from Attorney General to R. E. Graham, June 10, 1964.
199. Letter from Attorney General to Herb Thorndahl, Apr. 28, 1970.
200. Letter from Attorney General to Ida Peterson, Feb. 23, 1971.
201. N.D. CENT. CODE § 39-07-11 (Supp. 1975).
202. [1964-66] REP. OF ATT'Y GEN. OF N.D. 189 [OP. ATT'Y GEN., Dec. 2, 1966].
203. Letter from Attorney General to Judge Eckes, May 10, 1967.
204. Letter from Attorney General to C. E. Romsdahl, Oct. 2, 1962.
205. Letter from Attorney General to Hugh McCutcheon, Jan. 10, 1973.
206. *Id.*
207. Letter from Attorney General to Danee Wright, Sept. 3, 1970.

mental health and retardation center providing professional services to various political subdivisions, the attorney general stated that the answer would depend on whether a non-profit corporation is subject to the provisions of the open records law.[208] In this instance, he replied, since the governing bodies of the political subdivisions appointed the center's board of directors, it appeared to be a public agency expending public funds and thus would probably be subject to the open records law.[209]

The attorney general's office has also indicated that records of county school district reorganization committees are open;[210] records of a district health unit are open;[211] and marriage license records must be open;[212] but that veteran's service records are not available for public inspection.[213]

E. INSPECTION OF COURT RECORDS

There have been two North Dakota Supreme Court decisions dealing specifically with the question of which court records are open for inspection. In both cases newspapers were seeking to inspect the court records involved.

In *Grand Forks Herald v. Lyons*,[214] the newspaper was seeking access to county court records pertaining to wills admitted to probate; bonds of executors, administrators, and guardians; all letters issued to such persons; and all marriage licenses.[215]

The newspaper claimed access to the records under the aegis of the open records law, but the district court held that the open records law did not apply to county court records.[216]

The supreme court affirmed the decision by ruling, in what could be termed a unique interpretation, that the reference in the open records law to "agencies of the state"[217] did not include courts.[218] The court suggested that if the legislature had intended to include courts within the provisions of the open records law, it would have specifically provided so.[219]

Since the open records law was found to be inapplicable, the court based its decision on a statutory provision which states: "The records of the [county] court shall be open to inspection during of-

208. Letter from Attorney General to George Unruh, Mar. 17, 1975.
209. *Id.*
210. Letter from Attorney General to O. H. Groff, Apr. 28, 1975.
211. Letter from Attorney General to B. E. Klein, Apr. 18, 1974.
212. Letter from Attorney General to Judge Hoy, June 18, 1965.
213. [1968-70] REP. OF ATT'Y GEN. OF N.D. 525, 528 [OP. ATT'Y GEN., Nov. 6, 1968]; Letter from Attorney General to Vivian Selm, May 28, 1974.
214. 101 N.W.2d 543 (N.D. 1960).
215. Brief for Appellant at 7, Grand Forks Herald v. Lyons, 101 N.W.2d 543 (N.D. 1960).
216. 101 N.W.2d 543, 545 (N.D. 1960).
217. N.D. CENT. CODE § 44-04-18 (1960).
218. 101 N.W.2d 543, 546 (N.D. 1960).
219. *Id.*

fice hours by persons having business therewith."[220] To determine which records were compelled to be open under this provision, the court looked to a statute which specifically designated the records which had to be made available for inspection.[221] The court found that all of the records pertaining to probate that the newspaper was seeking were open for inspection "by persons having business therewith."[222]

However, the court determined that the legislature, in providing for inspection "by persons having business therewith," did not intend to open county court records to the public generally.[223] On the basis of this finding, the court held that the right of the press under this statute was no greater than that of the general public, and the gathering of news was not proper business under the terms of the statute.[224]

The court did, however, allow the newspaper to inspect marriage license records, finding that they were not records of the county court, but rather were public records subject to the open records law.[225]

In *Williston Herald v. O'Connell*,[226] Judge O'Connell of the Williams County Court with Increased Jurisdiction had relied upon the *Lyons* decision to deny the newspaper access to his court's criminal records and files.[227] The newspaper contended that it wanted only the right to examine the records to determine the names of individuals charged with criminal offenses, their addresses, the specific charges filed against them, and the disposition made by the court, including the amount of the fine and the jail sentence.[228]

Although Judge O'Connell expressed a personal view that none of the news of the court should be published, he did concede the public nature of his court operations.[229] His complaint, however, concerned the method by which the newspaper sought to obtain the information. He maintained that the newspaper could get the information by sending a reporter to court sessions, a practice which the newspaper claimed was not feasible. The judge further argued that the

220. N.D. CENT. CODE § 27-07-36 (1974), *as amended*, (Supp. 1975).
221. N.D. CENT. CODE § 27-07-32, which listed various records to be kept by county courts, was repealed by ch. 301, § 5 [1971] Laws of N.D. 694.
222. 101 N.W.2d 543, 546-47 (N.D. 1960).
223. *Id.* at 547.
224. *Id.*
225. 101 N.W.2d 543, 547-48 (N.D. 1960).
226. 151 N.W.2d 748 (N.D. 1967).
227. *Id.* at 761. N.D. CENT. CODE § 27-08-24(12) (1974) requires clerks of county courts of increased jurisdiction to maintain a register of criminal actions like that required for the district courts by N.D. CENT. CODE § 11-17-01(11) (1976), but there is not public inspection mandate included.

The register must include the number and title of each criminal action, a memorandum of each document filed and order in the case, and names of witnesses along with the number of days they attend and their legal fees. N.D. CENT. CODE § 11-17-01(11) (1976).
228. Brief of the Petitioner at 1, Williston Herald v. O'Connell, 151 N.W.2d 758 (N.D. 1967).
229. Letter from Lawrence O'Connell, Judge of the Williams County Court of Increased Jurisdiction, to Walter M. Wick, publisher of the Williston Herald, Jan. 21, 1967.

criminal records were kept in a vault which also contained records made confidential by law.[230]

An amicus curiae brief filed by the North Dakota Press Association distinguished the *Lyons* case as dealing with a county court *without* increased jurisdiction, and its records were therefore more private than public in nature.[231] The Association argued that since a county court with increased jurisdiction handles many of the same matters as a district court, its records should be treated as district court records, which do not appear to be closed.[232] Therefore, it was argued, the records of a county court with increased jurisdiction would not come within the statutory restrictions applicable to county courts.[233]

Judge O'Connell, on the other hand, argued that his court was more like a county court, and therefore inspection was limited to "persons having business therewith"[234] on the basis of the holding in *Lyons*.[235]

The North Dakota Supreme Court, in a unanimous decision, limited the holding in *Lyons* to probate matters and held that the specific statutory restrictions on inspection of county court records did not apply to criminal records of a county court with increased jurisdiction.[236]

The court went on to state that the public and, therefore, the press, has a right to inspect such criminal records, but that this right is not unlimited.[237] It added an important qualification: "The court may, in its discretion, impound its files in a given case when justice so requires, and in that event may deny inspection thereof."[238]

In addition to these court decisions, the North Dakota Attorney General has addressed the issue of inspection of court records on several occasions. In a letter dealing with the public inspection of the criminal records of county courts of increased jurisdiction and district courts, the attorney general seemed to qualify the apparent holding in *Lyons* that the open records law does not apply to courts.[239] After reviewing the *Lyons* case, and various statutes, the attorney general stated:

> [T]he public does have an interest in criminal proceedings and such interest is sufficient to entitle the public,

230. 151 N.W.2d 758, 760 (N.D. 1967).
231. Brief for N.D. Press Ass'n as Amicus Curiae at ——. Williston Herald v. O'Connell, 151 N.W.2d 758 (N.D. 1967).
232. *Id.* at ——.
233. *Id.* at ——.
234. N.D. CENT. CODE § 27-07-36 (1974), *as amended*, (Supp. 1975).
235. 151 N.W.2d 758, 761 (N.D. 1967).
236. *Id.*
237. 151 N.W.2d 758, 762 (N.D. 1967).
238. *Id.* at 763.
239. Letter from Attorney General to Rep. Robert Peterson, Jan. 25, 1967.

> generally, to examine public records to determine whether public matters are being handled properly.
>
> . . . .
>
> [T]he decision of the Supreme Court in the *Lyons* case might, at first glance, appear to hold that no records of a court are open to inspection. Nevertheless, considering the language used in the decision, we do not believe it was the intent of the court to prohibit the inspection by the public of criminal records thereof.[240]

The attorney general later reiterated that the *Lyons* and *O'Connell* decisions did not close all court records, but just certain ones.[241]

The attorney general has also stated that, based on the *Lyons* decision, information concerning estates in county courts is not open for public inspection.[242]

In an opinion concerning the accessibility of county court records, particularly probate files, by those who have legitimate interest in such information,[243] the attorney general reviewed both the *Lyons* and the *O'Connell* decisions and concluded that while probate files are not subject to the open records law, they are open to "persons having business therewith,"[244] and that this would appear to include the holder of certain mineral interests in land under probate.[245] The question arose when the mineral interest holder hired an abstractor to prepare verbatim copies of all public records which might have a bearing on the status of the title, and a county judge denied the abstractor access to probate records.[246]

Thus both the North Dakota Supreme Court and Attorney General seem to treat court records specially, taking the position that certain court records are not generally open to the public under the open records law. Rather, inspection will be granted for certain records only when the person seeking access to the records has a special interest therein, and a court may deny access to anyone when justice requires such action.

F. SUMMARY

The scope of the North Dakota open records law has generated few problems in interpretation. The North Dakota Supreme Court has had to rule only on the status of certain court records. Inquiries to the attorney general have involved clarification as to the status of certain agency records rather than major questions of interpretation concerning the open records law and its exceptions.

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240. *Id.*
241. Letter from Attorney General to Robert Adkins, May 19, 1971.
242. Letter from Attorney General to Mrs. Howard Klingbeil, Sept. 25, 1975.
243. [1974-76] N.D. OP. OF ATT'Y GEN. —— (Nov. 18, 1975).
244. N.D. CENT. CODE § 27-07-36 (1974), *as amended*, (Supp. 1975).
245. [1974-76] N.D. OP. OF ATT'Y GEN. —— (Nov. 18, 1975).
246. *Id.* at ——.

For the most part the statutory exceptions are precisely drawn, leaving very few areas in which a dispute could arise. Also, since they are based on generally recognized public policy, the public has had few objections to any of the statutory exceptions.

IV. CONCLUSION

Ensuring the public access to the greatest possible amount of information about governmental activities is a basic tenet of our democracy. If in fact decisions are made in a local or state public body in violation of the open meeting laws, or if a public body wrongfully denies access to its records, it would be advisable first to give prompt notice of this breach to the agency itself. Because this area of the law is relatively new and still developing, it may be possible that the chairman and/or members of the body were simply uninformed and just acting as they had in the past. If the violations continue, then it may be necessary to take the agency to court by a procedure such as obtaining an injunction prohibiting the officials from denying public access to meetings and/or records.

The North Dakota open meetings and open records laws are flexible, yet clear and direct in their intent. They seem to have presented no major problems in interpretation by the courts or the attorney general. The statutes themselves, the 1974 constitutional amendment, the supreme court decisions, and the attorney general's opinions all clearly set forth the view that government should act in the open, or "in the sunshine."

Statutory exceptions are relatively few in number, generally including only bona fide emergencies and situations involving strong policies such as protecting the reputations of teachers. These exceptions have been strictly construed by the North Dakota Supreme Court. The only judicially created exceptions appear to be those with respect to certain court records, and they are narrow and well-defined. Attempts to evade the laws by subterfuges are invalidated as the emphasis is placed on substance, not form.

The numerous attorney general's opinions and letters, which have involved a wide variety of public bodies, have generally followed a consistent pattern. They indicate a policy of that office to view the laws strictly and to take a general stance of openness unless the legislature has provided otherwise.

These interpretations show that the intent of North Dakota's statutes will be carried out. As a result, governmental bodies in North Dakota will not be allowed to retreat behind a veil of silence. In our democratic system, secrecy is not congenial to truth-seeking.