

N.D.A.G. Letter to Jones (Jan. 28, 1985)

January 28, 1985

Mr. Wayne P. Jones
Ransom County State's Attorney
P.O. Box 391
Lisbon, North Dakota 58054

Dear Mr. Jones:

Thank you for your letter of January 9, 1985, requesting an opinion as to whether North Dakota's Open Meetings Law applies to the Southeast Crime Conference.

North Dakota's Open Meetings Law is found in N.D.C.C. § 44-04-19. This law requires meetings of certain governmental entities or agencies to be open to the public and further requires advance notice of such meetings.

I believe that there are three categories of entities covered by our Open Meetings Law. Those categories are as follows:

1. Public or governmental bodies, boards, bureaus, commissions;
2. Agencies of the state or any political subdivision of the state; and
3. Organizations or agencies supported in whole or in part by public funds, or expending public funds.

Meetings of the three categories or entities described above are covered by the Open Meetings Law and must be open to the public. Furthermore, advance notice of such meetings must be given as required by N.D.C.C. § 44-04-20.

To determine whether meetings of the Southeast Crime Conference are subject to the Open Meetings Law, we must apply the facts as to the make up of the Southeast Crime Conference to the three types covered by the Open Meetings Law I have previously described. I believe the first two categories can be eliminated at the outset. There is no indication in your letter that the Southeast Crime Conference is a public or governmental body, board, bureau, or commission. Furthermore, there is no information presented indicating that this conference is an agency of the state or any of its political subdivisions.

The last category is that covering agencies or organizations supported in whole or in part by public funds, or who expend public funds. Your letter does not clearly indicate whether the conference satisfies this category. You do mention a \$5.00 membership fee which is paid by the member. You do not indicate whether the member is reimbursed for that \$5.00 membership fee by its employing agency which most likely is a state or one of its political

subdivisions. Furthermore, your letter does not make mention whether the conference is supported in part by other public funds, or whether it expends public funds.

I will tell you that the fact that members of this conference travel to its meeting while on duty and/or receive reimbursement for such traveling is not relevant to the question of whether the meeting is an open meeting. We do not determine whether a meeting is covered by the Open Meetings Law by the attendees of that meeting. Instead, scrutiny is made of the entity which is meeting and its authority for existence as well as the funds which support its existence in determining whether that meeting falls within the Open Meetings Law.

In summary, the Southeast Crime Conference is covered by the Open Meetings Law only if it can be shown that it is an agency supported in whole or in part by public funds or it is an agency which expends public funds. If such facts are not in existence, then the meetings of the Southeast Crime Conference are not covered by the Open Meetings Law. Where such a conclusion is drawn, advance notice of such meetings need not be given as required by N.D.C.C. § 44-04-20.

Sincerely,

Nicholas J. Spaeth

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