

N.D.A.G. Letter to DuBois (Nov. 20, 1987)

November 20, 1987

Mr. Lawrence DuBois
Walhalla City Attorney
P. O. Box 633
Cavalier, ND 58220

Dear Mr. DuBois:

Thank you for your letter of October 27, 1987, inquiring as to the applicability of North Dakota's open records law to the city of Walhalla, Office of Economic Development. A staff attorney has spoken to you concerning your request and has gathered further information so as to assist me in responding to your question.

The information I have learned reveals that the office of economic development for the City of Walhalla was created by resolution of the Walhalla City Council. There are no city funds involved in the operation of this office, although it is housed within the city auditor's office in city hall. The money used to operate the Office of Economic Development for the city is obtained from the federal government and the federal grant moneys which are made available to this office. The office expends federal grant moneys in furthering those federal grant programs. A portion of those federal grant moneys are used for the operation and administrative expenses of the office.

Furthermore, the office of economic development administers the community development block grant program on behalf of the State of North Dakota in the Walhalla area. The city keeps a percentage of the block grant moneys collected from private businesses before forwarding the payments to the appropriate state office.

North Dakota's open records law, as found both within the constitution and in our statute, provides that, except as otherwise provided by law, records of all 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. Records which are deemed to be public must be open and accessible for inspection during reasonable office hours. Your inquiry as to the applicability of these laws to the Office of Economic Development for the city of Walhalla occurs as a result of a request from a citizen of Walhalla to review the files of this office as to a grant application made by a private business.

Enclosed are letter opinions from 1976 and 1977 written by then Chief Deputy Attorney General Gerald W. VandeWalle. These letter opinions conclude that entities created by statute are bodies subject to the open meetings and open records laws. It appears to, be the conclusion of this office at that time that entities created by public governing bodies are deemed to be governmental or public in nature. As they were created by a public body

and required to administer a public function, the conclusion was that they were a governmental body within the meaning of the open meetings and open records laws.

Within this conclusion I am in agreement. Entities created through public or governmental process must be considered public or governmental in nature. As such, they are subject to the requirements of the open meetings and open records laws.

I have recently caused the publication of a guide to North Dakota's open records and open meetings laws. This task occurred with the cooperation of the North Dakota Newspaper Association. I have enclosed a copy of this guide hoping that it might be helpful to you and to the city officials of Walhalla in any other open records/open meetings questions which may occur in the future.

I hope the information in my letter as well as the guide will be helpful to you and to the Walhalla city officials.

Sincerely,

Nicholas J. Spaeth

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Enclosures