

Overruled in part by N.D.A.G. 99-O-02

N.D.A.G. Letter to Solbert (Aug. 2, 1991)

August 2, 1991

Honorable Ken Solberg
State Senator
207 Sunset Lane
Rugby, ND 58368

Dear Senator Solberg:

Thank you for your July 15, 1991, letter asking if the North Dakota Insurance Reserve Fund is subject to North Dakota's open meetings and open records laws.

The North Dakota Insurance Reserve Fund ("NDIRF") is an incorporated government self-insurance pool organized pursuant to N.D.C.C. ch. 32-12.1. The members of NDIRF are state agencies or political subdivisions within the state of North Dakota which have made fund contributions or premium payments in order to insure against their legal liabilities. The funds to make the payments are obtained through an annual tax levy or appropriation for an insurance reserve fund. These funds may only be used by political subdivisions for insurance or self-insurance purposes. Such purposes could be met by purchasing insurance from a private insurance company, depositing the funds into an individual insurance reserve fund, or contributing funds to a government self-insurance pool. 1985 N.D. Op. Att'y Gen. 96.

Government self-insurance pools are regulated by N.D.C.C. ch. 26.1-23.1. The pool must be governed by a board of directors elected by pool members and may be incorporated. N.D.C.C. § 26.1-23.1-03. A government self-insurance pool is not an insurance company or insurer. N.D.C.C. § 26.1-23.1-02.

Unless otherwise specifically provided by law, all meetings of governmental bodies and "organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public." N.D. Const. art. XI, § 5; N.D.C.C. § 44-04-19. The North Dakota Supreme Court has adopted a broad interpretation of this language favoring open meetings of all bodies conducting government business. See Dickinson Education Ass'n. v. Dickinson Public School Dist. No. 1, 252 N.W.2d 205 (N.D. 1977) (All school board-teacher contract negotiating sessions, regardless of negotiating committee composition, are open to the public). This construction is consistent with the general policy inherent in the open meetings law, which this office has stated as follows:

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.

Letter from Attorney General Helgi Johanneson to Kenneth Haschke (Jan. 4, 1967).

North Dakota's open records law, using language similar to that found in the open meetings law, provides that unless otherwise specifically provided by law, all records of government bodies and "organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours." N.D. Const. art. XI, § 6; N.D.C.C. § 44-08-18. The term "record" is given an expansive meaning. The term refers to all records retained by a public official in the course of his public duties. City of Grand Forks v. Grand Forks Herald, Inc., 307 N.W.2d 572 (N.D. 1981) (Municipal personnel files are public records). Furthermore, where a government entity has delegated a public duty to a third party, documents in possession of the third party connected with public business are public records within the meaning of N.D.C.C. § 44-04-18. Forum Publishing Company v. City of Fargo, 391 N.W.2d 169 (N.D. 1986) (Job applicants in the possession of a private consulting firm hired by the city to screen applicants for chief of police are public records).

NDIRF is the governing authority of a government self-insurance pool formed pursuant to N.D.C.C. chs. 26.1-23.1 and 32-12.1. A relationship exists whereby the members of NDIRF have by law or contract delegated the transaction of lawful business to NDIRF; therefore, NDIRF falls within the meaning of the term "agencies" as used in sections 44-08-19 and 44-08-18. See Forum Publishing Company, 391 N.W.2d at 172. The governing body of a government self-insurance pool supported by public funds and spending public funds performs a government function. NDIRF's function is no different from that of the governing body of a political subdivision which elects to establish an individual self-insurance fund, except that NDIRF is the governing authority designated to administer pool funds on behalf of numerous participating members. Accordingly, NDIRF is subject to the open meetings and open records laws.

N.D.C.C. § 26.1-23.1-06 provides that information regarding that portion of the funds or reserves of a self-insured government pool established for satisfying a specific claim or cause of action is confidential, and not discoverable in litigation except for limited purposes. Therefore, records containing this information are not public records. Furthermore, it is my opinion that when such information is discussed at a meeting which would otherwise be open to the public, that portion of the meeting relating to the confidential information may be closed. Otherwise, the purpose behind making the information confidential would be subverted. See Marston v. Gainesville Sun Publishing Company, 341 So.2d 783 (Fla. Dist. Ct. App. 1976), cert. denied, Gainesville Sun Publishing Company v. Marston, 352 So.2d 171 (Fla. 1977). This exception should be narrowly construed in a manner that does not frustrate the general policies providing for open meetings and access to public records.

Sincerely,

Nicholas J. Spaeth

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