

**OPINION
67-173**

May 10, 1967 (OPINION)

Honorable Ben J. Wolf

President

Public Service Commission

RE: Public Service Commissioner - Public Records - Records Included

This is in reply to your request for an opinion to the law pertaining to the records maintained by your Commission, whether same is substantially the same as in the year 1958, the definition of "public official", and what is includible in "day to day" correspondence. You mention that the reason for your request is that your Commission is required to expend considerable sums of money through the use of its employees in attending to the requests of persons and corporations who wish to examine records. You call our attention to an opinion dated June 4, 1958, issued by this office in regard to this general subject.

The only substantial change in said law since the date of the previously written opinion to which you make reference is that section 1 of chapter 305 of the 1957 Session Laws has been codified into section 44-04-18 of the North Dakota Century Code, and it has been decided by the Supreme Court of this State in *Grand Forks Herald v. Lyons*, 101 N.W.2d. 543, in effect, that said section 44-04-18 did not apply to county court records.

The previous opinion does not recognize that it was not the intent of the statute to convert all governmental offices into a kind of public library through which persons might browse at their leisure. Your letter further indicates the concomitant of that statement, i.e., that the Commission is required to expend considerable sums of money through the use of its employees in attending to the requests of persons and corporations who wish to examine records, taking them away, to a degree, from performing other duties necessary to the Public Service Commission.

You might further note in this context the statement of the previous opinion that, "* * * I do believe, however, that the custodian of the records may require the person making such a request to specify the record or records which such person wishes to inspect * * *." You might further note in this regard the provision of section 49-01-15 of the North Dakota Century Code to the effect that:

CHARGES FOR COPIES AND RECORDS DETERMINED BY THE PUBLIC SERVICE COMMISSION. The commission shall determine and fix all charges for furnishing copies, records, reports and evidence. All fees charged and collected under this section, except those for transcripts of evidence which shall be paid to the person preparing such transcripts, shall be paid into the general fund of the state treasury."

The direct answer to your problem in this regard might well be to make a schedule of charges concomitant with the cost to the Commission of furnishing such service for assistance in such inspection.

In specific reply to your questions, it is our opinion that the Public Service Commission, its officers and agents are within the meaning of said section 44-04-18 and that all correspondence made as part of the duties of their office come within the purview of that statute. We are not suggesting that the statute necessarily includes a requirement that litigation materials be presented to opposing counsel prior to appropriate time in pending litigation.

HELGI JOHANNESON

Attorney General