

**OPINION  
67-244**

January 4, 1967        (OPINION)

Mr. Kenneth Raschke, Commissioner

Higher Education

RE: State - Public Meetings - UND Faculty Senate

This is in reply to your letter of December 27, 1966, in which you request an opinion relative to the following facts and question:

The Faculty Senate at the University of North Dakota, Grand Forks, North Dakota, is a body organized under the Constitution of the University of North Dakota, a copy of which is attached hereto and made a part of this request.

Section 44-04-19 of the North Dakota Century Code contains the following provision:

Except as otherwise specifically 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.'

In view of the foregoing this office respectfully requests an opinion on the following question:

Is the Faculty Senate of the University of North Dakota required by law to hold open meetings?"

Under the University of North Dakota Constitution the Faculty Senate is a legislative body of the University. It has jurisdiction over such matters as requirements and methods for admission to the institution, requirements for degrees and certificates, determination of curricula, authorization of new courses of study and changes in courses of study, questions of scholarship and attendance, etc., but such jurisdiction is apparently inferior to that of the Faculty Council under the University Constitution. This authority contains some of the matters over which the State Board of Higher Education has jurisdiction. See section 15-10-17 of the North Dakota Century Code and Article 54 of the Amendments to the North Dakota Constitution.

We would note that the statutes and Constitution of the State of North Dakota make no provision with respect to a "Faculty Senate" as such. Section 15-10-13 of the North Dakota Century Code does provide that in each institution of higher education, under the control and subject to the administration of the State Board of Higher Education, the faculty, consisting of the president, instructors, teachers and assistants, has the authority to adopt, subject to such rules and regulations as the State Board of Higher Education may establish, all necessary rules and regulations for the government of the school.

Article 54 subsection 6(b) of the North Dakota Constitution provides that in furtherance of its powers, the State Board of Higher Education shall have the power to delegate to its employees details of the administration of the institutions under its control. We assume the University Constitution finds its legal basis in these statutory and constitutional provisions.

However, with respect to a college or university constitution, we would note the Supreme Court of North Dakota has stated:

It is argued that the provisions of the College constitution have the force and effect of law. It is, however, at most only a rule or regulation approved by the Board. We think it is clear that the College constitution as, a rule or regulation, does not have, and cannot have, the effect of diminishing, limiting, restricting or qualifying the power and authority vested in the Board by our State Constitution and the statutes." See *Posin v. State Board of Higher Education*, 86 N.W.2d., 35 (ND 1957).

The statement of the Supreme Court leaves no doubt but that the absolute control of the University and the related functions rests with the State Board of Higher Education and not with the Faculty Senate or any other faculty group. Such groups have only such powers as the State Board of Higher Education determines they shall be permitted to exercise. In exercising functions which have been delegated to them by the State Board of Higher Education (and which could be exercised by the Board if they chose to do so) the Faculty Senate, although it is not a public body created by the statutes or the Constitution of the State, assumes the color of a public body because of the delegation of such authority.

The Faculty Senate is not supported in whole or in part by public funds except insofar as its members are paid a salary to teach at the University. The Faculty Senate does not expend public funds since this is the responsibility of the State Board of Higher Education.

It is therefore our opinion that the Faculty Senate at the University of North Dakota, when exercising jurisdiction which has been delegated to it by the State Board of Higher Education, assumes the color of a public body as contemplated by section 44-04-19 and meetings of such group must be open to the public when such jurisdiction is being exercised. Meetings at which the exercise of such jurisdiction does not take place need not be opened to the public since the group, in such instance, has no color of a public body.

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 of circumstances.

HELGI JOHANNESON

Attorney General