

**OPINION
79-106**

August 8, 1979 (OPINION)

Honorable William E. Gorder

State Representative

1345 Lawler Avenue

Grafton, North Dakota 58237

Dear Representative Gorder:

We are writing in response to your letter of July 30, 1979, wherein you requested an opinion of this office concerning what constitutes "reasonable office hours" as such language is used in North Dakota Century Code section 44-04-18. In your letter you state that in your local water management office you have a part-time secretary and that some people have had difficulty in seeing public records for this reason.

Section 44-04-18 of the North Dakota Century Code to which you refer in your letter provides as follows:

44-04-18. ACCESS TO PUBLIC RECORDS - PENALTY.

1. Except as otherwise specifically provided by law, all records 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 public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction.

Under the terms of this section, the Legislative Assembly has included no requirement that public records be accessible at certain specific times of the day, but only that they be accessible during "reasonable" office hours. Had the Legislative Assembly intended all public records to be accessible for inspection during specific office hours it could easily have required, for example, that all public records be accessible between 8 a.m. and 5 p.m. local time. This has simply not been required.

We believe the purpose and effect of requiring accessibility during "reasonable" hours is to provide a flexible standard that takes both the goal of maximum accessibility and the practicalities of the operations of diverse public offices into effect. Such a statutory standard takes account of those offices which may be staffed only on a part-time basis. To require accessibility during specific office hours, such as 8 a.m. to 5 p.m., for offices not staffed on such a schedule would without a doubt provide greater accessibility, but could well create a burden on part-time offices which cannot afford

to pay full-time staff, or for whom full-time staff is simply unavailable.

We believe that the meaning of the term "reasonable" office hours takes on its meaning only with references to the facts and circumstances involved. What is reasonable in one case may under different facts be less reasonable or even unreasonable. We would construe "reasonable office hours" to refer to the hours that an office is normally open for purposes other than inspection of public records. If the office in question is normally open from 8 a.m. to 5 p.m. for the general business purposes of that office, it should also be open at the same times of the day for the purposes of allowing inspection of public records. If, on the other hand, the office is only open from 1 p.m. to 5 p.m. for the normal business purposes of that office, then we believe that there is nothing in section 44-04-18 to require that the office staff or other public officials leave other public or private duties at other times of the day or night to open the office and guarantee access to public records. Rather, we believe that an office operating on such a part-time schedule must be open during the same times that it is normally open for other business purposes of the office to allow inspection of public records.

Additionally, allowing inspection of public records in such a manner will most probably prove more convenient for the public over a long period of time as the public would normally have a right to expect access to records covered by section 44-04-18 during those times when the office is otherwise open for public business.

We trust that the foregoing will prove of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General