

**OPINION
79-210**

November 30, 1979 (OPINION)

Mr. Irvin Riedman
Clerk
North Dakota Parole Board
Department of Parole and Probation
Box 1497
Bismarck, North Dakota 58505

Dear Mr. Riedman:

This is in response to your letter of July 31, 1979, in which you state:

Is the North Dakota Parole Department one of those public bodies which have been required, since 1957, to hold its meetings open to the public in accordance with Section 44-04-19, N.D.C.C.?

After considerable research into the question, my legal assistant has been unable to discover any clear authority on either side of this question. There does not appear to be any express exemption of the Parole Department from the requirements of the open meeting law in the Century Code. However, because of the nature of Parole Board meetings and hearings, and specific statutory provisions regarding the confidentiality of information considered by the Parole Board, it seems as though the Parole Department may very well be considered to come within the exceptions provided for in Section 44-04-19, N.D.C.C.

Article 92 of the North Dakota Constitution provides as follows:

Unless otherwise 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. . . .

Section 44-04-19 of the North Dakota Century Code provides as follows:

44-04-19. OPEN GOVERNMENTAL MEETINGS. - 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. The governing members of the above bodies, boards, commissions, agencies, or organizations meeting in violation of this section shall be guilty of an infraction for a first offense. A public or governmental body, board, bureau, commission, or agency meets in violation of this section if it

refuses any person or persons access to such meeting, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.

Section 12-59-04 of the North Dakota Century Code, which deals with records kept by the Parole Board, provides:

12-59-04. RECORDS PRIVILEGED - INSPECTION. - All presentence and preparole reports, and the supervision history, obtained in the discharge of official duty by any member or employee of the board, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, committees of the legislative assembly, or others entitled by law to receive such information, except that the board or court may, in its discretion, permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful.

While we do not construe Section 12-59-04 to exempt the Parole Board from the provisions of Section 44-04-19 as a general rule, it is our opinion that it does exempt those portions of Parole Board meetings which must by necessity be closed to prevent disclosure of privileged presentence and preparole reports and supervision histories. This conclusion will require that in determining policies and procedures for the conduct of Parole Board meetings the Board be keenly aware of the rights of the public.

The 1979 Legislative Assembly considered a situation similar to that which the Parole Board faces and amended Section 12-55-03 of the North Dakota Century Code which deals with meetings of the Board of Pardons. Section 12-55-03 now provides:

12-55-03. BOARD MEETINGS - WHEN AND WHERE HELD - EXECUTIVE SESSIONS - INFORMATION TO BE RELEASED. - The board of pardons shall hold at least three regular meetings in each calendar year, and may hold such other special meetings at such times as it shall determine necessary for the proper performance of its official duties. The regular meetings shall be held on the fourth Monday of March, the second Monday of August, and the first Monday of December of each year at the penitentiary. All special and emergency meetings of the board shall be held in the executive chamber at the state capitol, or in such other place as may be ordered by the board.

The board may meet in executive session only for those portions of its meetings dealing with information specifically privileged by state or federal law. Notice shall be given to the press and the public of all of the board's meetings and the portions thereof that shall be open and closed. The board's secretary shall, within twenty-four hours of the conclusion of each board meeting, or sooner if possible, release information on the actions taken during the closed portions of the meeting. The information shall cover all applications and other matters, and shall include, but need not be limited to, the name of the

applicant, the applicant's crime, the applicant's sentence and the date it was imposed, the date of the board's action, and the reasons for the board's actions.

The Parole Board may wish to consider the language of the second paragraph of that section in setting its policy for the conduct of meetings, and may wish to seek similar statutory language in the sections of law governing the Parole Board during a future legislative session.

We hope this information will be of help to you.

Sincerely,

ALLEN I. OLSON

Attorney General