

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-10

Date Issued: February 6, 1981 (AGO 81-10)

Requested by: Senator Wayne K. Stenehjem

- QUESTION PRESENTED -

Whether meetings of an advisory arbitration panel selected by a school board and a teachers' organization pursuant to their agreement to assist in teacher's contract negotiations are governed by the state's open meeting laws.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that Article 92 of the North Dakota Constitution and sections 44-04-19 and 44-04-20 of the North Dakota Century Code apply to meetings of an advisory arbitration panel selected by a school board and a teachers' organization pursuant to their agreement. - ANALYSIS - In a previous opinion we held 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 circumstances. Attorney General's Opinion of January 4, 1967. More recently we held that an advisory committee established by executive order was a public body. That opinion involved the Judicial Nominating Committee established to assist Governor Link in the process of selecting persons to be considered for appointment to fill judicial vacancies. It is clear that the reason for the establishment of the Judicial Nominating Committee is to serve the public purpose of providing for a selection and reporting process resulting in the appointment of state judges. The Committee was established by the official and public act of the Governor by executive order as a standing committee. Its establishment and initial proceedings have been publicly reported. By terms of the Executive Order the Committee's work will be "supported in whole or in part by public funds." Attorney General's Opinion of July 27, 1979. The advisory arbitration panel in question was set up in part by the school board and used school facilities. Under North Dakota law school board negotiation sessions must be open. In a case of first impression, the North Dakota Supreme Court held that Article 92 and section 44-04-19, N.D.C.C., "required that all school board-teacher contract negotiating sessions, regardless of negotiating committee composition, shall be open to the public." *Dickinson Education Ass'n v. Dickinson Public School District, No. 1*, 252 N.W.2d. 205, 212 (N.D. 1977). (Emphasis supplied). Although an arbitration panel is not a negotiating committee as such, this case does suggest that an entity vested in part by a school board is a public body. Accordingly, the advisory arbitration panel is a "public body" for purposes of sections 44-04-19 and 44-04-20, N.D.C.C., and its meetings must be open. Notice of a public meeting must comply with section 44-04-20, N.D.C.C. Meetings of an arbitration panel would probably be considered special meetings under that section.

Although the news media must make a request for notice of special meetings, my opinion is that the intent of the law is such that consideration should be given to giving news media representatives notice even if they do not request it. The Supreme Court in the Dickinson case, even though it found an open meeting law violation, concluded that it was not necessary to void the completed negotiations. We also believe that because the violation occurred early in the negotiation process (apparently in late March or early April), and subsequent events mitigated such violation - including the public disclosure which resulted from five months of judicially supervised negotiations - such violation constitutes harmless error in the instant case. 252 N.W.2d. 205, 213. The question of harmless error is a subject for the courts to decide. It may, however, have an application to the facts behind your question.

-EFFECT-

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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