

April 11, 2014

Wayne Stenehjem
Attorney General of North Dakota
600 W. Boulevard Ave.
Bismarck, ND 58501

Re: Request for Open Record Opinion

Dear Mr. Stenehjem:

I am writing to request an opinion on whether the Industrial Commission has violated North Dakota's Open Records and Meeting Law, N.D.C.C. Chapter 44-04, and in particular, whether the Industrial Commission has violated Section 44-04-18 by failing to provide minutes of the Industrial Commission meetings within a reasonable time.

This request for an opinion arises out of a request sent to the Industrial Commission on March 5, 2014 by Dr. Ellen Chaffee, who is a volunteer for my campaign for Commissioner of Agriculture. (Copy of open records request is attached as Exhibit A.) The request asked for minutes of the Industrial Commission for the years 2009, 2010, 2011, 2012, 2013, and through March 1, 2014. Despite two follow up requests by Dr. Chaffee asking for the status of the request (see Exhibit B), the first set of minutes for 2009 was not received until April 4, 2014 (see Exhibit C). The minutes for 2010, 2011, 2012, 2013, and 2014 have not been received as of the time I am submitting this request.

As stated by A Guide to North Dakota's Open Records and Meetings Law (hereinafter "Attorney General's Guide"), "Anyone may ask the Attorney General to issue an opinion regarding an alleged violation of open records and meetings law." I am entitled to request this opinion because the open records request was made on my behalf.

I realize that whether a public body has responded within a reasonable time is dependent upon facts of a given situation. As stated in many Attorney General Opinions and in the Attorney General's Guide, "Generally, a 'reasonable time' is measured in hours or a few days, but depending on the amount and type of records requested and various other factors, it may be several days or weeks."


I view the request for the minutes of the Industrial Commission to be a simple request that should be answered in a matter of "a few hours or days rather than several days or weeks." See N.D.A.G. 2002-0-06; N.D.A.G. 2004-0-05.

This request was limited to “minutes” of Industrial Commission meetings for a period of five years. This is not an exorbitant number of records and minutes are the types of records that should be readily available. (Indeed, many other public agencies routinely have minutes available on their website.) As a public body, the Industrial Commission is subject to state law, which provides that minutes must be kept of all open meetings. Further, as stated by prior Attorney General Opinions, a public body such as the Industrial Commission should usually prepare draft minutes prior to the next meeting for approval at the next regularly scheduled meeting of the Industrial Commission meeting. See N.D.A.G. 98-0-04; N.D.A.G. 2004-0-05, n. 1. Even if the draft minutes have not been approved, they must still be released. As stated in the Attorney General Guide: “Minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved.”

As stated in N.D.A.G. 2004-0-05, “Under most circumstances, a delay of a month in providing copies of requested records would be unreasonable.” See also N.D.A.G. 2001-0-12. The Industrial Commission (commonly referred to as the most powerful agency in North Dakota) should not need in excess of 30 days to respond to a simple request for minutes of open meetings. It is not remotely analogous to one of the smaller, volunteer or part-time staffed cities and townships that have occasionally been allowed to have extra time (beyond hours or a few days) to respond to a request. Here, on April 4, 2014, the Industrial Commission proposed to send the 2010 records “the following week;” to send the 2010 records during the week following April 4, 2014; the 2011 records the following week, etc. According to this schedule, the minutes would not be provided until May 2, 2014 – more than two months after the original request. (See email dated April 4, 2014, attached as Exhibit C.) I believe this is unacceptable, and I am asking for your opinion stating that this schedule for release of records is not a reasonable time under North Dakota’s Open Records and Meeting Law.

I look forward to your prompt reply.

Sincerely,
Ryan Taylor,

A handwritten signature in black ink that reads "Ryan Taylor". The signature is written in a cursive style with a large, looping initial "R".

Democratic-NPL Endorsed Candidate for Commissioner of Agriculture

5435 13th Avenue NE
Towner, ND 58788
(701) 537-3632

Attachments: Exhibits A, B and C.

Endorsed by:

Dr. Ellen Chaffee
9500 66TH ST. NE
Bismarck, ND 58503
Ellen.chafee@gmail.com
701-840-1780