

October 12, 1977

Mr. Dale W. Moench
Attorney At Law
P.O. Box 370
Dickinson, North Dakota 58601

RE: Open Meetings - 44-04-19, NDCC

Dear Mr. Moench:

This is in reply to your letter of September 21, 1977, relative to the application of Section 44-04-19 of the NDCC requiring open meetings of public bodies to the occupational and professional boards. Your request is made in your capacity as special assistant attorney general for the Board of Hairdressers and Cosmetologists.

I am not aware of any previous opinions of this office which have considered this precise question. However, I believe the position of this office has been that any board created by statute and administering a public function is a governmental body within the meaning of Section 44-04-19. While I recognize that the occupational licensing boards may be exempt from the definition of "public" or "governmental" for certain purposes such as State Bonding Fund, such definitions would appear applicable only to that particular subject matter. I also note that Section 44-04-19 is worded in the alternative, i.e., it requires all meetings of public or governmental bodies, boards, bureaus or agencies of the State or organizations or agencies supported in whole or in part by public funds. There may be some question as to whether certain of the occupational boards expend "public funds" since the revenue is derived from licenses. However, since the board is created by statute, it would appear to be a public or governmental body subject to the open meeting statute.

If we were to conclude the boards were not public or governmental bodies, it would appear the statutes creating the boards and authorizing them to carry out certain licensing functions could be subject to attack on the grounds the State has no authority to regulate the particular activities except under its police power and if such power is exercised by a public body. We would therefore recommend that all meetings of such boards, except those meetings as may now or hereafter be excluded from the requirement, be open meetings in accordance with Section 44-04-19 of the NDCC

I trust this discussion will adequately set forth our position on the question presented.

Sincerely,

Gerald W. VandeWalle
Chief Deputy Attorney General