

N.D.A.G. Letter to Ring (Nov. 28, 1990)

November 28, 1990

Honorable Jennifer Ring
District 42 Representative
2421 University Avenue
Grand Forks, ND 58201

Dear Representative Ring:

Thank you for your November 2, 1990, letter requesting an opinion regarding the applicability of North Dakota's open meetings law to the Judicial Branch of the University of North Dakota (hereafter UND) Student Senate. You also ask whether the president of UND has the authority to determine whether the Honors program is a major academic division of UND for purposes of determining whether that Program is entitled to representation by an academic senator in the UND Student Senate.

The issue of whether student organizations on North Dakota campuses are subject to North Dakota's open meetings law has never been specifically addressed by this office, nor has it been addressed in the courts in this state. I have also been unable to locate any other case law which addresses this specific issue.

North Dakota's open meetings law essentially provides that meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of state or political subdivisions of the state, as well as organizations or agencies supported in whole or in part by public funds or which expend public funds, must be open to the public. N.D. Const. Art. XI, § 5; N.D.C.C. § 44-04-19. Whether the Student Senate or entities created by the Student Senate are organizations which are supported in whole or in part by public funds or which expend public funds depends, to a large extent, on the factual circumstances involved.

A good argument can be made that the Student Senate is an organization supported, at least in part, by public funds and, therefore, is open to the public. For example, the Student Senate maintains offices at the University. It can also be argued that the Student Senate is an organization which expends public funds and, therefore, must be open to the public. Student activity fees could be considered public funds because they are collected by UND. The Student Senate may also expend additional moneys provided more directly by UND. Thus, there are good arguments that North Dakota's open meetings law applies to the Student Senate and entities created by the Student Senate.

In this case however, the decision need not be based upon North Dakota's open meetings law. The issue of whether the meetings of the Judicial Branch of the Student Senate are open to the public can be resolved by looking to the student body constitution. The student body constitution states that meetings of the Student Senate shall be open. See

Student Body Constitution art. III, § III, C. The Judicial Branch of the Student Senate is an entity created by the Student Senate. Nowhere in the student body constitution and bylaws is it indicated that meetings of the Judicial Branch or any other branches or committees created by the Student Senate may be closed. Thus, the statement in the student body constitution that meetings of the Student Senate shall be open applies to meetings of the Judicial Branch, especially where there is no language in either the student body constitution or the bylaws that indicates that the meetings of the Judicial Branch may be closed. In conclusion, the student body constitution and bylaws indicate that the meetings of the Judicial Branch of the Student Senate should be Open.

Your second question is whether the president of UND has the authority to determine which programs are major academic divisions of UND for purposes of determining whether those programs are entitled to representation by an academic senator in the UND Student Senate. The student body constitution states:

The method of representation [on the Student Senate] shall be prescribed in the by-laws except that each college or major academic division shall be entitled to at least one (1) Senator.

Student Body Constitution art. V, § II, C. The issue is whether the Honors Program constitutes a major academic division, entitling it to a seat on the Student Senate. The bylaws do not include the Honors Program in its list of colleges or major academic divisions which are represented by academic senators in the Student Senate.

See By-Laws to the Constitution, art. I, § I, G., 2. The president of UND has stated that the Honors Program constitutes a major academic division and thus, "legitimately merits representation as a separate academic unit" Letter of February 15, 1989, from UND President Thomas Clifford and Vice President for Academic Affairs Alice Clark to the Student Senate.

The question is whether the Student Senate is required to give the Honors Program its own senate seat because President Clifford has determined that the Honors Program constitutes a major academic division. The student body constitution must be approved "by vote of the general student body and by the President of the University." Code of Student Life, University of North Dakota, § 4-2, C, 1 (1989-90). Section 4-2, C, 1 indicates that the president of UND has broad powers over the operations of the Student Senate. When the Student Senate takes particular action with which the president disagrees, the president has the discretion to either require that the Student Senate proceed in a particular manner, or allow the Student Senate's decision to stand. Thus, in answer to your question, the president does have the authority to determine whether the Honors Program is a major academic division for purposes of determining whether that Program is entitled to representation by an academic senator in the UND Student Senate. The president may, however, leave the final decision up to the Student Senate.

I hope this discussion is useful to you.

Sincerely,

Nicholas J. Spaeth

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