N.D.A.G. Letter to McIntee (Sep. 19, 1991)

September 19, 1991

Mr. Michael S. McIntee
City Attorney
McIntee Law Firm
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Dear Mr. McIntee:

Thank you for your August 27, 1991, letter inquiring about whether city council meetings involving discussion of disciplinary action against the Chief of Police may be closed to the public.

As you are aware, N.D.C.C. § 44-04-19 states, "except as otherwise specifically provided by law, all meetings of . . . any political subdivision of the state . . . shall be open to the public." In addition, N.D.C.C. § 40-06-02 requires all meetings of the governing bodies of municipalities be open to the public. Thus, all city council meetings must be open to the public unless some other state statute specifically indicates otherwise.

No statute exempts a city council from the open meetings law when discussing disciplinary action against its Chief of Police. If a city council meets unlawfully in a closed meeting to discuss disciplinary action against the Chief of Police, official action taken by the city council at a subsequent open meeting will likely be invalid. See <u>Peters v. Bowman Public School District</u>, 31 N.W.2d 817 (N.D. 1975), where a school district's decision not to renew a teacher's contract was held invalid because the school board had met in a closed session to discuss the reasons for the contemplated nonrenewal.

A statute that may allow a certain portion of the meeting be closed is N.D.C.C. § 44-04-19.1, which allows that portion of a meeting of a public agency during which an attorney consultation occurs to be closed to the public.

Based on the foregoing, I must conclude that city council meetings involving the discussion of disciplinary action against the city's Chief of Police must be open to the public. In addition, discussion of disciplinary action that does not constitute "attorney consultation" as defined in N.D.C.C. § 44-04-19.1 must be open to the Public.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth
jfl