

N.D.A.G. Letter to Manly (Dec. 27, 1984)

December 27, 1984

Robert E. Manly
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P. O. Box 949
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Dear Bob:

Thank you for your letter of November 15, 1984, concerning North Dakota's open records law and county probate records.

I am in agreement with Judge Bekken that the earlier Attorney General opinions and letters on this subject are no longer applicable given the repeal of Chapters 27-07 and 27-08 of the North Dakota Century Code, dealing with county courts and county courts of increased jurisdiction, respectively. Both of these chapters were replaced by Chapter 27-07.1, N.D.C.C., dealing with county courts.

Section 44-04-18, N.D.C.C., establishes our state's open records law which reads as follows:

Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

There is no statutory exception for probate records. However, several opinions of the North Dakota Supreme Court are relevant to the question presented.

In Grand Forks Herald v. Lyons, 101 N.W.2d 543 (N.D. 1960), the North Dakota Supreme Court interpreted Section 27-0736, N.D.C.C., which as noted above has been repealed. The Court held that Section 44-0418 of the 1957 Supplement to the 1943 Revised Code, now recodified as Section 44-04-18, N.D.C.C., did not apply to records of the county court. 101 N.W.2d 543, 545. The Court also held that a county court did not fall within the meaning of "agencies of the state." 101 N.W.2d 543, 546. In State v. O'Connell, 151 N.W.2d 758 (N.D. 1967), the Court interpreted Section 2708-10, N.D.C.C., and held as follows:

The statute is silent as to any rights of inspection of these records. If such rights exist, it is not because of any statutory authority, but because judicial

records, generally, are accessible to the public for any proper purpose. 151 N.W.2d 758, 762.

Although this case dealt with criminal records, the holding of the case in my opinion covers more than criminal records.

We have carefully considered this question. We believe that it is the right of the public to inspect the records of judicial proceedings after such proceedings are completed and entered in the docket of the court. . . . Such right, however, is not an unlimited one, as contended for by the petitioner. The court may, in its discretion, impound its files in a given case when justice so requires, and in that event may deny inspection thereof. 151 N.W.2d 758, 763, citations omitted.

The Supreme Court also noted that the county court "has the power and authority to provide reasonable rules and regulations for such inspection as to when, where, and how the inspection may be made." 151 N.W.2d 758, 763.

Accordingly, it is my opinion that the records of the county court under Section 27-07.1-08, N.D.C.C., are accessible to the public because they are judicial records and not because of the provisions of Section 44-04-18, N.D.C.C. The county court may in its discretion impound its files in any given case when justice so requires and it may further set reasonable rules and restrictions as to under what condition these judicial records are to be accessible to the public for any proper purpose.

Sincerely,

Robert O. Wefald

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