



ATTORNEY GENERAL OPINIONS

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One of the Attorney General's most important and demanding statutory duties is to respond in writing to questions of law in which the state or any of its officers, bureaus, boards, commissions, or agencies have an interest.

Attorney General Opinions answer legal questions that relate to a public official's duties, interpret laws, and guide state and local officials in applying laws.

What is An Attorney General's Opinion?

An Opinion is similar to a legal precedent and stands until a court or later opinion overrules it, or new legislation is enacted to change the statute in question. Opinions are not binding on the courts, but they are usually given careful consideration. An Attorney General's opinion protects a public official who follows it from liability, even if a court would later disagree with the opinion.

Who May Request an Opinion?

State law restricts who may request and receive an Attorney General's Opinion. The Attorney General may issue legal opinions only to: state officers, state agencies, the state legislature, county state's attorneys, city attorneys, city governing bodies, water resource boards, soil conservation districts, health district boards, the Judicial Conduct Commission, and the Garrison Diversion Conservancy District.

Any member of the public, however, may request an opinion relating to an alleged violation of the state's open records or open meetings laws by a public entity.

What Questions Are Not Appropriate for An Opinion?

The Attorney General issues opinions on questions of law related to matters involving state statutes, the state constitution, and matters having statewide significance. There are several situations for which an opinion typically would be unsuitable. These include when the question presented:

- is one of fact rather than law;
- is imminently likely to be or is presently pending before a court of law, or a court having jurisdiction has already ruled on the issue;
- concerns internal operation or management of the judicial branch of government;
- is moot or hypothetical;
- calls for interpreting local ordinances or charters;
- involves matters regarding whether a criminal offense has occurred;
- involves the constitutionality of a statute, or
- amounts to private legal advice to individuals or businesses (even if the request is made by someone otherwise entitled to an opinion).

City or County Issues

Because city attorneys and county state's attorneys have a statutory duty to advise the local government officials and agencies within their jurisdiction, this office may decline to issue opinions on matters that should be, or which already have been, addressed by the political subdivision's legal advisor.

Requesting An Opinion

1. Review the guidelines about what questions are appropriate for Attorney General Opinions.
2. Send a written request to the Office of Attorney General.
3. It is helpful to state why the question is significant, and the context in which the issue arises. Try to provide any information that may be useful, including relevant research, statutes, cases, prior opinions, and agency rules.
4. When requesting an opinion, county state's attorneys and city attorneys must include their preliminary research on the issue, along with any previously issued advice, memorandum, or conclusion.
5. Explain any special needs for expedited issuance. Please note that these needs will be considered but it is impossible to guarantee the exact date an opinion will be issued.

Note: When the Legislature is in session, requests for opinions from members of the Legislative Assembly will be accepted only after the request has received approval from a majority or minority leader.

The Drafting Process

The Attorney General first determines whether a formal opinion is the appropriate response. The Attorney General may deny a request for an opinion. Often, the issue may be addressed or resolved through an informal process.

Attorney General Opinions involve a lengthy research and review process. The request is assigned to an Assistant Attorney General who analyzes the issues, conducts extensive research, and prepares a draft opinion. Each draft opinion is reviewed by at least one other Assistant Attorney General, as well as the Division Director, the Chief Deputy Attorney General, and the Attorney General. The opinion may be revised throughout the process. The opinion is issued to the requesting entity.

Because of the legal significance of an Attorney General's Opinion, the opinion drafting process is exhaustive and generally takes around 120 to 180 days; complex issues may take longer.

Where Can One Find Attorney General Opinions?

- Published Attorney General Opinions issued from 1942 to date can be downloaded at www.ag.nd.gov by clicking on the "Legal Opinions" link. Copies of Attorney General opinions are provided to the State Law Library, Westlaw and Lexis.
- Individual copies of opinions issued prior to 1942 may be requested by contacting the Office of Attorney General at (701) 328-2210 or via e-mail to ndag@nd.gov.
- Anyone may register to receive e-mail notification when Attorney General opinions are issued. Send an e-mail to ndag@nd.gov or call (701) 328-2210.

Opinions on Open Records and Open Meeting Violations

Anyone may request an opinion on an alleged violation of the state's open records or open meetings laws by a public entity. Additional information is available on the Attorney General's on the "Open Records & Meetings" link.