

**LETTER OPINION  
2004-L-64**

October 28, 2004

The Honorable John Andrist  
State Senate  
PO Box E  
Crosby, ND 58730-0660

Dear Senator Andrist:

Thank you for your letter asking whether a City of Fargo election measure concerning publishing city commission meeting minutes is lawfully on the November 2, 2004, ballot. For the reasons indicated below, it is my opinion that the City of Fargo measure relating to publishing city commission meeting minutes is not lawfully on the November 2, 2004, ballot.

**ANALYSIS**

Election measures concerning the publication of city government proceedings are governed by N.D.C.C. § 40-01-09.1, which provides as follows:

Beginning with the 1996 biennial municipal elections, and every four years thereafter, all cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. If voters approve publication, the governing body shall, within seven days after each of its meetings, give its official newspaper, for publication, the complete minutes, or a complete summary showing the substantive actions taken at the meeting.

Roll call votes must be published, but may be indicated as "unanimous" where appropriate. A list of the individual checks written by the city and approved by the governing body, showing the payee and the amount of each check, must be published. However, employee salary checks need not be published if the governing body elects to publish an annual salary schedule for each employee. When applicable, these minutes may be labeled as being published subject to the governing

body's review and revision. The minutes shall continue to be published until disapproved at a succeeding quadrennial election.

(Emphasis added.) You indicate that a similar measure was on the ballot on June 8, 2004, and that the measure favoring publication passed. Given that the measure passed, you question whether it may appear on the ballot again so soon. If the measure has been improperly placed on the ballot, the results of the election will have no legally binding effect. N.D.A.G. 96-L-192.

“The primary goal in construing the meaning of a statute is to discover the intent of the Legislature. Northern X-Ray Company, Inc. v. Hanson, 542 N.W.2d 733, 735 (N.D. 1996). In seeking to determine legislative intent, courts will look first to the language of the statute. ‘If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute.’ Id.” N.D.A.G. 2003-L-45 (quoting N.D.A.G. 2003-L-33). Section 40-01-09.1, N.D.C.C., plainly states that beginning in 1996 and every four years thereafter the question of whether minutes of a governing body shall be published in the official newspaper must be placed on the ballot. The statute does not authorize the question to be placed on the ballot at any other time. Moreover, it also provides that “the minutes shall continue to be published until disapproved at a succeeding quadrennial election.” Id. The legislative language makes it unmistakably clear that if the question passes, it remains in effect and may not be reconsidered for four years.

It might be argued that even if N.D.C.C. § 40-01-09.1 does not authorize more frequent votes on publication, the measure in question merely amounts to a straw or advisory vote, which has long been recognized in North Dakota. Straw or advisory votes have, in fact, been recognized in certain circumstances; however, they are nonbinding and without legal effect. See e.g. N.D.A.G. Letter to Berg (Mar. 9, 1988).

N.D.A.G. 96-L-192 discussed advisory or straw votes on ballot measures:

Although the results of the ballot measure are not binding, the results may be considered as an advisory or straw vote . . . . See Enget letter. “[A] board of county commissioners may seek a nonbinding, advisory opinion of its constituents in implementing a specific statutory authority given to the board by the constitution or a statute. . . . However, the board may not seek an advisory opinion or straw vote of the electorate on matters not within its statutory or constitutional authority.” Letter from Attorney General Nicholas J. Spaeth to Tom P. Slorby (December 23, 1987).

Section 40-01-09.1, N.D.C.C., only authorizes placement of the question of publication of minutes on the ballot at four year intervals and, as noted above, the city governing board has no authority under the statute to discontinue publication of the minutes until the measure is “disapproved at a succeeding quadrennial election.” N.D.C.C. § 40-01-09.1.

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Thus, a city governing board has no statutory authority over publishing minutes for the intervening four year period once publication has been approved, and submitting the question to the electorate during the intervening period fails even as a nonbinding straw or advisory vote.

Based on the foregoing, it is my opinion that placement of the City of Fargo measure relating to publishing minutes of city commission meetings on the upcoming November 2, 2004, ballot is unlawful, and any results of a vote on the measure are of no legal effect.

Because this opinion has determined that placement of the measure on the upcoming ballot is unlawful, it is unnecessary to address the other questions you raise.

Sincerely,

Wayne Stenehjem  
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).