

**N.D.A.G. Letter to Seaworth (April 22, 1986)**

April 22, 1986

Mr. Hugh P. Seaworth  
Bismarck City Attorney  
221 North 5th Street  
P.O. Box 5503  
Bismarck, ND 58502

Dear Mr. Seaworth:

Thank you for your letter dated December 6, 1985. I apologize for the delay in responding. In your letter, you requested an Attorney General's opinion as to tape recordings of city commission meetings.

Your inquiry is whether a board of city commissioners may use tape recordings of its proceedings merely as an aid in preparation of the journal or minutes of meetings; and, secondly, whether these tape recordings may be erased after preparation of the journal and minutes have been completed.

N.D.C.C. § 40-06-02 provides as follows:

40-06-02. MEETINGS TO BE PUBLIC -- JOURNAL OF PROCEEDINGS TO BE KEPT. All meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept.

This section clearly requires that a governing body keep a journal of its proceedings.

In addition, N.D.C.C. §21-06-05 provides, in relevant part, as follows:

21-06-05. DOCUMENTS WHICH MAY BE DESTROYED --WHEN. After the same have been offered to the state archivist for preservation as archival resources, the auditor or clerk of a school district, city, or park district may destroy, by any suitable means as determined by the governing body, their records after the same have become five years old except the following which shall be retained as permanent records of the school district, city, or park district:

Governing body's proceedings.

\* \* \*

This section makes it clear that the proceedings of a governing body shall be retained as permanent records and, as such, they may not be destroyed after being retained for five years.

It would appear, based on an interpretation of N.D.C.C. §§ 40-06-02 and 21-06-05, that the journal of a governing body's proceedings constitutes the official record of such proceedings. Therefore, the journal must be retained as a permanent record of such proceedings.

Since N.D.C.C. §40-06-02 requires only that a journal of the proceedings of a governing body be kept and makes no mention of tape recordings as part of that official record, it would appear that there is no statutory requirement that the tape recordings of proceedings of a governing body, to be used solely as an aid in preparation of the minutes and journal, be retained as a part of the permanent record. Of course, it would be advisable that such tape recordings be retained and not erased until such time as preparation of the minutes and journal have been completed and approved.

Sincerely

Nicholas J. Spaeth

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