

**OPINION  
64-209**

May 7, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Elections - Notice of Election

Letter of date May 1, 1964, from Superintendent of School, Gladstone Public School District No. 2, to your office was referred to my desk for attention and reply.

The question therein is stated as:

\* \* \* \* We had the notice of election for the increase in debt limits and for the actual bond issue published in the newspaper; however, we also posted these notices in the required number of 'conspicuous' places in the district. Will it be necessary for us to furnish affidavits as to posting of these notices or will the affidavits of publication suffice?

Please advise us as to what our next step should be."

The statutory provisions governing these matters of notices of election are as follows:

Section 15-48-02 of the North Dakota Century Code, as amended, states:

NOTICE OF ELECTION - SPECIAL ELECTIONS. The notice of election, whether for the annual school election or for a special election held pursuant to the provisions of this chapter, shall state clearly the question to be voted upon. Unless such question is submitted at the annual school election, a special election shall be called, and at least fourteen days' notice of such election shall be given by publishing a notice thereof in the official newspaper of the county in which the school district is located, and if no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in the state."

Section 21-03-12 of the North Dakota Century Code states:

NOTICE OF ELECTION TO BE GIVEN. The auditor, clerk, secretary, or similarly acting officer, by whatever name designated, of the municipality shall give notice of election by causing a notice thereof to be published once each week for at least two weeks prior to the date thereof in the official newspaper of such municipality, if any, or if it has none, in any newspaper published therein, or if no newspaper is published therein, then by posting copies of such notice in five public places in the municipality. the date of such posting or first publication shall be at least fifteen days before the date of such election, exclusive of the day of such posting or first publication. Such notice shall specify the date, polling hours, and polling places of such election and shall contain a

complete copy of the initial resolution and a statement that the question to be submitted thereat shall be whether said initial resolution shall be approved. If said question is to be submitted at a municipal election, the notice herein prescribed may be separate from the notice of such municipal election and may refer to the notice of such municipal election for the designation of polling places."

Assuming factually that the municipality has an official newspaper, or that there is a newspaper published therein, (this office has previously defined the word "published" to mean - made known to the public, on the basis of numerous judicial precedents), the affidavit of publication should be sufficient for the purpose of showing statutory compliance, and presumably the documentation necessary to prima facie show the validity of the bond issue on this point.

We are informed that no newspaper is published in the Gladstone School District. If no newspaper is published in the district the posting would be essential to the bond issue, though not the debt limit increase proceedings.

However, the substance of the matter, i.e., whether the voters of the municipality were notified of the election could be at issue at some time in the future possibly even for the twenty years that the bond issue will probably run. While we would not suggest that the notice of posting would be essential to the prima facie proof of validity of the bond proceedings, it would seem to us that as long as the district has gone to the effort of posting as well as publishing it might just as well make out affidavits as to such fact, and include same with all records of its proceedings. It cannot possibly do any harm and it might possibly be of some help.

HELGI JOHANNESON

Attorney General