

**OPINION**  
**58-186**

November 17, 1958           (OPINION)

MUNICIPAL GOVERNMENT

RE:   Governing Body - Publication of Proceedings Mandatory

This is in reply to your request for an opinion of this office in regard to the publication of the proceedings of your city council pursuant to section 40-0812 of the North Dakota Revised Code of 1943.

Your first question is stated as: "In view of the above statutes, is it mandatory that the minutes of the regular meetings of the Hebron City Council be published?" You will note that the statute uses the word "shall" rather than "may". From such language it would appear that the legislative assembly intended the statute to be mandatory rather than merely directory. (See: copy of opinion attached). We note also the statement in 37 Am.Jur. 763, Municipal Corporations, section 151. "It is commonly required by statute or charter provision that ordinances, bylaws, and in some cases, resolutions having the effect of ordinances shall be published in some manner within the municipality. Such a requirement is mandatory, and unless an ordinance is published in accordance with the requirement, it is void. . . .".

Your second question is stated as: "If the answer to question number one is in the affirmative, would it also be true of the minutes of any special meetings called by the mayor?" The statute refers to all of the council's proceedings. We are unable to see any basis of reasoning upon which special meetings called by the mayor would be excepted.

Your third question is stated as: "Would the failure to publish the minutes of the city council invalidate any action that the city may take in reference to financing of city improvements?" The answer to this question would depend, we believe, upon the meaning of the phrase "any action" as used therein. Obviously, if there was an actual lack of sufficient notice of some proceeding of the council wherein the citizens were entitled to notice, such as issuance of bonds, pursuant to election, failure to publish proceedings would have such effect. However, if the matter involved were merely general discussion of the possible procedures that were to be effectuated by further formal action of the council, it seems doubtful that the proceeding finally adopted would be thereby invalidated. As you are probably aware, there is not a great deal of judicial precedent available on the proper interpretation of section 40-0812. If, however, you have a specific problem in this regard, we would be glad to issue our opinion in regard to the specific facts involved.

Your last question is stated as: "If publication is necessary, do the actual minutes have to be published or can an abbreviated version of same be substituted?" The statute does not in terms prescribe that the "minutes" of the council meetings be published. Note, also,

the provision of section 40-0602 of the North Dakota Revised Code of 1943 requiring that a "journal" of the "proceedings" of the council be kept. We are not aware of any decision of the supreme court of this state on the point, however, it is our opinion that the statute does not require a verbatim publication of the minutes kept but rather that an analysis of the proceedings showing the substantive actions of the council would suffice. (See copy of opinion attached.)

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