

**OPINION
59-209**

July 28, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Sidewalks - Notice - Served by Whom

Re: Sidewalks, Sections 40-2903 and 40-2912

This is in reply to your letter of July 21, 1959, concerning the above cited sections.

You state that section 40-2903 of the N.D.R.C. of 1943 provides that a copy of the notice shall be served as provided in section 40-2912. Section 40-2912 provides that:

. . . . The street commissioner shall serve such notice by delivering a copy thereof to the occupant or owner of each lot, or by leaving a copy thereof at the dwelling house upon such lot with some person over the age of fourteen years residing therein. If any lot or parcel of land is not occupied, the commissioner shall serve the notice by posting a copy. . . . If such sidewalk is not repaired, the street commissioner, . . ., shall repair the same and certify the cost thereof, with his return of service of the notice,"

Your question is as follows: "Must the service of this notice be made by the Street Commissioner personally or can he delegate or appoint some one to make service for him?"

Service must of course be made as provided by statute and where a specified mode of giving notice is prescribed by statute, that method is exclusive. See 39 Am. Jr., 237, NOTICE AND NOTICES, Section 9. In the above quoted statute, however, we interpret the words "shall serve" to mean shall cause to be served. In this instance, as in the case of other statutes which require a plaintiff or defendant to serve notice, the responsibility for seeing that such service is made rests with the party named; however, in most instances these provisions are not interpreted to require such party to personally make such service.

It is, therefore, our opinion that section 40-2912 of the N.D.R.C. of 1943, quoted in part above, does not require the service to be made by the street commissioner personally, but rather that he has the duty and responsibility of seeing that such service is properly made.

This position is strengthened by that portion of section 40-2912 which states: ". . . . If such sidewalk is not repaired within the time fixed in such notice, the street commissioner shall repair the same" (Emphasis supplied). No reasonable person would so interpret this sentence as to require the street commissioner to personally repair the sidewalk, and yet the wording is the same as that providing for service of the notice. As stated

above, we believe that these provisions mean that the street commissioner has the responsibility and duty to see that such notice is served and that such repairs are made.

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