

OPINION  
60-187

April 9, 1960 (OPINION)

MUNICIPAL GOVERNMENT

RE: Governing Body in - Rules of Procedure - Expelling Members

Your letter of April 5, 1960, has been received and referred to me for reply.

You state Burlington's president of the board of village trustees left Burlington last September and did not return until recently; that he was absent for approximately seven months; that in February "the other two board members appointed another man from that ward to take his place to serve out the rest of the term;" that the party appointed accepted the appointment, signed the oath of office, and has regularly attended the meetings; that the absent president was notified that he had been supplanted; and that after his recent return to Burlington the former president "took over the meeting" of April 4, 1960, "claiming he was the one to do so."

You request this office to rule as to whether or not the supplanted president is entitled to resume the duties of president of the board of village trustees.

Section 40-0605 of the North Dakota Revised Code of 1943 provides:

"The governing body of a municipality shall determine its rules of procedure, punish its members or persons present for disorderly conduct by fine, and with the concurrence of two-thirds of its members may expel a member from a session but may not expel the member a second time for the same offense. The governing body may fine or expel any member for neglect of duty or for unnecessary absence from its sessions." (Emphasis added.)

Section 40-0719 provides:

"If a vacancy occurs in the board of trustees or in any other office, such vacancy shall be filled by appointment at a special meeting of the board. If a vacancy is to be filled on the board of trustees, the appointment shall be made from the district from which the retiring trustee was elected. All appointments shall be for the unexpired term."

A public office is a public trust to be exercised for the benefit of the public. It does not appear that a prolonged absence from a municipality of which one is an elective officer is consistent with a dutiful and conscientious exercise of that trust.

The concluding sentence of section 40-0605 (above quoted) appears to constitute statutory authority for the removal or expulsion from office of a long absent member of the board of trustees. The statute does not require that the party to be expelled is to be notified or

afforded a hearing. Though some courts have held that the power of removal is quasijudicial in nature and, therefore, necessitates notice and a hearing, it seems that said power is generally viewed as administrative in character and, therefore, notice and a hearing are not prerequisites of a valid expulsion. See 2 McQuillin Municipal Corporations (2d.Ed.) section 576.

It appears that the board complied with the provisions of section 40-0719 in filling the vacancy created by the expulsion of the long absent member.

It is, therefore, the opinion of this office that if the board of trustees has duly expelled and supplanted a long absent member of the board, said party is without a valid claim to that office.

LESLIE R. BURGUM

Attorney General