

**OPINION  
60-36**

August 16, 1960(OPINION)

CITIES AND VILLAGES

RE: Improvements - Boulevards - Width of Streets

This is in reply to your letters of August 4, 1960, and August 5, 1960, in regard to a proposed street improvement to be constructed in your city.

You inform us that the street concerned is 120 feet in width. Several years ago curb and gutter improvements were constructed on the street placed 15 feet from the property line of abutting owners leaving a roadway of 90 feet in width. The city now contemplates a boulevard type of improvement of this street. Apparently, the intention is to place a grass strip 42 feet wide in the center of the street leaving two 24 foot paved roadways. It will of course be necessary to construct curbing along the perimeter of the center strip.

Abutting property-owners have raised the question of whether they must pay for the curbing along the center strip, preparation of ground and seeding of the center strip, and maintenance thereof, or whether the city may pay such costs. Your specific question is whether the city may bear any part or all of the cost of such a project, including center strip, curbing, and planting and maintenance of grass.

You call our attention to an opinion of this office under date of May 23, 1960, in regard to payment of the cost of curbing by adjoining property-owners. You point out the distinction between the usual instance where such curbing lies along or within a few feet of adjoining property and the present instance. You further state that in so far as the curb is not immediately fronting on or adjacent to the property adjoining the street, but is in the middle of the street, property-owners contend that such improvement is a city obligation.

On the basis of previous opinions of this office, enclosed herewith, and in view of the specific provisions of chapter 40-32 of the North Dakota Revised Code of 1943, it is our opinion that the city cannot properly as such bear the entire cost of curbin and grassing the 42 foot center strip here proposed. There might be some possibility of handling this project by a park district. You will not, however, that section 40-3211 of the North Dakota Revised Code of 1943 does specifically provide that the provisions of said chapter are supplementary to the provisions of the laws of this state authorizing municipalities to make the improvements enumerated in said chapter 40-32 by the creation of special improvement districts. You will further note that the present section 40-2201 of the North Dakota Revised Code of 1943, as amended by chapter 306 of the 1959 Session Laws, does provide for utilization of the provisions of said chapter for "The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such

improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the municipality;" On this basis it is our opinion that the provisions of section 40-2410 of the 1957 Supplement to the North Dakota Revised Code of 1943 can be utilized in such an improvement project.

You further ask whether the width of the street from curb to curb must be established by a separate ordinance or resolution.

As you point out, sections 40-2210 and 40-2211 of the North Dakota Revised Code of 1943 do provide for the approval by a resolution of the governing body of the plans and specifications presented by the engineer. Presumably, such plans and specifications should include a designation of the width of the proposed street improvement between curbs, unless of course the city governing body would wish to exercise its own judgment in this matter by first enacting an ordinance establishing such width, in which case the plans and specifications should designate the improvement to be of the width prescribed in the ordinance. Unquestionably, the city under section 40-0501, subsection 8, of the North Dakota Revised Code of 1943, as amended to date, does have authority to establish street widths. It would, therefore, be our conclusion that the width of the street can be established by the resolution of the governing body approving an engineer's plans for a particular street, or by a separate and distinct ordinance on the subject.

As you point out, section 40-3101, subsections 1 and 2, of the North Dakota Revised Code to 1943, does authorize the governing body of a city to prescribe plans and specifications for the curbing to be used in the city and to establish the widths between the same in different locations. This would not in our opinion prohibit the adoption of a resolution such as is prescribed in sections 40-2210 and 40-2211 of the North Dakota Revised Code of 1943 nor render same ineffective.

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