

LETTER OPINION
99-L-112

November 18, 1999

Honorable Larry J. Robinson
State Senator
3584 Sheyenne Circle
Valley City, ND 58072-9545

Dear Senator Robinson:

Thank you for your letter asking if N.D.C.C. § 15-28-11 permits a school board to place on the ballot the question of whether the school board meeting minutes should be published, a year after the question was first approved by the voters.

You state that the Valley City Public School District placed this question on the ballot in the June 1999 election and it was approved by the voters. You further indicate that since that time, publication rates have increased substantially and the school board is considering taking the issue back to the voters in the June 2000 election.

As you know, N.D.C.C. ch. 15-28 was repealed by the 1999 Legislative Assembly. See 1999 N.D. Sess. Laws ch. 196, § 17. The provisions of N.D.C.C. § 15-28-11, which were in effect when the publication issue was voted on in June of 1999, have been revised and recodified in new chapter 15.1-09 as N.D.C.C. § 15.1-09-31. Former N.D.C.C. § 15-28-11 required a biennial election on the question of whether the school board meeting minutes should be published and further provided that "[t]hese proceedings must be given to the newspaper by the school district's business manager within a reasonable time after each school board meeting for the succeeding two years, or until disapproved at a succeeding school board election."

The question you raise hinges on the meaning of the language contained in the last sentence of N.D.C.C. § 15-28-11 quoted above. Although the pertinent language in N.D.C.C. § 15.1-09-31 is changed somewhat, the provisions are substantially the same. The latter and current statute reads, in part, as follows:

A vote to approve the publication is effective for a period of two years or until disapproved at a succeeding school district election.

Honorable Larry J. Robinson
November 18, 1999
Page 2

While the language in question in the two statutes could be reasonably construed to permit the question of publication of school board minutes to be placed on the succeeding annual election ballot, this office has taken a contrary position in several letters issued over the years with regard to former N.D.C.C. § 15-28-11. A letter from then Assistant Attorney General Gerald W. VandeWalle to Superintendent of Public Instruction M. F. Peterson (March 13, 1968) discussed whether the then current version of N.D.C.C. § 15-28-11 permitted an election to be held on the publication question one year after being approved by the voters. The letter states:

The last sentence does appear to indicate that, in those districts in which the publication of the minutes was previously approved, the question may be presented at an election other than the election held in odd numbered years. However we would note that no provision for placing the question on the ballot during the regular elections in even numbered years (or any special elections for that matter) is included within the statute, even though the words under consideration might appear to indicate same.

I believe the words "or until disapproved at a succeeding school board election" merely modify the term "for the succeeding two years" directly preceding. In other words it appears the drafters of this initiated measure meant that the minutes must be published for the succeeding two years and thereafter until disapproved at a succeeding school board election.

This position was reaffirmed on subsequent occasions. See letter from Assistant Attorney General Gerald W. VandeWalle to Elaine Dosch (April 25, 1968) (reaffirming position but noting that there was "some doubt" as to the meaning of the sentence in question); letter from Assistant Attorney General Gerald W. VandeWalle to D. J. Swartz (May 5, 1972). But cf. letter from Assistant Attorney General Nancy K. Hoff to Ronald W. McBeth (July 17, 1981) (if school board fails to put question of publication of minutes before voters at biennial election, publication should continue until next general or special election). This statute has never been construed by the North Dakota Supreme Court.

As noted above, N.D.C.C. § 15-28-11 was derived from an initiated measure enacted by the people. The provisions of N.D.C.C. § 15-28-11 were then revised and recodified as N.D.C.C. § 15.1-09-31. The

Honorable Larry J. Robinson
November 18, 1999
Page 3

primary purpose of statutory construction, including that of initiated measures, is to determine the intent of the legislative body, which must initially be sought from the language of the statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985); State v. Houge, 271 N.W. 677, 680 (N.D. 1937). Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

School board elections are held annually. N.D.C.C. § 15.1-09-22. N.D.C.C. § 15.1-09-31 provides that the vote to approve publication of the minutes is effective for two years "or until disapproved at a succeeding school district election" which by virtue of N.D.C.C. § 15.1-09-22 could be the succeeding year's annual election. It is my opinion, based on a plain reading of N.D.C.C. § 15.1-09-31, that the phrase "until disapproved at a succeeding school district election" means that a vote to disapprove the publication of minutes may be taken at the succeeding annual school district election. Had the Legislature intended to only permit the question to be voted at the next biennial election, it could have clearly stated so. Compare N.D.C.C. § 40-01-09.1 (stating that minutes of meetings of city governing bodies must continue to be published "until disapproved at a succeeding quadrennial election").

While my opinion on the meaning of the provision contained in N.D.C.C. § 15.1-09-31 differs from the position taken in the letters previously issued by this office relating to the similar provision contained in former N.D.C.C. § 15-28-11, I believe that a plain reading of the provisions compels the conclusion that the question on publication of school board minutes may be placed on the next succeeding annual school district election ballot.

Sincerely,

Heidi Heitkamp
Attorney General

jjf/pg