

Opinion No. 73-53

July 16, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Representative James Koch Box 1926 Santa Fe, New Mexico 87501

QUESTIONS

QUESTIONS

1. May publication be authorized by a member of the governing body of a municipality, a duly constituted committee of such governing body, or the managing officer or agent of the municipality pursuant to the provisions of New Mexico Laws 1973, Chapter 85?
2. In order to fully comply with the provisions of New Mexico Laws 1973, Chapter 85, may a governing body of a municipality ratify and approve the action or actions of a member of the governing body of the municipality, a duly constituted committee of such governing body or the managing agent or officer of the municipality in publishing the notice required by said act?

CONCLUSION

1. Yes.
2. Yes.

OPINION

{*106} ANALYSIS

Chapter 85, New Mexico Laws 1973, provides as follows:

"AN ACT RELATING TO MUNICIPAL ORDINANCES; {*107} PROVIDING FOR NOTICE BY PUBLICATION OF CERTAIN PROPOSED MUNICIPAL ORDINANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new Section 14-16-2.1 N.M.S.A. 1953 is enacted to read:

"14-16-2.1 NOTICE BY PUBLICATION OF CERTAIN PROPOSED ORDINANCES. --

A. Notice by publication of the title and subject matter of any ordinance proposed for adoption by the governing body of any municipality must take place at least two weeks prior to consideration of final action upon the ordinance in open session of the

governing body, except that this section shall not apply to ordinances dealing with an emergency declared by the chairman of the governing body or the mayor, as the case may be, to be an immediate danger to the public health, safety and welfare of the municipality, or to ordinances the subject matter of which is amending a city zoning map, provided the amendment to such zoning map has been considered by, and recommended to, the commission by a planning commission with jurisdiction in the matter. It is sufficient defense to any suit or prosecution to show that no notice by publication was made.

B. Notice of the proposed ordinance shall be published one time as a legal advertisement in a newspaper of general circulation in the municipality.

C. Copies of a proposed ordinance shall be available to interested persons during normal and regular business hours of the municipal clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the municipality's elected commission."

The foregoing act requires that a proposed ordinance be published in a newspaper of general circulation in the municipality prior to adoption of the ordinance. This publication must be made more than 14 days prior to the meeting of the governing body in which final action on the ordinance is to be taken.

In New Mexico it is a general rule of statutory construction that unless the contrary appears, statutory words are presumed to be used in their ordinary and usual sense with the meaning commonly attributable to them. **State v. Martinez**, 48 N.M. 232, 194 P.2d 124, 155 A.L.R. 811 (1944); **Hendricks v. Hendricks**, 55 N.M. 51, 226 P.2d 464 (1950).

In construing the statute in this manner, it is silent on who must take steps to have the publication placed in the newspaper. Effecting publication of a proposed ordinance is a ministerial act which may be done by any person within a municipality having authority to place matters upon the agenda for consideration by the governing body. Clearly, an individual member of the governing body or a duly constituted committee of the governing body has the authority to place matters of municipal concern on the agenda for hearing in open session. In those municipalities where authority has been delegated to an agent or officer of the municipality for preparation of the agenda of matters to come before the governing body, this delegation of authority constitutes authority for that individual to publish a proposed ordinance. Therefore, a member of the governing body, a duly authorized committee of the governing body or the managing agent of the City if authorized to place matters on the agenda for consideration may authorize publication.

You suggest in your opinion request that one interpretation placed upon Chapter 85 would require the governing body of a municipality to grant prior approval to the publication by a majority vote of that governing body. This is contrary to the plain meaning and content of the statute.

Statutes are to be construed in a way which will prevent absurdity, hardship, or injustice, to favor public convenience and to oppose all prejudice to public interest. **State v. Llewellyn**, 23 N.M. 43, 167 P. 414 (1917); **State v. Southern Pacific Co.**, 34 N.M. 306, 281 P. 29 (1929). Obviously, the primary purpose of the statute is to inform the public of any proposed action on the adoption of an *{*108}* ordinance by the governing body. To this end, the act requires publication of notice and availability of copies of the proposed ordinance for interested members of the public. Obviously, the legislature intended the conclusions reached herein, otherwise it would be wasted motion to provide for the furnishing of copies of **proposed** ordinances to interested persons if they were not going to consider the proposal until they secured a majority vote to allow publication.

The City Council or governing body of the municipality is the legislative branch of the municipality. In our system of government, one or more members of a legislative body have always been permitted to introduce proposed legislation for consideration and action by the governing body, and to require approval of publication by a majority vote of the governing body before legislation could be considered would be contrary to ordinary, customary and standard procedures followed by congress, by our own state legislature, and municipal governing bodies within this state before the passage of Chapter 85.

To place any other construction on Chapter 85 could effectively deny individual and minority members of the governing body an opportunity to present proposed ordinances for a hearing on the merits at a meeting where final action could be taken. Such a procedure would create an absurdity, hardship, and an injustice to the minority members of a governing body which would not favor public convenience, causing prejudice to the public interest.

The legislature may require such a procedure, but it will not be so interpreted unless it clearly appears from the language of the statute.

For a similar statute requiring majority approval before publication see New Mexico Statutes Annotated, Section 14-20-12 (1953 Comp.).

Assuming, for the sake of argument, that a member of the governing body, a duly constituted committee of such body or the managing agent or officer of the municipality lacked authority to publish the notice required by Chapter 85, a conclusion to which we do not subscribe, this can be corrected after publication. It is well settled that the governing body of a municipality may review and ratify unauthorized acts of its agent or employees so long as the unauthorized act performed falls within the scope of its corporate powers. 62 C.J.S., Municipal Corporations, Sec. 542(6). In order to ratify and approve the prior unauthorized action, the governing body must take affirmative action as a body. 62 C.J.S., Municipal Corporations, Sec. 542(6).

It is clear that a municipality is granted authority to publish notice of proposed ordinances. Therefore, if the governing body meeting as a body duly passes a motion to ratify the prior unauthorized acts of publication of notice done by a member of the City

Council or an agent or employee of the City, this will satisfy the requirements of Chapter 85 if the publication was in other respects proper and timely.

If we were to conclude differently on the questions raised in your request, we would totally frustrate traditional municipal government and we would also, by necessity, rewrite Chapter 85, a chore we do not relish nor intend to indulge in.