
Coates' Canons Blog: Who Needs Minutes?

By David Lawrence

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Some weeks ago I posted a blog about a mayor's failure to sign minutes or an ordinance, noting that even when statutes clearly require such a signature (which is not the case in North Carolina), the courts have refused to invalidate the minutes or the ordinance simply because of the mayor's failure or refusal to sign. A few days later a local government attorney asked, what if there are no minutes at all – does that affect the validity of actions taken at a meeting? (No doubt the question was hypothetical.) The answer is, not automatically.

The purpose of minutes is to serve as the official record of a board's actions, and courts frequently refuse to admit parol or other evidence that seeks to contradict what is shown in a board's minutes. But they have been unwilling to carry that principle to the point of refusing to admit such evidence when there are no minutes at all. A good example is *Thomas v. Board of Trustees*, 215 N.E.2d 434 (Ohio App. 1966). The township trustees had been meeting late into the night, and their clerk got tired and went home. After the clerk's departure, the board took up the discharge of a township constable, and voted to affirm the discharge made by the chief of the township police. Because the clerk wasn't there, though, the discharge did not appear in the board's minutes. The constable claimed he therefore had not been fired and sued for lost wages.

The Ohio court admitted that township trustees were under a duty to keep minutes of their meetings, a duty a court could order them to keep. But a failure to comply, the court said, "does not, per se, invalidate the action of the township trustees." It could be proved through other evidence.

A second example: New Mexico law permitted towns to withdraw from the state retirement system by adoption of a resolution. The city of Hobbs asserted that it had adopted such a resolution, but there was no evidence of its having done so in the city records. (The court noted that the city administration had been "in turmoil" at the time of the alleged action.) In *State ex rel Wilson v. City of Hobbs*, 313 P.2d 1053 (N.M. 1957), the state brought suit to compel payment of retirement contributions by the city, and the New Mexico court allowed completely circumstantial evidence to prove that the resolution had in fact been adopted.

Bottom line: while the law requires that public boards keep minutes, and boards and their staff should make every effort to comply with that law, the failure to do so does not doom actions taken at the affected meeting, as long as there is some other evidence that can be produced to prove what in fact occurred. (It should be noted, though, that if there is no other evidence, or if that evidence is conflicting, proving that an action was taken might become quite difficult, reinforcing the need to comply with the law in the first place and prepare and approve minutes.)

Postscript: Don't overlook **G.S. 160A-79**, which sets out the rules for pleading and proving city ordinances (and because of **G.S. 153A-50**, county ordinances as well).

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-79.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-50.html
- www.sog.unc.edu/node/1553