

**Opinion No. 46-4846**

January 29, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Fred G. Healy State Highway Engineer Santa Fe, New Mexico. Attention: Mr. L. D. Wilson, Office Engineer

Re: Santa Fe Municipal Projects

**OPINION**

{\*181} We are in receipt of your letter of January 25, 1946, and the enclosed copy of a Resolution. This Resolution appears to have been passed by the City Planning Commission, recommending to the City Council the approval of Section A of proposed inter-State Highway 85, with certain minor limitations. On the bottom of the Resolution appears the following:

"The foregoing Resolution is hereby approved by the City Council this 22nd day of January, 1946."

It does not appear, from the Resolution, whether the approval by the members of the City Council took place in a regular meeting of the City Council. If the Resolution was merely approved by the individual members of the City Council, other than in a meeting, it constitutes no formal action by the City Council, but is merely an indication of how the individual members would vote if a Resolution were formally presented at a City Council meeting.

The most recent pronouncement of our Supreme Court on this question is found in the case of Landers vs. Board of Education, 45 N.M. 446, 116 P. 2d 690. There the Court quoted with approval the following language from L. R. A. 1915 F. 1047, as follows:

"It is an elementary principle that, when several persons are authorized to perform a public service, or to do an act of a public nature, as an organized body, which requires deliberation, they should be convened in a body, that they may have the counsel and advice of every member, although they are not all of the same opinion as to the matter in hand. Accordingly, the great weight of authority is to the effect that, in order for a school board to bind the district in the employment of teachers, it is necessary that the members of the board act as a board, and that to do so it is imperative that all meet together, or at least be notified of such meeting, and have an opportunity to meet together, to consult over the employment of such teachers."

The Court also said:

"The mere fact that all members of the board, as individuals, had signed the contract, does not estop the defendant board from asserting its invalidity while it is executory."

Hoping the above answers your question, I am

By ROBERT W. WARD,

Asst. Atty. General