

**LETTER OPINION**  
**93-L-100**

March 19, 1993

Mary K. O'Donnell  
Rolette County State's Attorney  
PO Box 1079  
Rolla, ND 58367

Dear Ms. O'Donnell:

Thank you for your February 10, 1993, letter regarding register of deeds' duties relating to the filing and the recording of city resolutions to vacate public grounds, streets, or alleys pursuant to N.D.C.C. ? 40-39-08.

N.D.C.C. ? 40-39-08 provides, in part, that a "transcript of the resolution, duly certified by the city auditor, shall be filed for record and duly recorded in the office of the register of deeds. . . ." (Emphasis added.) In your letter you essentially ask whether the register of deeds should "file" the resolution somewhere as well as record it as other real estate documents are recorded.

BLACK'S LAW DICTIONARY defines the specific phrase utilized in N.D.C.C. ? 40-39-08, "filed for record" as "[l]eft with recorder or registrar for recording." BLACK'S LAW DICTIONARY 756 (Rev. 4th ed. 1968).

36A C.J.S. File (1961) describes the act of filing as follows:

In practice, the term may . . . indicate, either the act of one of the parties in bringing the paper and depositing it with the officer for keeping, or the act of the officer in folding, indorsing, and putting up the paper.

In the first sense, the most accurate definition is said to be the delivery of a paper to the proper officer to be kept on file; . . .

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In the second sense of receiving for custody, "filing" is defined as an act of the clerk, receiving a paper into custody, and giving it a place among other papers. It is also used as referring to or including both acts, and is then defined as the act of depositing or lodging an instrument for filing in the proper office and the act of accepting it for that purpose; the delivery of the paper or document to the proper officer and the lodging thereof by him in his office; the delivery to the clerk and his acceptance for record in his office; placing a paper in the proper official's custody by the party charged with this duty, and the making of the proper indorsement by the officer.

(Footnotes omitted.)

Given the above, it is my opinion that North Dakota Century Code section 40-39-08 simply requires the city to forward a transcript of the resolution to the register of deeds' office for the purpose of recording. The transcript itself need not be separately filed and maintained. The document should simply be recorded as other real estate documents are recorded.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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