

N.D.A.G. Letter to Hagerty (Aug. 21, 1986)

August 21, 1986

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Hagerty:

Thank you for your letter of August 8, 1986, inquiring as to whether a sheriff is entitled to receive a commission pursuant to N.D.C.C. §11-15-08 when he serves a garnishee summons.

N.D.C.C. §11-15-08 does allow a sheriff to collect commissions on all moneys received and disbursed by him "on an execution, order of sale, order of attachment, or decree for the sale of real or personal property. . . ." A garnishee summons, which does not have to be served by the sheriff, is a document of notice and a demand for information made to a third party (usually the employer) by a judgment creditor concerning a judgment debtor. Furthermore, there are no moneys received or disbursed by the sheriff upon the service of the garnishee summons. The garnishee summons does not constitute an execution, order of sale, order of attachment, or a decree for the sale of real or personal property. As such it is our conclusion that the sheriff is not entitled to any commission upon serving a garnishee summons.

I understand there is a collateral question as to whether a sheriff is entitled to receive a commission when he serves a writ of execution as part of a garnishment proceeding. A writ of execution served in a garnishment proceeding is not classified differently than any other execution process. Where moneys are received or disbursed by the sheriff on a writ of execution served in a garnishment proceeding, the sheriff would be entitled to a commission pursuant to N.D.C.C. §11-15-08.

Sincerely,

Nicholas J. Spaeth

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