

Date Issued: March 11, 1985 (AGO 85-10)

Requested by: Gail Hagerty, Burleigh County State's Attorney

- QUESTION PRESENTED -

Whether the exemptions under N.D.C.C. section 28-22-03.1 are exemptions available to nonbankrupt debtors.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the exemptions under N.D.C.C. section 28-22-03.1, are exemptions available to nonbankrupt debtors.

- ANALYSIS -

An exemption is a right given by law to a debtor to retain a portion of his personal property free from seizure and sale by his creditors under judicial process. Exemptions have been described as privileges granted on grounds of public policy for a humane and generous purpose. Exemption laws are the product of an enlightened public policy which seeks to afford some measure of protection to the family of an unfortunate debtor, as well as the debtor himself, as well as to the public. *Dunbar v. Spratt-Snyder Co.* 226 N.W. 22 (Iowa 1929). Exemptions further the interests of a state in assuring that citizens are not reduced to a condition of destitution crippling their ability to carry on with useful employment and that families are not deprived of shelter and comforts necessary to health and well-being. *Grimestad v. Lofgren* 117 N.W. 515 (Minn. 1908); see also 31 Am.Jur.2d. Exemptions sections 1, 3 (1967).

N.D.C.C. section 28-22-01 provides that "the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court." N.D.C.C. section 28-22-03.1 provides:

28-22-03.1. ADDITIONAL EXEMPTIONS FOR RESIDENTS. In addition to the exemptions provided herein, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.
4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the

debtor and any dependent of the debtor.

- b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
- c. A social security benefit.

There is no limitation in N.D.C.C. section 28-22-03.1 that these exemptions shall apply only to bankrupt debtors. N.D.C.C. section 1-02-05 provides:

1-02-05. CONSTRUCTION OF UNAMBIGUOUS STATUTE. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

It is clear from a review of N.D.C.C. section 28-22-03.1 that its wording is clear and free of all ambiguity and therefore its application is not limited to bankrupt debtors. Therefore, the exemptions found in N.D.C.C. section 28-22-03.1 also apply to nonbankrupt debtors as provided for in N.D.C.C. section 28-22-01.

This opinion supersedes Attorney General's Opinion 84-17 issued on March 30, 1984. The 1984 opinion relied upon a change in a statutory headnote in concluding that the exemptions provided by N.D.C.C. section 28-22-03.1 were not available to nonbankrupt debtors. However, this reliance is misplaced given statutory and case law holding that a headnote is not part of a statute and may not be the basis of a legal conclusion holding a statute to be ambiguous. See N.D.C.C. sections 1-02-13, 1-02-05, 1-02-39; State v. Houser 261 N.W.2d. 382 (N.D. 1977); Jochim v. Jochim 306 N.W.2d. 196 (N.D. 1981).

Therefore, it is my opinion that N.D.C.C. section 28-22-03.1 is not ambiguous and that the exemptions provided by that statute are available to all debtors.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General