

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-19

Date issued: August 15, 1988

Requested by: Pat S. Fricke, Executive Director  
North Dakota Housing Finance Agency

- QUESTION PRESENTED -

Whether a judgment against the state of North Dakota can be collected by execution against real property of the North Dakota Housing Finance Agency.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a judgment against the state of North Dakota cannot be collected by execution against real property of the North Dakota Housing Finance Agency.

- ANALYSIS -

N. D. C. C. ' 32-12-04 sets forth how a judgment against the state of North Dakota is to be collected:

32-12-04. How judgment collected.--No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any action, the clerk shall make and furnish to the office of the budget a duly certified copy of such judgment. After approval, and if funds have been appropriated therefor, the office of the budget, in due course, shall prepare and issue a warrant for the amount of such judgment and deliver the same to the person entitled thereto.

For a judgment against the state to be satisfied, N. D. C. C. ' 32-12-04 explicitly requires that: (i) payment of the judgment first be approved by the office of the budget and (ii) funds be appropriated for the payment of such specific judgment. After these two conditions are met, the office of the budget shall prepare and issue a warrant in payment of the judgment amount.

The North Dakota Century Code contains only one existing appropriation for the North Dakota Housing Finance Agency. N. D. C. C. ' 54-17-07. 4 appropriates housing program revenues for the payment of housing revenue bonds issued pursuant to N. D. C. C. ' 54-17-07. One other appropriation for the agency appears in the 1987 Session Laws. The North Dakota Housing Finance Agency has included within the North Dakota Industrial Commission budget an appropriation for its ongoing administrative duties. This appropriation for the current

biennium is contained in 1987 N.D. Sess. Laws ch. 21. Nowhere within this administrative appropriation for the North Dakota Industrial Commission or the North Dakota Century Code is there an appropriation for the satisfaction of any judgments against the state of North Dakota or the North Dakota Housing Finance Agency.

N. D. Const. art. X, ' 12 provides for certain constitutional appropriations which are self-executing and do not require a further legislative appropriation. See, e.g., State ex rel. Walker v. Link, 232 N. W. 2d 823 (N. D. 1975); King v. Baker, 299 N. W. 247 (N. D. 1941); Langer v. State, 284 N. W. 238 (N. D. 1939). However, there is no constitutional appropriation applicable to any payments of judgments against the Housing Finance Agency.

Absent such a constitutional or legislative appropriation of funds to pay a judgment, a judgment against the state cannot be satisfied. Other state courts have interpreted statutes similar to the North Dakota law providing that no attachment or execution can issue against the state, and that the state can refuse to pay any claims obtained by way of a judgment unless the constitution or statutes have appropriated moneys for such satisfaction. In California, it has been stated that a judgment against the state "merely liquidates and establishes the claim against the state, and that, in the absence of an express statute so providing, such judgment cannot be collected by execution against the state or its property, or by any of the ordinary processes of law provided for the enforcement of judgments." Cirone v. Corey, 189 Cal. App. 3d 1280, 234 Cal. Rptr. 749, 753 (1987) quoting Westinghouse Electric Co. v. Chambers, 169 Cal. 131, 135, 145 P. 1025 (1915)). It, therefore, would follow that it remains for the state, after the entry of a judgment, to provide for payment in the manner it sees fit or to refuse to do so. See, e.g. Commonwealth v. Circuit Court, 365 S.W.2d 106 (Ky. 1963); Zerbetz v. Alaska Energy Center, 708 P.2d 1270 (Alaska 1985); see also, e.g., Miss. Code Ann. ' 11-45-5; Miss. Op. Att'y Gen., (September 15, 1979, and April 16, 1979); Alaska Stat. ' 09.50.270; Alaska Op. Att'y Gen. 333 (May 19, 1987).

As discussed above, no North Dakota Housing Finance Agency property has been specifically appropriated for the satisfaction of judgments against the state.

Because no appropriation exists which could allow execution against real property held in the name of North Dakota Housing Finance Agency, there can be no satisfaction of those judgments by execution.

Therefore, in my opinion, the clerk of the district court in which these judgments were entered should comply with the requirements of N. D. C. C. ' 32-12-04 and furnish to the Office of Management and Budget a certified copy of such judgment. Upon approval and upon appropriation of moneys specifically for the satisfaction of such judgments, the Office of Management and Budget can issue a warrant in the respective judgment amounts to the respective respective judgment creditors. However, prior to such appropriation and execution of the necessary warrant, no satisfaction of judgment can be obtained. No recorded judgment would be effective as a lien against real

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property held by the North Dakota Housing Finance Agency, and, although recorded, no judgment would operate in any manner to cloud the title or hinder the ability of the North Dakota Housing Finance Agency to transfer title to such real property.

- EFFECT -

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

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Attorney General

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