

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-17

Date issued: November 15, 1989

Requested by: Peter H. Furuseth
Williams County State's Attorney

- QUESTION PRESENTED -

Whether N. D. C. C. ' 11-15-08 requires that the sum of \$1,000 be received and disbursed by a sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property before that sheriff may collect a fifty dollar commission.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N. D. C. C. ' 11-15-08 does not require that the sum of \$1,000 be received and disbursed by a sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property before that sheriff may collect a fifty dollar commission. Rather that section establishes a minimum fee of \$50 for the sheriff's services.

- ANALYSIS -

N. D. C. C. ' 11-15-08 governs the sheriff's commission for performing executions, orders of sale, orders of attachment, claim and delivery and decree of sale of real or personal property. That section provides:

11-15-08. Commissions collected by sheriff.

1. Except as provided in section 11-15-09, the sheriff is entitled to collect commissions on all moneys received and disbursed by the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property as follows:
 - a. On the first one thousand dollars, fifty dollars.
 - b. On all moneys in excess of one thousand dollars, one percent.
2. If personal property is taken by the sheriff on an execution,

under a requisition in claim and delivery, or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the commission specified in subsection 1 based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer under section 11-15-14.

N. D. C. C. ' 11-15-08 is ambiguous. The statute could be interpreted to authorize the sheriff to collect the fifty dollar commission only after the sum of \$1,000 has been received and disbursed upon court process or to collect the commission for all receipts and disbursements up to \$1,000.

Prior to the 1989 amendment N. D. C. C. ' 11-15-08 provided:

11-15-08. Commissions collected by sheriff. Except as otherwise provided in section 11-15-09, the sheriff is entitled 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, as follows:

1. On the first four hundred dollars, three percent.
2. On all moneys in excess of four hundred dollars and not exceeding one thousand dollars, two percent.
3. On all moneys in excess of one thousand dollars, one percent.

In all cases where personal property is taken by the sheriff on an execution or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the percentage specified in this section based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer in accordance with section 11-15-14.

N. D. C. C. ' 11-15-08 was amended in 1989 by H. B. 1393. The amendment removed the graduated commission percentages upon the first \$1,000 received or disbursed by a sheriff and, in their place, imposed a fifty dollar commission. This amendment created the ambiguity which now exists.

When a statute is ambiguous, the object sought to be obtained, the legislative history, including former statutory provisions, and the consequences of a particular construction may be considered in determining the statute's meaning. N. D. C. C. ' 1-02-39.

A statute must be construed to avoid absurd results. Larson v. Wells County Water Resource Bd., 385 N.W.2d 480, 482 (N.D. 1986). It is presumed that the Legislature, in enacting a provision did not intend absurd or unjust

consequences. Wallentinson v. Williams County, 101 N.W.2d 571, 577 (N.D. 1960). A construction of a statute should determine the intent of the Legislature. Coulter v. Ramberg, 55 N.W.2d 516, 519 (N.D. 1952).

The bill summary of H.B. 1393 prepared by the Legislative Council staff provided:

GENERALLY, THIS BILL:

As amended, permits the sheriff to collect a flat fee of \$50 for the first \$1,000 received and disbursed in certain proceedings. The bill also makes property obtained in claim and delivery actions subject to sheriff's fees.

Bill Summary to HB 1393, March 3, 1989.

At the 1989 hearings on H.B. 1393, Representative Gary Knell stated: "The first part of the bill changes the situation so that the sheriffs collect a flat fee of \$50 for the first \$1,000 received in certain proceedings. After that, a percentage is used." Hearings on H. 1393 before the North Dakota Senate Judiciary Comm., 51st Leg. (March 1, 1989)B). Gerald Shafer, a Burleigh County Deputy Sheriff, testified: "He pointed out for the committee that another term for the fees can be "user fees." The people who use the court system use this system of collecting money." Id.

Ray Walton, a representative of the North Dakota Peace Officers Association stated that the North Dakota Sheriffs Association had made several recommendations for fee changes to the 1989 Legislature. He further stated:

The changes in House Bill 1393 deleted the percentage commission on all sales of real or personal property by the Sheriff and provides for a fee of \$50.00 on all proceeds up to \$1,000.000. The one percent commission would be collected on anything over \$1,000.00 as it is now.

. . . .

The money collected in these cases goes to the County and not to the Sheriff and is payable out of the proceeds of the sale.

The commissions being proposed are more commensurate with the costs to the County.

Id.

The 1989 Legislative Assembly, in the adoption of H.B. No. 1393, established a flat fifty dollar fee on all moneys collected and disbursed by a sheriff pursuant to court process as enumerated in N.D.C.C. " 11-15-08 up to the amount of \$1,000. The legislative history establishes that a sheriff is not

required to collect and disburse the sum of \$1,000 before the commission may received.

To conclude that a sheriff must obtain the sum of \$1,000 before the sheriff is entitled to collect a commission would eliminate the commission for all moneys less than \$1,000 which are received and disbursed. In those cases, no "user fee" would be received for the time and effort expended by the sheriff in obtaining the money nor would the counties be reimbursed for their costs. This would be an absurd and unjust result which would nullify or defeat the intention of the Legislature in enacting these amendments to N.D.C.C. '11-15-08. On the other hand, charging user fees is consistent with reimbursing the cost to the county for providing collection services and will further the Legislature's intent.

Given the legislative history and prior statutory provisions, it is my opinion the statute provides for a minimum fifty dollar fee on all amounts collected.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. '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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