

LETTER OPINION
2004-L-53

August 4, 2004

Mr. Donald R. Becker
Emmons County State's Attorney
PO Box 658
Linton, ND 58552-0658

Dear Mr. Becker:

Thank you for your letter asking whether there is a conflict between statutes addressing expenses charged by the sheriff in a foreclosure under N.D.C.C. §§ 57-28-04 and 11-15-07. It is my opinion that the expenses charged under N.D.C.C. § 57-28-04(5) apply to tax lien and special assessments foreclosures under N.D.C.C. ch. 57-28, and the expenses and fees charged under N.D.C.C. § 11-15-07 apply to other foreclosures generally.

ANALYSIS

Section 11-15-07, N.D.C.C., specifies fees the sheriff is required to charge and collect on behalf of the county for certain activities, including fees for serving various documents and for other tasks relating to advertising and selling real or personal property under foreclosure. Chapter 57-28, N.D.C.C., governs the foreclosure of tax liens and special assessments on real estate. Section 57-28-04(5), N.D.C.C., states that "[t]he expense of service of the notice, publication and other foreclosure costs under this chapter in the amount of fifty dollars must be added to the amount required to satisfy the tax lien." (Emphasis supplied.) The \$50 specified in N.D.C.C. § 57-28-04(5) is not the same as the total of each of the items which may be charged by the sheriff pursuant to N.D.C.C. § 11-15-07.

"A particular statute specifically applicable to a statutory procedure must control over a conflicting general provision, particularly one that is made applicable only by general reference." Van Raden Homes, Inc. v. Dakota View Estates, 520 N.W.2d 866, 868 (N.D. 1994). Whenever a general provision in a statute conflicts with a special provision in another, the two must be construed, if possible, to give effect to both. N.D.C.C. § 1-02-07. If the conflict is irreconcilable, the special provision must prevail and must be construed as

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an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

By its express terms, N.D.C.C. § 57-28-04(5) states that it applies only to foreclosures under chapter 57-28. This is in contrast to the fees specified in N.D.C.C. § 11-15-07, which relate to certain activities performed by the sheriff but which are not linked to the specific legal authority under which those activities may take place. It is my opinion that the expenses charged under N.D.C.C. § 57-28-04(5) apply to tax lien and special assessments foreclosures under N.D.C.C. ch. 57-28, and the expenses and fees charged under N.D.C.C. § 11-15-07 apply to other foreclosures generally.

Sincerely,

Wayne Stenehjem
Attorney General

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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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).