

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-05

Date Issued: March 4, 1996

Requested by: Patricia Burke, Burleigh County State's Attorney

- QUESTIONS PRESENTED -

I.

What impact, if any, do child labor laws have on the nature and amount of community service that a juvenile can be ordered to perform?

II.

What is the extent and limit of a court's authority to order defendants or juveniles to pay a fee for performing community service?

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that state and federal child labor laws apply to juveniles ordered to perform community service.

II.

It is my opinion that a court has discretion to order defendants and juveniles to pay a fee for the cost of performing community service as a condition of probation or as an alternative to paying a fine or serving a term of imprisonment if payment of the fee will serve an appropriate purpose.

- ANALYSES -

I.

The North Dakota child labor law is found in N.D.C.C. ch. 34-07. The federal child labor law is found in 29 U.S.C. § 212 and 29 C.F.R. part 570. Both the state and federal laws address not only employment of children but permitting children to work. N.D.C.C. §§ 34-07-01, 34-07-02, 34-07-03, 34-07-15, 34-07-16, 34-07-19; 29 U.S.C.

§ 203(g). A court order requiring a juvenile to perform community service necessarily includes permitting the juvenile to perform the work (service).

Not only does the language of the child labor laws appear to apply to court ordered community service of juveniles, the laws are specifically made applicable to juvenile inmates by administrative rule. N.D. Admin. Code § 94-02-15-04 addresses what work adjudicated or convicted juveniles may be required to perform. "Work" would include community service. This section provides:

An adjudicated or convicted juvenile inmate may be required to perform work provided:

1. The work assignment does not conflict with educational programs; and
2. The work is not prohibited by state and federal statutes and regulations pertaining to child labor.

Pursuant to this section, a juvenile inmate may not be required to perform community service (work) prohibited by state and federal child labor statutes and regulations.

Furthermore, federal and state child labor laws establish public policy regarding what is appropriate labor for children. Any court ordering a juvenile to perform community service, therefore, should be aware of the child labor laws and adhere to the public policy which they establish.

It is my opinion that state and federal child labor laws apply to juveniles ordered to perform community service. This opinion is in harmony with the only federal court decision found addressing this issue. See King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975) (child labor laws applicable to juveniles who are civilly committed to state camps upon being adjudicated delinquent or in need of supervision).

II.

The next question is the extent and limit of a court's authority to assess a fee to be paid by defendants or juveniles ordered to perform community service. A sentencing judge is allowed the widest possible discretion in fixing a criminal sentence, within the limits fixed by statute. State v. Ennis, 464 N.W.2d 378 (N.D. 1990). N.D.C.C. ch. 12.1-32 establishes the general sentencing provisions in North Dakota. N.D.C.C. § 12.1-32-02 sets forth the sentencing alternatives

available to a court, unless other sentencing alternatives are specifically provided in the statute defining the offense.

N.D.C.C. § 12.1-32-02(1)(f) provides that a defendant may be sentenced to "appropriate work detail" or community service. See 1995 N.D. Op. Att'y Gen. L-11 [Letter to Patricia Burke (January 26, 1995)]. In addition, defendants may be required to perform community service as a condition of probation, which is another sentencing alternative authorized under N.D.C.C. § 12.1-32-02. See N.D.C.C. § 12.1-32-07(3). Also, N.D.C.C. § 39-08-01(4)(b) authorizes courts to sentence an individual convicted of a second offense of driving under the influence within five years to perform ten days of community service. Thus, a defendant can be ordered to perform community service either as a condition of probation or as a separate sentence.

This office has previously concluded that "post-conviction incarceration expenses could be required to be paid by a defendant if made a condition of probation or as part of a plea agreement." Letter from Attorney General Nicholas Spaeth to Dennis Johnson (September 26, 1986), citing State v. Kottenbroch, 319 N.W.2d 465 (N.D. 1992) (probation) and State v. Thorstad, 261 N.W.2d 899 (N.D. 1978) (plea agreement). See also 1986 N.D. Op. Att'y Gen. 134 (costs of court-appointed defense counsel). The same rationale would support requiring the payment of a fee for the cost of performing community service as a condition of probation or as an alternative to a fine or term of imprisonment.

N.D.C.C. 12.1-32-02 does not expressly authorize a court to order a defendant to pay the cost of community service. Presumably, a sentence to an "appropriate work detail" or community service is preferable from a defendant's point of view to a fine or term of imprisonment. The North Dakota Supreme Court has previously held that a plea agreement can be enforced against a defendant who agreed to pay the costs of his court-appointed defense counsel, although not specifically listed as a sentencing alternative in N.D.C.C. § 12.1-32-02, in exchange for receiving a more-lenient sentence. State v. Thorstad, 261 N.W.2d 899 (N.D. 1978). For the same reason, where a fine or term of imprisonment may be imposed, a defendant can be required to pay a fee in exchange for receiving a more-lenient sentence to "an appropriate work detail" or community service, even if not expressly authorized by N.D.C.C. 12.1-32-02.

Community service may also be required as a condition of probation rather than a separate sentence. "The list of conditions [of probation] under 12.1-32-07 is not exclusive and the imposition of

those conditions is purely a matter of judicial discretion so as to allow a judge to tailor conditions to meet particular facts and circumstances in any given case." State v. Saavedra, 406 N.W.2d 667, 671 (N.D. 1987). The only restriction on this discretion is that the condition be "reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so." N.D.C.C. § 12.1-32-07(2). Thus, if requiring a defendant to pay for the cost of community service would serve this purpose, such a fee would be authorized under N.D.C.C. § 12.1-32-07 as a condition of probation.

A court has similar discretion regarding the disposition of a delinquent child. Like defendants sentenced in adult court, a juvenile may be required to perform community service either as a condition of probation or as a separate disposition. N.D.C.C. § 27-20-31(2,6). Although this section does not expressly authorize a court to order a juvenile to pay the cost of community service, it authorizes a court to make any order of disposition "best suited to the child's treatment, rehabilitation, and welfare." Thus, if requiring a juvenile to pay for the cost of community service would serve this purpose, such a fee would be authorized under N.D.C.C. § 27-20-31.

In conclusion, it is my opinion that a court has discretion to order defendants and juveniles to pay a fee for the cost of performing community service as a condition of probation or as an alternative to paying a fine or serving a term of imprisonment if payment of the fee will serve an appropriate purpose.

- 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 questions presented are decided by the courts.

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