

N.D.A.G. Letter to Ficek (June 14, 1988)

June 14, 1988

Mr. Vince H. Ficek
City Attorney
P.O. Box 866
Dickinson, ND 58601-0866

Dear Mr. Ficek:

Thank you for your May 25, 1988, letter concerning the application of N.D.C.C. § 29-26-22.1 to municipal court judgments.

As I understand the facts in your letter, the city of Dickinson prosecuted a certain defendant in municipal court for violations of Dickinson's municipal ordinances. That individual was convicted and assessed fines and costs totaling \$1,480. The city would now like to use N.D.C.C. § 29-26-22.1 to docket those criminal judgments in a civil judgment docket and then execute upon those judgments.

N.D.C.C. 29-26-22.1 provides:

29-26-22.1. Judgment for fine or costs in criminal cases -- Docketing and enforcement. The court may, within ten years of the date of entry of a judgment that imposes a fine or assesses costs against a defendant, order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money.

It is unclear whether this statute was intended to apply to municipal courts, and the legislative history of the statute does not answer that question. Reading the statute as a whole, however, it is apparent that the Legislature did not intend to include municipal courts within the provisions of N.D.C.C. § 29-26-22.1.

The first sentence of the statute, in particular, only makes sense when it is read to apply to courts that have a judgment docket in which a civil judgment for money may be docketed. Municipal courts, unlike district and county courts, do not have such a civil judgment docket. Therefore, if I were to construe the statute to include municipal courts, I would be required to invent a procedure for docketing municipal court judgments in a district or county court. The Legislature's failure to include such a procedure within N.D.C.C.

§ 29-26-22.1 supports the position that the Legislature did not intend to have that statute apply to municipal court judgments.

For these reasons, I conclude that N.D.C.C. § 29-26-22.1 does not apply to municipal court judgments imposing fines or costs for violations of municipal ordinances.

To collect the fines and costs in question, therefore, you will have to pursue other remedies available to you. Those remedies appear to include bringing a civil action against the defendant for the sums owed (perhaps in small claims court), pursuing a contempt proceeding against the defendant pursuant to N.D.C.C. § 40-18-14 for failure to comply with the municipal judge's order to pay the fines and costs, or seeking commitment of the defendant for nonpayment of the fines or costs pursuant to N.D.C.C. § 40-11-12.

I hope that this has been of some assistance to you.

Sincerely,

Nicholas J. Spaeth

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