

N.D.A.G. Letter to Gibbens (Aug. 8, 1988)

August 8, 1988

Ms. Lisa Beckstrom Gibbens
Towner County State's Attorney
P.O. Box 601
Cando, ND 58324

Dear Ms. Gibbens:

Thank you for your July 14, 1988, letter concerning N.D.C.C. § 29-26-22.

Specifically, you ask whether when a court suspends part, but not all, of a criminal fine and taxes a court administration fee against the defendant, N.D.C.C. § 29-26-22 requires that 25% of the court administration fee collected be added to the common schools trust fund.

N.D.C.C. 29-26-22 provides:

29-26-22. Judgment for fines, costs, and court administration fee -- Statement to be filed by court -- Docketing and enforcement. In all cases of conviction, a court administration fee of up to twenty-five percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. When a fine is imposed and suspended or the imposition of a sentence is suspended pursuant to chapter 12-53, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not Paid.

(Emphasis supplied.) This statute permits courts to assess a court administration fee against convicted criminal defendants in lieu of court costs.

N.D.C.C. § 29-26-22 requires that 25% of this fee be paid to the state common schools trust fund after collection whenever the fee is assessed and "a fine is imposed and

suspended or the imposition of a sentence is suspended pursuant to chapter 12-53." N.D.C.C. ch. 12-53 governs the suspension of criminal sentences both when the entire sentence is suspended and when only a part of that sentence is suspended. See N.D.C.C. ch. 12-53; State v. Faul, 300 N.W.2d 827, 833 (N.D. 1980); see also State v. Nace, 371 N.W.2d 129, 132 (N.D. 1985). Therefore, under the plain language of N.D.C.C. § 29-26-22, 25% of the court administration fee collected must be paid to the state's common schools trust fund whether the court orders a partial suspension or a total suspension of the fine or sentence in question.

It could be argued that N.D.C.C. § 29-26-22 is somewhat ambiguous because that statute does not specifically state how the court administration fee should be handled when the court orders only a partial suspension of a sentence. For that reason, this office examined the legislative history of the 1987 legislation that added the language in question to N.D.C.C. § 29-26-22. We sought to determine whether the Legislature intended to include partial suspensions of sentence within the provision requiring that 25% of the court administration fee be paid to the common schools trust fund. That legislative history shows that the Legislature did not discuss or, apparently, consider the situation in which a criminal sentence is only partially suspended. See Hearing on S. 2458 Before the Senate Judiciary Comm., 50th Leg. (Feb. 2, 1987); Hearing on S. 2458 Before the House Judiciary Comm., 50th Leg. (March 9, 1987). The statute's legislative history, thus, does not clarify the legislative intent with regard to partial suspensions.

We must, therefore, interpret N.D.C.C. § 29-26-22 according to its plain language. See N.D.C.C. §§ 1-02-02, 1-02-05. Under the plain language of that statute, whenever a fine is imposed and suspended, whether in whole or in part, or the imposition of a sentence is suspended, whether in whole or in part, pursuant to N.D.C.C. ch. 12-53, 25% of any court administration fee taxed against a criminal defendant and then collected must be paid to the state and placed in the common schools trust fund.

If you believe an interpretation of N.D.C.C. § 29-26-22 other than the one presented here is warranted, you may wish to seek clarification of this statute in the next legislative session.

Sincerely,

Nicholas J. Spaeth

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