

N.D.A.G. Letter to Hope (Sep. 25, 1986)

September 25, 1986

Mr. James Hope
Assistant State's Attorney
Stark County State's Attorney's Office
P.O. Box 130
Dickinson, ND 58601

Dear Mr. Hope:

Thank you for your letter of September 18, 1986, requesting our assistance in determining the appropriate fee for filing a satisfaction of two previously separately recorded mortgages.

North Dakota law, as found at N.D.C.C. §11-18-05, provides for the determination of fees charged by the register of deeds. That statute, in relevant part, states as follows:

11-18-05. FEES OF REGISTER OF DEEDS. The register of deeds shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, five dollars for the first page and two dollars for each additional page.
 - * * *
 - b. Multipurpose mortgages or mineral instruments which contain additional mortgages or mineral instruments, five dollars for the first page and two dollars for each additional page plus three dollars for each additional mortgage or mineral instrument described therein.

This statute has been considered by this office on a prior occasion. In a 1984 Attorney General's opinion, this office concluded that the fee for filing a statement of claim on severed minerals is determined by N.D.C.C. § 11-18-05(1)(a). The reason for this conclusion is that the statement of claim on severed minerals is not specifically provided for in N.D.C.C. §11-18-05(1). Furthermore, the opinion concluded that the statement of claim on severed minerals is not a multipurpose mortgage or mineral instrument containing additional mortgages or mineral instruments as provided for in N.D.C.C. §11-18-05(1)(b). 1984 N.D. Op. Att'y. Gen. 30.

It would appear that the same analysis utilized in the 1984 Attorney General's opinion is applicable in determining your question. The mortgage satisfaction document enclosed with your letter is not a multipurpose mortgage or a mineral instrument containing additional mortgages or mineral instruments. It is true that this mortgage satisfaction refers to two separate mortgages and may be considered a multipurpose document. However, N.D.C.C. § 11-18-05(1)(b) is limited to multipurpose mortgages or mineral instruments which contain additional mortgages or mineral instruments. As a mortgage satisfaction referring to two separate mortgages is not specifically provided for in the statute and does not constitute a multipurpose mortgage or mineral instrument, the filing fee is determined pursuant to N.D.C.C. §11-18-05(1)(a).

I realize that there are many registers of deeds across the state who are not satisfied with the 1984 Attorney General's opinion and, I am sure, will not be happy to hear of my conclusion in this matter. I not unmindful of the amount of time and effort involved in filing multipurpose documents containing numerous legal descriptions. The fees charged for the filing of such multipurpose documents is obviously inadequate and in need of correction.

However, given the current language found within N.D.C.C. §11-18-05, I have no discretion in this matter. Instead, I believe this matter would be an appropriate topic for review by the upcoming legislative session. This office is prepared to assist the registers of deeds in any legislative effort pursued to correct this filing fee deficiency.

Sincerely,

Nicholas J. Spaeth

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