

**OPINION
67-331**

October 6, 1967 (OPINION)

Mr. Lynn E. Crooks

Unsatisfied Judgment Fund

RE: Unsatisfied Judgment Fund - Balance - Collection
of Fee

This is in reply to your letter dated October 2, 1967, wherein you informed this office that you had made a request for additional registration fees pursuant to sections 39-17-01 and 39-17-02 of the North Dakota Century Code.

In your letter you set forth facts as follows: That on May 31, 1967, the general cash balance of the Unsatisfied Judgment Fund was approximately \$209,000.00; that out of said fund the legislature had appropriated for the forthcoming biennium the amount of \$70,000.00 for administration; and that the amount committed by the fund on the twenty-third day of May for payments of judgment was approximately \$49,000.00, leaving a balance available for payments of future judgments in the amount of \$90,000.00. You ask whether or not this satisfies the requirements set forth in section 39-17-02.

Section 39-17-02 of the North Dakota Century Code provides, in part, as follows:

"* * * It is also provided that there shall be a continuing appropriation out of the fund of all moneys required for administration purposes but not to exceed thirty-five thousand dollars annually for administration of the Unsatisfied Judgment Fund. If on the first day of June in any year the amount of money standing to the credit of the Unsatisfied Judgment Fund is one hundred thousand dollars or more, the requirements for the payment of such fee shall be suspended during the succeeding year and until such year in which, on the first day of June of the previous year, the amount of such fund is less than one hundred thousand dollars when such fee shall be reimposed and collected as provided herein."

The obvious purpose of the above quoted section is to assure that adequate funds are available to maintain the Unsatisfied Judgment Fund and at the same time to provide a means whereby the \$1.00 fee may be suspended if the revenue raised thereby is not needed to administer the provisions of chapter 39-17. It would appear that the legislature intended that the Unsatisfied Judgment Fund be maintained on a relatively current basis rather than allowing large reserves to be built up. Accordingly, since the Unsatisfied Judgment Fund was established in 1947, the fee has been suspended during the following years: 1949, 1950, 1951, 1952, 1954, 1955, 1957, 1958, 1960, 1961, 1963 and 1965. It might also be added that in 1963 the legislature raised fund limits from five and ten to ten and twenty thousand dollars. This action, as anticipated, almost doubled the amount paid

out of the Unsatisfied Judgment Fund each year since then.

With this background in mind, it can be readily seen that the legislature intended the \$100,000.00 figure mentioned in section 39-17-02 to apply only to the uncommitted balance. Any other construction would be unworkable. As has been noted, section 39-17-02 provides a standing appropriation of \$35,000.00 per year or \$70,000.00 per biennium for administrative purposes; were such money to be included in the above mentioned \$100,000.00, a mere \$30,000.00 would be available for payments of judgments in the succeeding year. The smallest aggregate amount paid out of the Unsatisfied Judgment Fund for any year since 1952 has been \$74,000.00. In more recent years, the annual pay-out has been in the neighborhood of \$300,000.00 per year. Since settlements of individual cases also commit the moneys for which the settlement has been made, it would appear that such money should likewise be subtracted from the general cash balance before determining whether the \$100,000.00 limit has been reached.

It is therefore our opinion, based on the facts recited in your letter, that the request for additional registration fees is proper.

HELGI JOHANNESON

Attorney General