

**OPINION
69-258**

August 26, 1969 (OPINION)

Mr. Richard B. Bear

Assistant State's Attorney

Burleigh County

RE: Officers - Sheriffs - Fees on Foreclosure Proceedings

This is in response to your letter in which you ask for an opinion on the following situation:

It appears that the Burleigh County sheriff did not collect \$1.50 for advertising a sale in foreclosure proceedings resulting from an execution issued to him. Subsection 15 of section 11-15-07 provides for collecting a fee of \$1.50 in addition to the publication costs. It also appears that the sheriff did not collect this fee because of section 12-08-11. It further appears that the sheriff did not perform the service because the notices were prepared and submitted by the plaintiff's attorney to the newspaper. You then refer to sections 28-23-04 and 32-19-08 and observe that it is your feeling that the sheriff is responsible to make and give the notice and, therefore, should collect the fee of \$1.50 for advertising for a sale as a result of an execution.

Executions of judgments pursuant to the provisions of chapter 28-21 are directed to the sheriff of the county in which the judgment is docketed. The provisions of section 28-21-06 clearly indicate that the execution must be directed to the sheriff unless he is an interested party; in which instance it would be directed to the coroner.

Under the provisions of sections 28-23-01 and 28-23-04, relating to sales of personal and real property under executions, the term "officer" necessarily refers to the sheriff or his deputy; except where the sheriff is interested, then it refers to and includes the coroner.

The publications required under both sections 28-23-01 and 28-23-04 are duties and responsibilities imposed upon the sheriff. He must, by law, determine the time and place of the sale. (See sections 28-23-01 and 28-23-04.)

While the sheriff may not necessarily be concerned with the mechanics related to the preparation of the notice and its presentation to the newspaper, it is still his responsibility and duty and he is specifically concerned as to the time and place. We do not believe that the sheriff is actually required to personally prepare the notice any more than he is required to prepare other pleadings. It is difficult to envision a situation where the sheriff would not be consulted as to the time and place of the sale of the property or in proper instances the description of the property which is to be sold.

The sale by the sheriff is actually under the jurisdiction of the Court, as an officer of the Court. The time and place of the sale are put in the notice pursuant to direction, or at least by consent of the sheriff. It thus becomes clear that the sheriff's office must be utilized to prepare and effectuate a notice of sale. It is the use of such office for which a fee is demanded, as set out in section 11-15-07, subsection 15, as amended. The \$1.50 is for such service and is not for the preparation or presentation for publication. The publication is actually at the direction of the sheriff, for which a fee is demanded. The sheriff has performed a service for the fee and there is no reason why section 12-08-11 should be of any concern.

It is, therefore, our opinion that the sheriff is responsible for and must charge \$1.50 for the publication of a notice of sale arising out of an execution of judgment. The discussions herein do not refer to foreclosures by advertisement under chapter 35-23 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General