

OPINION
74-197

August 8, 1974 (OPINION)

Mr. Terence P. Devine

Nelson County States Attorney

Lakota, ND 58344

Dear Mr. Devine:

This is in reply to your letter of July 23, 1974. You ask whether or not Section 27-08.1-01 of the North Dakota Century Code contemplates that the small claims court can be used for actions based on tort provided that the claim does not exceed two hundred dollars.

Section 27-08.1-08 provides for the jurisdictional limits of the small claims court. It is stated therein:

. . . The jurisdiction of such court shall be confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed two hundred dollars.

It is apparent that the small claims court, therefore, has jurisdiction over all cases for recovery of money where such amounts do not exceed two hundred dollars. An examination of North Dakota law conclusively establishes that actions in tort are predicated upon the recovery of money as damages for any detriment incurred.

32-03-01. Damages for any injury. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

32-03-20. Measure of damages for tort. For the breach of an obligation not arising from contract, the measure of damages, except when otherwise expressly provided by law, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

The obvious purpose of the Small Claims Court Act is to provide a forum whereby the parties can litigate their rights in an inexpensive and uncomplicated manner, provided that the claim does not exceed the specified amount. It is apparent that the legislature has not distinguished claims in tort from claims based upon obligations in contract since the statute generally refers to "cases for recovery of money". As is stated in 20 Am. Jur.2d., Section 31, the jurisdiction of small claims courts generally extended to tort claims as well as contractual claims.

In direct answer to your inquiry, the main purpose of the Small Claims Court Act is to provide a procedure for all litigation

involving small claims, and no distinction is suggested. Therefore, tort claims are to be included as proper actions to be litigated by the small claims court.

I trust that the foregoing adequately states the position of this office.

Sincerely,

ALLEN I. OLSON

Attorney General