

OPINION
74-402

January 24, 1974 (OPINION)

Mr. Richard B. Thomas
State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Thomas:

This is in reply to your letter of January 14, 1974, with regard to fees to be charged by the sheriff. You enclose a letter from the sheriff of your county to your office explaining the details of the problem.

Our attention is called to subsection 2 of section 11-15-07 of the 1973 Supplement to the North Dakota Century Code providing:

"11-15-07. COUNTY FEES. The sheriff shall charge and collect the following fees on behalf of the county:>

* * *

"For serving a summons, warrant of attachment, order of replevin, injunctive order, citation, or other mesne process of making a return thereon, \$5, and for service on each defendant besides the first, \$5;

* * * "

The first question is stated as:

"Does this mean that the sheriff shall charge \$5 for the service of each document served, or shall several documents served on one person be \$5."

As an example of the practical application of the statute, the question is restated to the effect that if the sheriff's office serves a summons and complaint, warrant of attachment and affidavit for attachment on one defendant, should the charge for county fees be \$5 or \$15.

It is further explained that in the past your sheriff's office has charged separately for each document but since the fees were raised considerably by the last legislature, they are being questioned by attorneys as to what is the correct interpretation according to law.

We recognize the substantive change in fees provided for in the legislative amendment to which reference is made. However, there do not appear to be other substantive changes in the language of subsection 2 of section 11-15-07 of the North Dakota Century Code in the 1973 amendments.

We note the classification of the items named as in effect "mesne

process". Service of the summons, of course, obtains jurisdiction of the person so served. Service of the warrant of attachment obtains jurisdiction of the property involved. In the example given there are thus two "mesne processes" served for which the fee under the statute would thus be \$5 each or a total of \$10. (Under the very ancient definition of the term "mesne" it is perhaps arguable whether a summons is actually "mesne" process, however, under the modern connotations of the term and the manner of use of same in this statute, we feel it is obvious that that is the legislative meaning in this statute.).

Neither the "complaint" nor the "affidavit for attachment" is mentioned in the statute nor is a fee for same prescribed. Without going into detail on the application of the North Dakota Rules of Civil Procedure, we should mention that as a matter of practice, the "complaint" or "affidavit of attachment" may or may not be sent along with the "process" (summons or warrant of attachment) to sort of explain and as a part of the "process" with which it is served. As was the practice prior to the statutory amendment (see copy of letter of this office of November 14, 1963, enclosed herewith), the fee for service of the mesne process - "summons" includes service of the complaint herewith, and the fee for service of the mesne process - "warrant of attachment" includes service of the "affidavit for attachment" therewith.

We hope the within, foregoing and enclosed will be sufficient for your purposes.

Sincerely yours,

Allen I. Olson

Attorney General