

**OPINION
78-213**

February 23, 1978 (OPINION)

Mr. John Olson
Burleigh County State's Attorney
Burleigh County Courthouse
P. O. Box 1901
Bismarck, ND 58501

Dear Mr. Olson:

This is in reply to your letter of January 3, 1978, requesting an opinion relative to the proper fee to be charged by the clerk of the district court for the filing of a petition for administration of a trust, pursuant to Chapter 59-04, North Dakota Century Code.

As your point out, no specific fee is provided at either Chapter 59-04 or Section 11-17-04 (pertaining to fees to be charged by the clerk of the district court). Nor is there a fee specified at Chapter 30.1-32, North Dakota Century Code, (pertaining to trust registration).

An examination of the provisions of Chapter 59-04, as well as Chapters 30.1-32 through 30.1-35 indicates that the legislature intended that trust proceedings be court supervised. That involves something more than merely filing a "paper" as is provided by Subsection 5 of Section 11-17-04 (authorizing the clerk to charge a fee of one dollar). The question then becomes whether the petition described in Chapter 59-04 (and the registration provided in Chapter 30.1-32) amounts to the filing of an "action" within the intended scope of Subsection 1 of Section 11-17-04, authorizing the clerk to charge a fee of fifteen dollars.

While we are aware of the distinction made between "actions" and "special proceedings" at Chapter 32-01, North Dakota Century Code, and the fact that a trust administration would be technically classified as a special proceeding under those definitions, we do not believe that those definitions, which are found at a different chapter of the Century Code, were intended to apply to Section 11-17-04. If that were so, it would have the nonsensical result of permitting writs of mandamus, for example, to be filed without charge. Rather, it would appear that the term "action" as found at Subsection 1 of Section 11-17-04, North Dakota Century Code, is intended to encompass legal proceedings involving court supervision and for which another fee is not provided.

It is, therefore, our opinion that the filing of a petition for administration of a trust pursuant to Chapter 59-04, North Dakota Century Code, is the filing of an "action" as the term is used at Subsection 1 of Section 11-17-04, North Dakota Century Code.

Sincerely,

ALLEN I. OLSON

Attorney General