

Office of the Attorney General
State of North Dakota

Opinion No. 81-92

Date Issued: August 24, 1981

Requested by: Wayne P. Jones
Ransom County State's Attorney

--QUESTION PRESENTED--

Whether state law provides for a specific fee which a sheriff may charge when an attorney directs him to serve an execution upon a defendant and to levy against any and all property in the sheriff's jurisdiction.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a sheriff may charge a fee of \$7.50 to serve an execution and a subsequent fee of \$15.00 to make a levy against any and all property in the sheriff's jurisdiction with a return of service.

--ANALYSIS--

Section 28-21-08 of the North Dakota Century Code reads in part as follows, '[T]he levy of an execution shall be made in the same manner as a levy under a warrant of attachment.'

Section 32-08.1-08, N.D.C.C., concerning the writ of attachment reads in part as follows:

1. The sheriff shall without delay serve copies of the writ, affidavit, and bond upon the defendant in the same manner as the summons. . . .

3. If the defendant has not filed a special answer, pursuant to section 32-08.1-17, within ten days after notice of the issuance of a writ of attachment, the sheriff shall seize, in his county, so much of the property of the defendant as will satisfy the demand of the plaintiff with costs and expenses. The sheriff shall attach real property and perishable property without delay, notwithstanding the right of the defendant to file a special answer.

I can be seen from the above section that the actual levying or seizing of property is not done at the time of the service of the writ of execution unless real property or perishable

property is seized. Therefore the service of a writ of execution is a service of 'other mesne process.'

Sections 11-15-07(2) and (8), N.D.C.C., read as follows:

2. For serving a summons, warrant of attachment, order of replevin, injunctive order, citation, and other mesne process and making a return thereon, a total of seven dollars and fifty cents for each person served at different locations.

8. For levying a writ of execution and making a return thereof, fifteen dollars.

Therefore, when a writ of execution is served the proper fee is \$7.50. When there is a levy upon the writ of execution and a return made, the proper fee is \$15.00, making the total fee \$22.50. In a letter dated April 23, 1981, to Sheriff Walter P. Raugutt of Dickey County this office answered the question of whether \$15.00 was the proper fee for service of an execution in the negative. That remains the case since the fee for service of an execution is \$7.50.

Of course, the sheriff is to also charge any other fees set forth by law pertaining to the miles traveled and sale of the property.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: John E. Jacobson
Assistant Attorney General