

Date Issued: April 22, 1982 (AGO 82-33)

Requested by: Tom P. Slorby, Ward County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether section 11-17-04(14) of the North Dakota Century Code requires a clerk of district court to charge a fee for certifying the record to the district court of another county pursuant to an order for a change of venue.

II.

Whether the party requesting a change of venue is responsible for payment of the fees required by section 11-17-04(1) and (14), N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that section 11-17-04(14), N.D.C.C., requires a clerk of district court to charge a fee for certifying the record to the district court of another county.

II.

It is my further opinion that the party requesting a change of venue is responsible for payment of the fees required by section 11-17-04(1) and (14), N.D.C.C.

- ANALYSIS -

I.

Section 11-17-04(14), N.D.C.C., provides as follows:

The clerk of the district court shall charge and collect the following fees:

* * *

4. For certifying the record on appeal to the supreme court or to the district court of any other county and transmitting the same, ten dollars.

Prior to the Code revision of 1943, the term "supreme court" in subsection 14 was followed by a comma, thus distinguishing between certification to the Supreme Court and certification to a district court. The comma was omitted in the 1943 revision. There is no record available to show whether this omission was inadvertent or by design.

There is no provision of law in this state providing for an appeal from one district court to another. However, section 11-17-04(1) provides as follows:

The clerk of the district court shall charge and collect the following fees:

1. For the filing of an action, including an action transferred from another county, and for all things in connection therewith which are not hereinafter provided for, fifteen dollars.

Subsection 1 was enacted in 1927, subsequent to the enactment of subsection 14. Again, there is no record available to show the rationale behind the enactment of subsection 1 or the failure to amend subsection 14 upon that enactment.

Section 11-17-04(1) was the subject of a 1966 opinion from this office to William C. Kelsch, then state's attorney of Morton County, in which it was stated that the clerk of district court is required to charge a filing fee for an action which has been transferred to his county from another county as a result of an order for a change of venue.

Section 1-02-38, N.D.C.C., enumerates the following presumptions associated with statutory enactments:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

Although it is possible to interpret the provisions of section 11-17-04(1) and (14) to be in conflict, under the terms of section 1-02-38, N.D.C.C., it must be assumed that both enactments were intended and both subsections must be interpreted to be in harmony if at all possible.

It is therefore my opinion that section 11-17-04(14), N.D.C.C., requires the collection of a fee for certifying the record on appeal to the Supreme Court or for certifying the record on transfer to a district court of another county. It is my further opinion that section 11-17-04(1), N.D.C.C., requires the collection of a filing fee for an action which has been transferred from one district court to another as a result of an order for a change of venue. Any other interpretation of the two subsections would violate the presumptions clearly set forth in section 1-02-38, N.D.C.C.

II.

Section 44-08-09, N.D.C.C., provides as follows:

The clerk of the supreme court, the clerk of each district court, the county judge, sheriff, constable, or register of deeds, in all cases, may require the party from whom any service is to be rendered to pay the fees in advance of the rendition of such service, or to give security for the same, to be approved by the officer.

It is clear from the language contained in section 44-08-09, N.D.C.C., that the Legislature intended the fees required by section 11-17-04(1) and (14), N.D.C.C., to be paid by the party benefiting from the services associated with those fees. The fees mandated by section 11-17-04(1) and (14), N.D.C.C., are required in order for venue to be properly changed from one court to another. The services associated with section 11-17-04(1) and (14), N.D.C.C., are rendered for the benefit of the party requesting a change of venue, who is therefore in my opinion responsible for the payment of the fees, associated with the transfer from one district court to another, required by section 11-17-04(1) and (14), N.D.C.C.

- 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 questions presented are decided by the courts.

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