

Date Issued: July 14, 1987 (AGO 87-14)

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

- QUESTION PRESENTED -

Whether a bank account, either passbook or checking, may be established for the purpose of initially depositing funds received by a county court for fines, costs, and other fees charged.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a bank account may be established for the purpose of initially depositing funds received by a county court for fines, costs, and other fees charged.

- ANALYSIS -

A county court may receive fees, fines, costs, and other penalties from various sources which require different types of administrative processing under the relevant statutes.

N.D.C.C. section 29-27-02.1 provides, in part, as follows:

29-27-02.1. DISPOSITION OF STATUTORY FEES, FINES, FORFEITURES, PECUNIARY PENALTIES, AND BOND FORFEITURES. All statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, shall be paid into the treasury of the proper county to be added to the state school fund.

(Emphasis supplied). This statute specifically requires that all monetary penalties resulting from the violation of state laws be paid into the treasury of the proper county when collected. See *Judicial Qualifications Commission v. Cieminski* 326 N.W.2d. 883, 887 (N.D. 1982). Because N.D.C.C. section 29-27-02.1 requires payment of all moneys received as a result of statutory violations into the county treasury when collected, it is my opinion that it would be improper for the county court or clerk of the county court to initially deposit such funds into a bank account upon receipt instead of paying them directly into the county treasury.

Fees may also be received by a judge of county court for services rendered for official acts pursuant to N.D.C.C. section 27-07.1-04, which provides, in part, as follows:

All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located.

It is my opinion that any fees received by a county judge for services other than performing marriage ceremonies must be deposited into the county treasury of the county in which the court is located, and it would be in violation of N.D.C.C. section 27-07.1-04 to initially deposit such funds in a county court bank account.

The clerk of the county court is authorized by law to collect certain fees other than fees, fines, forfeitures, and pecuniary penalties listed in N.D.C.C. section 29-27-02.1. Pursuant to N.D.C.C. section 27-07.1-11, the clerk may charge and collect the fees set forth in N.D.C.C. section 11-17-04. N.D.C.C. section 11-17-04 provides as follows:

11-17-04. FEE TO BE CHARGED BY THE CLERK OF THE DISTRICT COURT AND COUNTY COURT. The clerk of the district court and county court shall charge and collect the following fees:

1. For filing a case for decision in district court or county court which is not a small claims action, twenty dollars.
2. For filing a small claims action in county court, ten dollars.
3. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsection 1 and 2, five dollars.
4. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.

The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located.

The disposition of fees collected by the clerk of the county court under N.D.C.C. section 11-17-04 is controlled by N.D.C.C. section 27-07.1-12 which provides:

27-07.1-12. CLERK TO KEEP RECORD OF FEES - MONTHLY REPORT TO COUNTY AUDITOR. The clerk of the county court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of the clerk's term of office, the clerk shall file a statement under oath with the county auditor showing the amount of fees received since the date of the clerk's last report, and within three days thereafter, the clerk shall deposit with the county treasurer the total sum of such fees, except fees that the clerk is expressly authorized to retain.

By reading N.D.C.C. sections 27-07.1-11, 11-17-04, and 27-07.1-12 together, it is clear that the clerk of the county court shall charge and collect certain fees; must keep a record of all money received; must provide the county auditor with a monthly statement within three days after the end of a calendar month showing the amount of fees received since the clerk's last report; and, within three days after filing the monthly report with the county auditor, must deposit with the county treasurer the total sum of such fees, except for fees that the clerk is authorized to retain.

Because the clerk of the county court is specifically authorized to collect and temporarily retain filing fees, certification fees, and certain other fees, and is only required to pay them into the county treasury on a monthly basis, it is presumed that the clerk would also be authorized to establish a safe and prudent system for preserving the funds collected as fees until a payment over to the county treasurer. In the absence of any specific statute prohibiting the county court or clerk of the county court from establishing a bank account, either passbook or checking, it is my opinion that the establishment of such an account to hold funds from fees collected by the clerk pursuant to N.D.C.C. sections 27-07.1-11 and 11-17-04 until final payment to the county treasurer pursuant to N.D.C.C. section 27-07.1-12 would not be prohibited by North Dakota law.

Because the clerk of county court is authorized under N.D.C.C. sections 11-17-04 and 27-07.1-11 to collect certain fees, the funds so collected are public funds pursuant to N.D.C.C. section 21-04-01(5) which provides:

5. "Public funds" shall include all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state shall have legal custody. They shall include the funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose.

N.D.C.C. section 21-04-03 provides:

21-04-03. FUNDS OF PUBLIC CORPORATIONS TO BE DEPOSITED IN DESIGNATED DEPOSITORY. Public funds belonging to or in the custody of any public corporation shall be deposited in the Bank of North Dakota or in financial institutions which have been duly designated as depositories in the manner prescribed in this chapter.

Therefore, fees collected and held by the clerk of county court until delivery to the county treasurer are public funds belonging to the county, a public corporation. If the funds are to be deposited into a passbook or checking account in a financial institution prior to being paid over to the county treasurer, the depository account must be either in the Bank of North Dakota or a designated depository as prescribed in N.D.C.C. chapter 21-04. In lieu of depositing fees received by the clerk into an account in an authorized financial institution, the funds must either be deposited with the county treasurer or otherwise safeguarded in a reasonable and prudent manner which does not conflict with any applicable laws until the monthly deposit of fees for services rendered by the clerk is made into the county treasury.

- EFFECT -

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

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Attorney General

Assisted by: Scott J. Schneider
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