

OPINION
46-252

January 7, 1946 (OPINION)

SHERIFFS

RE: Commission - Collection of on Executions

This will acknowledge your letter of January 3, with reference to the right of the sheriff to collect a commission upon collections of money made by him under an execution in his hands, without any levy having been made by him under and by virtue of the terms of such execution.

It seems to me that your construction of section 11-1508 of the North Dakota Revised Code of 1943 is entirely correct. It is, therefore, the opinion of this office that the sheriff is entitled to charge and receive commissions on all moneys received on an execution in his hands, regardless of whether or not a levy or sale is had under and by virtue of such execution.

The pertinent part of the statute reads:

The sheriff shall receive commissions on all moneys received and disbursed by him on execution."

You are familiar with the provisions of section 11-1014 of the 1943 Revised Code, which states that the salaries fixed by law shall be full compensation to all county officers, and all fees and compensation received by any of them or their deputies or clerks, shall be accounted for and paid over monthly to the county treasurer. While the sheriff is entitled to charge and receive a commission on all moneys received on an execution, regardless of whether he has made a levy or sale thereunder, such fees and commissions will have to be accounted for by him to the county, as provided by law.

I trust that this answers your inquiry.

It is conceivable that after receiving an execution the sheriff may get in touch with the judgment debtor and collect money under and by virtue of the execution, without resorting to a levy and sale. If he collects the money because of an execution in his hands, and after it has been received, then I am entirely in accord with you that he is entitled to receive the commission set forth in the statute on any moneys received by him on the debt on which the execution was issued, provided, of course, that he accounts for the same to the county.

NELS G. JOHNSON

Attorney General