

**OPINION
52-21**

January 21, 1952 (OPINION)

COUNTIES

RE: Sheriff - Fees, Return Defendants Not Found

Your letter of January 9, 1952, in which you ask the opinion of this office on the following has been received.

Several local attorneys have been preparing Returns of Service of Summons and Complaint, including a paragraph in said Return of Defendants Not Found. They assume fees for such service should be only sixty cents. Are they correct in making such assumption? We are of the opinion a charge of sixty cents should be made for Return of Summons and Complaint, plus one dollar for Return of Defendants Not Found, even though there is only one typed Return of Service."

The general rule in regard to collection of fees is as follows:

Fees are only collectible when expressly authorized by law, and an officer demanding fees either from the public, or the state or other governmental bodies, must point to a particular statute authorizing them. No usage in regard to making such charges can legalize them without such authority."
46 C. J. 1017.

Section 11-1507 of the North Dakota Revised Code of 1943 provides in subsection 2 the following fees: "For serving a summons, warrant of attachment, order of replevin, injunctional order, citation, or other mesne process and making a return thereon, sixty cents, and for service on each defendant besides the first, fifty cents;".

You will note that on the enclosed list of sheriff's fees there is no specific subsection authorizing a fee of one dollar for return of defendants not found. A fee of one dollar was provided in section 3514 of the Compiled Laws of 1913 for search which at one time was considered the law which prescribed the fee for defendants not found. This section was, however, specifically omitted in the 1943 laws.

We are, therefore, of the opinion that the sheriff can only charge for the service of the summons or other order mentioned in the statute and cannot make any charge for return of defendants not found.

Section 11-1507 of the North Dakota Revised Code of 1943 and as amended by the 1947 Session Laws, chapter 130.

11-1507. SHERIFF'S FEES. The sheriff shall charge and collect the following fees:

1. For serving a capias with commitment of bail and return,

two dollars;

2. For serving a summons, warrant of attachment, order of replevin, injunctional order, citation, or other mesne process and making a return thereon, sixty cents, and for service on each defendant besides the first, fifty cents;
3. For making a copy of a summons or order of attachment, twenty-five cents;
4. For making a copy of an injunctional order, twenty-five cents;
5. For serving a subpoena on a witness, each person, twenty-five cents;
6. For taking and filing a bond in claim and delivery or any other undertaking to be furnished to and approved by the sheriff, one dollar;
7. For making a copy of any process, bond, or paper, other than as is herein provided, for each ten words, one cent;
8. For levying a writ of execution and making a return thereof, one dollar;
9. For levying a writ of possession with the aid of the county, two dollars and fifty cents;
0. For levying a writ of possession without the aid of the county, two dollars;
1. For serving a notice of motion or other notice or order of the court, fifty cents;
2. For executing a writ of habeas corpus and making a return thereon, one dollar and twenty-five cents;
13. For serving a writ of restitution and making a return thereon, one dollar and twenty-five cents;
4. For calling an inquest to appraise any goods and chattels which he may be required to have appraised, sixty cents, and each appraiser shall receive one dollar to be taxed as costs;
5. For advertising a sale in a newspaper, in addition to the publisher's fees, sixty cents;
6. For advertising in writing for the sale of personal property, one dollar;
7. For executing a writ or order of partition, two dollars;
8. For making a deed to land sold on execution or pursuant to an order of sale, two dollars;

9. For issuing a certificate of redemption when property has been redeemed from a sale under execution or upon the foreclosure of a mortgage, one dollar;
0. For selling real or personal property under foreclosure of any lien or mortgage by advertisement, three dollars;
1. For boarding prisoners, a sum to be determined by the county commissioners, by resolution in advance, which sum shall in no case exceed two dollars per day. (Amended by chapter 130, 1947 S.L.)

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