

**OPINION
52-51**

April 28, 1952 (OPINION)

DOMESTIC RELATION

RE: Uniform Reciprocal Enforcement of Support Act - Fees Chargeable

TO ALL STATE'S ATTORNEYS:

Chapter 122 of the 1951 Session Laws is an act concerning the extension and reciprocal enforcement of duties of support. In the various counties of this state the administration of this law has given rise to problems concerning the filing fees and the payment thereof when an action is instituted under this act. There are the following three problems which I shall set out and give an opinion on each:

QUESTIONS

1. In cases originating in the State of North Dakota, who is to pay the fee of the Clerk of the District Court for the filing of the petition and the cost of obtaining the certified copy of the petition and of the order from the Clerk of the District Court and the authenticated copy of the law from the Secretary of State?
2. In cases originating outside of the state of North Dakota, who is to pay the initial filing fee to the Clerk of the District Court in North Dakota?
3. Would the answers to questions 1 and 2 be at all different if the petitioner were the recipient of public aid and/or unable to pay the fees and costs referred to therein?

We call your attention to section 11-1704 of the 1943 Revised Code and as amended, which is an act fixing the collection of fees of clerks of the district court in the counties of this state.

OPINION

The clerk of the district courts in the various counties has no discretion in the execution of the requirements of Section 11-1704 of the 1943 Revised Code and as amended. He must collect the fees specified. And, since before he files papers, he must collect the fee for filing and before he furnishes certified copy of records, he must collect the fees therefor, it follows that someone must furnish the money by which the fees are paid.

Chapter 122 of the 1951 Session Laws, section 9 authorizes a proceeding in the district court which is initiated by the filing of a petition. It does not specify who the petitioner should be. Very likely the obligee mentioned in section 2, subsection 8 is without means to pay the fees. Quite likely, the filing of the petition is initiated by the county welfare board. In the case of a dependent

child, it is my opinion that the money should come from the appropriation made by the board of county commissioners under authority of chapter 50-03 of the 1943 Revised Code. This, in my opinion, could probably be included in the expenses allowable from this fund.

Chapter 50-01 of the 1943 Revised Code relates to the relief of the poor. In this chapter are found provisions authorizing the expenditure of public funds for the relief and support of the poor. Public officers are charged with the duty of enforcement of these statutes to the end that the public shall be relieved of the burden of supporting persons unable to support themselves when another has the obligation to support them so when the statutes are attempted to be enforced by public officers in North Dakota, it appears to me that the authority is necessarily implied that these officers have the power to extend public money under their control necessary to be expended in the payment of clerks' fees in the enforcement of such obligations. This would apply when North Dakota officers are attempting to enforce the obligation to support another against the person outside of North Dakota.

When proceedings are initiated in another state and the district court of North Dakota obtains its authority under subsections 12 and 13 of chapter 122 of the 1951 Session Laws, then it appears to me that it is the duty of the clerk to demand and receive the fees imposed by section 11-1704 of the 1943 Revised Code and as amended, supra. He is not concerned with the sources of such fees, but he is required to collect them. Necessarily they will come from the other state.

If the recipient of public aid resides in another state, as stated above, it is the duty of the clerk of the district court to collect the fees at the time he receives the papers for filing or at the time he furnished certified copies of his records. The fact that the person to be benefited ultimately is unable to pay does not affect his duty.

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Attorney General