

OPINION
55-108

February 2, 1955 (OPINION)

SHERIFFS

RE: Fees

This office acknowledges receipt of your letter of January 21, 1955, asking for an official interpretation of sections 11-1014 and 11-1507 of the N.D.R.C. of 1943 pertaining to the fees and charges collected by the county sheriff.

Your specific question is as to what fees that are collected by the sheriff may be retained by the sheriff and which must be turned over to the county treasurer.

Section 11-1507 provides for the charges to be made by the sheriff for performing certain official duties. Subsection 21 of said section, as amended by the 1951 Session Laws, provides for the payment to the sheriff for boarding prisoners a sum not in excess of two dollars per day per inmate of the county jail. This is a special arrangement whereby the county commissioners agree to pay the sheriff for labor and food for the keep of the prisoners and two dollars per prisoner may be retained by the sheriff.

Section 11-1014 specifically provides that the salaries fixed by law shall be full compensation for all county officials, their deputies, clerks and assistants and it further provides that any fee or compensation received by any official for any act rendered in his official capacity shall be accounted for and paid over monthly to the county treasurer.

Section 11-1508 provides for the commission to be collected by the sheriff in the sale of property upon execution or under an order of attachment or decree for the sale of real or personal property.

It is the opinion of this office that all such moneys collected by the sheriff in his official capacity must be accounted for and turned over to the county. This includes the commissions collected by the sheriff on execution sales and in all other matters where he acts in his official capacity.

It might be further noticed, however, that if a sheriff sells property under chattel mortgage foreclosure by advertisement, that such fees may be retained by this sheriff for the reason that he is not doing so in his official capacity. Any person is eligible to sell such property under foreclosure by advertisement.

We are enclosing herewith a copy of an opinion dated March 4, 1948, which in part deals with the question which you submitted. This should be of some help to you in solving this problem. It might also be of interest to you to consult the following cases: County of Stutsman v. Wright, 41 ND 167, 170 NW 326 and Dickey County v. Austin, 61 ND 309, 237 NW 831.

Answering specifically the question which you ask as to the sheriff collected a two dollar arrest fee, will state that it is the opinion of this office that in as much as such arrest is made in the performance of official duties of the sheriff, such money must be turned over to the county.

LESLIE R. BURGUM

Attorney General