

**OPINION**  
**55-75**

September 6, 1955           (OPINION)

LAW ENFORCEMENT OFFICERS

RE: Deputies - Fees for Arrest

This office acknowledges a request of August 8, 1955, for an opinion relative to the following questions:

Are regularly paid deputies entitled to any fees on making an arrest? If they take prisoners over to court are they entitled to any fees?"

In an opinion rendered by this office on May 12, 1938, we laid down the following rule:

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."

Section 11-1503 provides for the duties of sheriff. Among those duties are to arrest and to take before the nearest magistrate any person in his custody who has committed a public offense. In this section is outlined the duties of the sheriff which pertain to his work for the county. Section 11-1507 provides for the fees that the sheriff may charge. Nowhere in this section is there any fee for making an arrest by a regularly elected sheriff or deputy sheriff. Section 11-1513 provides for the situation when the sheriff or other officers serve a summons, subpoena, or bench warrant wherein the county or state is a party that he may certify his fee for the service. Section 11-1514 of the North Dakota Revised Code of 1943 provides for the fact that the sheriff shall at the expiration of every month file an itemized statement for mileage in connection with criminal cases. The only provision made for any charge by the sheriff to which he is personally entitled is that of mileage and expenses.

It is, therefore, the opinion of this office that a regularly elected sheriff or his deputies may not make an extra charge for the arrest and may not make an extra charge for taking a prisoner before the court as those are considered his official duties.

LESLIE R. BURGUM

Attorney General