

N.D.A.G. Letter to Rohrich (Dec. 4, 1991)

December 4, 1991

Mr. F. C. Rohrich
Emmons County State's Attorney
P.O. Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your November 25, 1991, letter in which you have requested clarification of Attorney General's Opinion 91-09 issued June 21, 1991, to Dickey County State's Attorney Daniel G. Diemert. In that opinion, I concluded that N.D.C.C. § 11-15-08, pertaining to commissions collected by a sheriff, does not authorize a sheriff to receive a commission if the sheriff has not received and disbursed monies in enforcement of an execution unless personal property has been taken by the sheriff on an execution and is applied in satisfaction of the debt without sale of such property.

In light of this opinion, you have inquired whether a sheriff can collect a commission once he has filed a levy on property and the attorney for the defendant then makes a settlement and does not involve the sheriff.

This specific issue was discussed in this Attorney General's opinion. Reference was made to the provisions of N.D.C.C. § 11-15-08(2) which provides that a sheriff may receive a commission upon the appraised value of personal property which has been taken by the sheriff on an execution or other court process and which has been applied in satisfaction of the debt without sale. I concluded:

In other words, if the sheriff has taken property pursuant to court process and the property taken is applied in satisfaction of the debt without sale so that there is no monetary sale proceeds, the sheriff will be entitled to receive a commission to the extent of the appraised value of that property. There is no requirement in N.D.C.C. § 11-15-08(2) that the sheriff receive and disburse monies before the sheriff is entitled to the statutory commission.

1991 N.D. Op. Att'y Gen. 91-09, p. 3.

If the sheriff has complied with the requirements of N.D.C.C. § 11-15-08(2), the sheriff will be entitled to collect the commission. However, failure to meet those requirements will require the sheriff to comply with the provisions of N.D.C.C. § 11-15-08(1) in which the sheriff must receive and disburse monies before the sheriff may collect a commission.

I have enclosed a copy of 1991 N.D. Op. Att'y Gen. 91-09 for your information. I believe that this opinion will answer the question you have presented to me.

Sincerely,

Nicholas J. Spaeth

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Enclosures