

N.D.A.G. Letter to LaQua (Dec. 17, 1991)

December 17, 1991

Mr. Vincent A. LaQua
Wells County State's Attorney
PO Box 347
Fessenden, ND 58438

Dear Mr. LaQua:

Thank you for your October 23, 1991, letter in which you request clarification regarding the fees the sheriff may collect pursuant to N.D.C.C. §§ 11-15-07 and 11-15-09.

N.D.C.C. § 11-15-07 provides that the sheriff may charge and collect \$25 "[f]or levying or executing any writ." N.D.C.C. § 11-15-07(5). When the sheriff of a county receives a written order from a court of this state to perform a foreclosure sale, and the sheriff subsequently performs the sale, the sheriff has executed a writ for which the sheriff may charge \$25. The sheriff may collect this amount regardless of whether any of the property for sale is purchased.

There are two provisions which govern the additional fees a sheriff may collect when the bidding process results in a sale. N.D.C.C. § 11-15-09 applies when the plaintiff successfully bids on the property foreclosed, and section 11-15-08 applies when a party other than the plaintiff successfully bids on the property which has been foreclosed. The sheriff may not collect fees under both sections 11-15-08 and 11-15-09 on the same sale. Section 11-15-09 provides that

[w]hen the person in whose favor an execution or order of sale has been issued by the court bids on the property sold under the execution or pursuant to judgment, the sheriff or other person making the sale shall collect on behalf of the county either of the following fees, and no more:

N.D.C.C. § 11-15-09 (emphasis supplied). The phrase "and no more" refers back to section 11-15-08(1) which applies when a party other than the plaintiff successfully bids on the property for sale. "Except as provided in section 11-15-09, the sheriff is entitled to collect commissions on behalf of the county . . ." N.D.C.C. § 11-15-08(1). The phrase "except as provided" in section 11-15-08 and the phrase "and no more" in section 11-15-09 refer to each other. This clarifies that when property is purchased, the sheriff may collect under either section 11-15-08 or section 11-15-09, but not both. The sheriff is entitled to a larger commission when someone other than the plaintiff successfully bids on the property for sale because in that event, the sheriff must make a transfer of funds from the buyer to the plaintiff. This does not occur when the plaintiff is the successful bidder. In that event, the plaintiff simply keeps the property.

There is no indication that the Legislature intended the words in section 11-15-09 "and no more" to exclude fees collected pursuant to section 11-15-07. To read section 11-15-09 as excluding all other fees would have the effect of limiting the sheriff to only the fee allowed in section 11-15-09, regardless of the process, or actions undertaken by the sheriff in relation to that particular sale. Further, such a reading would deny the sheriff the opportunity of collecting any fees pursuant to section 11-15-07 when a plaintiff successfully bids in property at a sale. However, when the plaintiff is not the successful bidder at the sale, the sheriff is allowed to collect fees pursuant to section 11-15-07. This is not the result the Legislature intended by enacting these provisions.

It is my opinion that when the plaintiff is the successful bidder in the execution sale, the sheriff is entitled to fees chargeable under both N.D.C.C. §§ 11-15-07 and 11-15-09.

I trust this responds to your inquiry.

Sincerely,

Nicholas J. Spaeth

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