

N.D.A.G. Letter to Koppy (Jan. 16, 1992)

January 16, 1992

Mr. Allen Koppy
Morton County States Attorney
210 2nd Avenue NW
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your November 25, 1991, letter in which you request my opinion on whether Morton County can retain and sell lost or misplaced personal property that is turned over to the possession of Morton County by citizens or county officers, such as deputy sheriff's officers. You indicate that the usual practice in Morton County over the years has been for the sheriff's office to take the property into custody and hold it until the board of commissioners authorizes an annual public sale. The proceeds of the sale are then deposited in the county general fund.

N.D.C.C. § 11-27-01 sets forth the authority for the board of county commissioners to sell property under specified circumstances. That section provides, in pertinent part:

The board of county commissioners of any county may dispose of any property, either real or personal, which the county has acquired through purchase, forfeiture, or operation of law other than through tax sale proceedings, under this chapter . . . (Emphasis supplied.)

Since N.D.C.C. § 11-27-01 is the statute governing authority of a county to sell property, in order to answer your question it must be determined whether the lost or misplaced personal property in question is acquired by the county through "operation of law." Words used in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Words and phrases in a statute must be construed according to their context and to the rules of grammar and the approved usage of the language. N.D.C.C. § 1-02-03.

As you have indicated in your letter, there are a number of North Dakota statutes dealing with the subject of lost or misplaced property. In addition to the statutes which you have listed, there are statutes governing finding of lost property set forth at N.D.C.C. §§ 60-01-34 through 60-01-43.

N.D.C.C. § 60-01-39 provides:

60-01-39. When finder may sell. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner, with

reasonable diligence, cannot be found, or, being found, refuses upon demand to pay the lawful charges of the finder in the following cases:

When the thing is in danger of perishing or of losing the greater part of its value; or

When the lawful charges of the finder amount to two-thirds of its value.

N.D.C.C. § 60-01-39 could possibly be utilized by a county to sell lost or misplaced property found by one of its employees because in that situation the county would be considered as the finder of the property. However, the sale could only occur under the requirements set forth in N.D.C.C. § 60-01-39.

My research does not indicate any statutes which could reasonably be interpreted to confer acquisition of property upon a county by "operation of law" so as to authorize a sale by the county as provided under N.D.C.C. § 11-27-01. It is also significant to note that municipalities in North Dakota do have a specific statute allowing disposition of abandoned or unclaimed personal property. N.D.C.C. § 40-05-02(20). Counties do not have a comparable statute.

Based upon the foregoing, it is my opinion that Morton County may only retain and sell lost or misplaced personal property turned over to the possession of the county by citizens or county employees if it does so pursuant to the requirements set forth in N.D.C.C. § 60-01-39.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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