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## Digest of Attorney General's Opinions

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## DIGEST OF ATTORNEY GENERAL'S OPINIONS

**QUESTION:** *Who owns a prescription after a doctor has issued it?*

Section 43-15-31 PHYSICIANS' PRESCRIPTIONS TO BE FILLED AND PRESERVED. Every registered pharmacist in the state shall file, or cause to be filed, a physician's prescription, or a copy thereof, which has been compounded or dispensed in his pharmacy or drug store. The prescription to the party presenting it on the request of such party only.

The Attorney General stated that, in view of the provisions of Section 43-15-31 of the North Dakota Century Code the ownership of the actual piece of paper on which the directions to the pharmacist are written is of little significance. The pharmacist must retain the original or a copy, and it is at his discretion which he retains. Once filed the statute forbids the furnishing of the prescription to anyone but the person who originally presented it to the pharmacist, except upon court order, and then only a copy can be offered as the prescription must stay in the pharmacists' files.

If the doctor attempts to recall the prescription after issuance, he must do so before it is filled, and he must actually regain possession of the prescription. The pharmacist is entitled to rely on the written prescription and if the doctor has recalled it without actually regaining possession the pharmacist would have no knowledge of the attempt to recall. Once the pharmacist has filled the prescription he cannot return it to the doctor as he must retain the prescription in his files.

**QUESTION:** *What is the liability of parties who establish a legal drain, under a local board of drainage commissioners, to other parties damaged by such drainage?*

It was noted that the Code (Ch. 61-21) provides the authority to

establish drains, the process to be followed, and the method of assessing payment for the drain. There is no provision, however, for the nonliability of assessed property owners, should the establishment of the drain under the authority of the drain commissioners result in damage to parties not included in the drain. In determining whether or not the assessed property owners were immune from civil suit, the nature of the Board of Drainage Commissioners was examined.

"The North Dakota Century Code (Chapter 61-21) makes no provision for the nonliability of assessed property owners should the establishment of the drain under the authority of the drain commissioners result in damage to parties not included in the drain."

The county drainage boards are quasi-corporations and agents of the state. It is doubtful, therefore, that there is any provision for imposing liability on an individual landowner in an action against him, even if he voted for the improvement. He did not construct the drain, a quasi-corporation constructed it, and this quasi-corporation, a part of a governmental body, would be liable for damages.

This does not mean that the individual landowner would not eventually end up paying for the damages that might occur. The aggrieved landowner may recover damages from the drainage board, which could then assess the increased cost against those landowners benefitted by the drainage district which has been established. This situation could not occur under a tort action as sovereign immunity could be claimed, but sovereign immunity does not apply to suits in inverse condemnation. In this situation, an action could result in a judgment for the value of the property "taken", which could be entered against the county or drainage district or both. Benefitting landowners' property is subject to assessment for the benefits of the drainage district once the district is established, and therefore could end up paying for the damages, indirectly, even though not directly liable for the damages.

*QUESTION: Concerned was the statutory six day work week for women, seeking an interpretation of the word "week". Does "week" mean a calendar week of Sunday through Saturday, or does "week" mean any consecutive seven day period?*

The Attorney General referred to Section 34-06-06 of the N.D.C.C., specifically the phrases ". . . or for more than six days, or for more than forty-eight hours in any one week." It was pointed out that the comma separating the two phrases was not in the code revisor's notes for the Revised Code of 1943 in which the comma appeared for the

first time. It was concluded that the comma was a typographical error and the above quoted phrase should be read as one phrase meaning six days in one week.

Next Section 1-01-33 was referred to, in which "week" is defined to mean seven consecutive days. It was also pointed out that the purpose of the statute was to promote the health and well-being of females. Coupling these two points with the interpretation of the phrase quoted above, it was concluded ". . . that a female may not be employed for more than six days in any period of seven consecutive days without being provided with one day of rest from such employment within such period."



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PROCEEDINGS  
*of*  
SEVENTIETH  
ANNUAL MEETING

STATE BAR ASSOCIATION  
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Williston, North Dakota  
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