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Digest of Attorney General Opinions

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chase price in the sum of \$1,568.80. Subsequent to assignment defendant made payments on the contract to the plaintiff totaling \$600.00. The amount paid by defendant to plaintiff plus the sum owed by Stockman to defendant was approximately \$1,800.00, an amount in excess of the purchase price of the automobile.

Plaintiff alleges that \$968.80 remains due on the contract and brings an action in claim and delivery to recover possession of the automobile. Defendant contends that the contract was not assignable but if it was assignable that he has an off-set against the indebtedness in the amount owed him by the assignor, Stockman.

The court ruled that nonassignability of the contract is not a defense because the defendant by his conduct in making payments to the assignee of the contract waived his right to assert such defense. "He did not, however, merely by making payments on the contract, waive the right to assert any off-set that he might have by reason of indebtedness owing by the assignor, Stockman Motors, Inc., to him . . ." The court then cited *Farmers Ins. Exchange v. Arlt*, 61 N.W.2d 429, which quotes Section 167 of the Restatement of the Law, Contracts in support of the decision. Section 167 allows the obligor to set-off against the assignee all rights which would have been available against the obligee in the absence of assignment provided such set-offs "are based on facts existing at the time of the assignment or are based on facts arising thereafter prior to knowledge of the assignment by the obligor."

DIGEST OF ATTORNEY GENERAL OPINIONS

CITY CURFEW ORDINANCE — ARREST OF NON-RESIDENT PARENT March 3, 1959

A North Dakota city curfew ordinance provided that the parent of the violating minor shall also be guilty of ordinance violation.

"While we can find no statutory or case law directly in point, it would appear that such an ordinance would be binding upon nonresident parents only if they are within the corporate limits of the municipality at the time their minor child violates the ordinance." See 5 McQuillin, MUNICIPAL CORPORATIONS 123, sec. 15.28 (3rd ed.).

CONSTITUTIONAL LAW — TAX LEVY FOR A TOWNSHIP COMMUNITY
CHEST

March 24, 1959

Section 185 of the Constitution of North Dakota states, "The state, any county or city may make internal improvements . . . , but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any . . . , association or corporation except for reasonable support of the poor"

It is doubtful that the writers of the constitution contemplated a "community chest" within the term "reasonable support of the poor." Thus the township is prohibited by the constitution from levying a tax for the purpose of raising funds for a community chest.

JUDICIAL PROCEDURE, CRIMINAL — APPOINTMENT OF COUNCIL FOR
INDIGENT DEFENDANT APPEARING BEFORE A POLICE MAGISTRATE OR
JUSTICE OF THE PEACE.

April 10, 1959

Section 27-0831 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides, in the words of the title, "Assignment of Counsel for Indigent Defendants in County Courts Having Increased Jurisdiction." Section 29-0127 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides for the appointment of an attorney to represent the defendant in all criminal actions upon the defendants showing of financial inability to employ counsel.

Decisions in other jurisdictions support the view that no constitutional right is denied by the failure to appoint counsel at public expense for an individual being tried in a police magistrate or justice of the peace court.

Since neither of the sections of the North Dakota Revised Code of 1943 directly or indirectly refer to the police magistrate or justice of the peace court, it is not possible to infer that either court need appoint an attorney, to be paid at public expense, for an indigent defendant before such court.

MINING AND GAS AND OIL PRODUCTION — ORIGINAL JURISDICTION
OF INDUSTRIAL COMMISSION

May 25, 1959

Section 38-0807 (3) of the 1957 Supplement to the North Dakota Revised Code of 1943 states, “. . . such order of the state geologist allowing exceptions to the established spacing pattern may be appealed . . . to the commission . . . Upon the filing of such an appeal . . . the commission may affirm or repeal the order of the state geologist.”

The statute is not mandatory but is merely permissive since it does not require that an application for an exception must be made to the state geologist. This reasoning is supported by section 38-0804 of the 1957 Supplement to the North Dakota Revised Code of 1943 where the state geologist is deemed to be the executive secretary and technical advisor of the commission.

“The legislature presumably was aware that the Industrial Commission could not handle all of the administrative functions and wished to provide a manner whereby the commission could be relieved of some of the minor duties” Since jurisdiction would not be removed from the commission and vested in a person subordinate to the commission, it follows that the commission has original jurisdiction over an application for an exception without any previous filing of such application with the state geologist.

N O T I C E

The Fifth Annual Rocky Mountain Mineral Law Institute, sponsored by the Rocky Mountain Mineral Law Foundation, will be held July 30, 31, and August 1, 1959 at the University of Utah. The North Dakota Oil and Gas Association is one of the sponsoring industry associations.

There will be many notable speakers on a wide variety of mineral law topics. In the afternoon of July 30, two workshops will be offered. The first is Oil and Gas — Recent Developments in the Rocky Mountain Area. The second is, Hard Rock — Land Office Processing of Lease Offers and Mineral Applications.

Early registration is urged so that the Institute Committee may provide the best accommodations and recreational facilities for all.

Accommodations for individuals or families can be provided in University residence halls near the place of meetings. A wide selection of hotel and motel accommodations is also available. For reservations contact:

Rocky Mountain Mineral Law Institute
College of Law
University of Utah
Salt Lake City, Utah.