

Sheriff, Fees Of—Chattle Mortgage, Waiver of Fees.

Whenever the sheriff performs any service for which a fee is charged under Section 4634, Political Code, he must collect the same and has no authority or right to waive the collection thereof. When the sheriff sells property under a chattle mortgage he should collect the fees for advertising and the commissions upon the amount received, and such fees when collected must be turned into the county as provided by Section 4591, Political Code.

Helena, Montana, August 4, 1905.

F. H. Ray, Esq., Assistant State Examiner, Helena, Montana.

Dear Sir:—Your letter of the 4th instant to hand, with request for an opinion upon the following questions:

1. Has the sheriff authority to waive any of the fees prescribed by Section 4634, Political Code, where he has performed the service and the case is subsequently settled out of court?
2. When the sheriff forecloses a chattel mortgage by taking possession of and selling the property, by virtue of a clause inserted in the mortgage conferring such power upon him, must he collect fees therefor, as prescribed in Section 4634, and if so, are the same to be turned over to the county?

In answer to the first question, you are advised that whenever the sheriff performs any service for which a fee is charged under Section 4634, he must collect the same and has no authority or right to remit or waive the collection thereof. In fact Section 4611, Political Code, provides that all fees should be paid in advance. Section 4630, of the same code, governs and controls, and among other sections, Section 4634, and reads as follows:

“The fees of public officers in the state are as follows, which must be charged and collected for the use of the state and counties, respectively.”

The fact that the case is settled out of court has no bearing whatever upon the fees to be charged for services performed by the sheriff prior to the settlement. Fees are one of the sources of revenue of the state and county governments, and it is the duty of the sheriff to see that all

such fees are collected and turned into the county treasurer.

In answer to your second question, you are advised that where the sheriff sells property under a chattel mortgage, it is his duty to collect the fees for advertising the property and the commissions upon the amount received or for which the property was bid in the same as upon an execution issued out of court, and these fees, when collected, must all be turned into the county as Section 4591 provides that

“No county officer, except as provided in this chapter must receive for his own use any fees, penalties or emoluments, for any official service rendered by him, but all fees, penalties and emoluments, of every kind, must be collected by him for the sole use of the county, * * *.”

The foreclosure of a chattel mortgage, and the sale of the property thereunder by a sheriff, is an official service, as such term is used in Section 4591.

Yours very truly,

ALBERT J. GALEN,

Attorney General.