

**Sheriff—Fees of in Chattel Mortgage Foreclosure Sale.**

The Sheriff is entitled to the same fees for performing his duties under a chattel mortgage conferring the power of sale as are provided for by Section 4916 of the Revised Codes of 1921 under execution sale.

E. E. Collins, Esq.,  
County Attorney,  
Billings, Montana.

My dear Mr. Collins:

I have your letter requesting my opinion on the following question:

“Is the Sheriff entitled to collect a fee of one dollar for taking property into his possession under a chattel mortgage providing for a sale of the property by the Sheriff, and to charge a fee of one dollar for the posting of notices as he does in cases where execution has been placed in his hands and he takes the property under execution?”

The fees of the Sheriff are enumerated in Section 4916, Revised Codes of 1921, but fees pertaining to the foreclosure of a chattel mortgage are no place therein specifically mentioned.

By Section 8286, Revised Codes of 1921, a chattel mortgage may be foreclosed by action in the same manner as the foreclosure of a mortgage upon real estate, which, of course, means upon a complaint filed, judgment rendered, and order of sale or execution issued. In that case, the Sheriff would be entitled to the same fees as for any other execution sale. This same section authorizes the mortgagor of personal property to insert in his mortgage a clause authorizing the Sheriff to execute the power of sale therein granted to the mortgagee, his legal representatives or assigns, upon the default of the mortgagor, and provides the procedure thereof. This is, in effect, a confession of judgment on the part of the mortgagor, and the Sheriff is acting in the same capacity as he would be had a judgment been entered against the mortgagor by the court. This power of sale takes the place of an

execution or order of sale by the court, and it is my opinion that the Sheriff, in carrying out such order of sale, is entitled to collect the same fees as are provided in Section 4916 for sale on execution.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.