

**County Treasurer, Collection of Delinquent Taxes on Personal Property.**

The law imposes the duty upon the county treasurer of collecting delinquent taxes on personal property and making seizure, but the treasurer may delegate the performance of such duty to the sheriff or assessor, as special deputies without compensation, the county treasurer being primarily liable for such collection.

Helena, Montana, Sept. 8, 1905.

Phil I. Cole, Esq., County Attorney, Chouteau, Montana.

Dear Sir:—I am in receipt of your favor of the 6th, making request for an opinion from this office upon the following question: The law provides that the county treasurer must collect the taxes due the county and that personal property may be seized and sold to pay the taxes thereon, in case the same becomes delinquent, and Section 4602, Political Code, as amended by Chapter 75, laws 1905, p. 164, provides that the county treasurer of counties of the sixth class, the class to which your county belongs, may not have a deputy for more than two months in the year, viz: the months of November and December, and the treasurer being himself unable to leave his office and business to go out and make seizure and collection of taxes from delinquents, can the treasurer deputize the sheriff or his deputies to act for him in the premises?

It is true that our supreme court has held, in the case of Mutual Life Insurance Co. of New York v. Martien, 27 Mont. 437; 71 Pac. 470, that Section 3940, Political Code, imposing the duty of making collection and seizure for delinquent taxes of property on the assessor rather than the treasurer is unconstitutional. In other words, it is not within the province of the legislature, under our constitution, to take such power away from the treasurer and delegate it upon some other person or officer. In that case, it is said in part: "The treasurer shall be the collector. This provision commands the treasurer to collect the taxes, and prohibits the assessor, the coroner, the jailer, the court house janitor or any other person except the treasurer, from collecting or keeping the moneys. \* \* \* Examination of these sections discloses that neither by implication nor by express words did the constitutional convention give the legislature any power to make anybody but the county treasurer a collector of taxes."

By Section 4318, Political Code, it is provided: "Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code." And by Section 4319 it is provided that "the appointment of deputies, clerks and subordinate officers of counties, districts and townships must be made in writing and filed in the office of the county clerk."

Accordingly, it is my opinion that there is no legal objection whatever to the treasurer deputizing the sheriff, deputy sheriff, assessor, or any other competent person by appointment, in writing, to act for him in the collection of such delinquent taxes and the making of such seizures, provided, there be no additional cost to the county, for while the duty is imposed upon the treasurer still he may properly delegate the same. The duty is imposed by law upon the treasurer, and the means adopted by him for performing the same is unimportant, for he alone is held responsible for the performance of such duty, and when the treasurer delegates the performing of this duty to the sheriff or any other person, himself and bondsmen are liable in the same manner and to the same ex-

tent that they would be were such duty done and performed by the treasurer himself in person. He assumes the responsibility in delegating such duty. The case above referred to is an authority only to the effect that the legislature cannot authorize any one except the county treasurer to collect such taxes under our constitution. In other words, the legislature cannot impose this duty on the assessor or other person, relieving the treasurer of such duty, for the duty is fixed by the constitution. But this does not prohibit the treasurer from himself deputizing another to act for him. However, in case of any action being commenced it would have to be commenced by and in the name of the treasurer.

Yours very truly,

ALBERT J. GALEN,

Attorney General.