

Sheriff, Commission Of. Fees of Sheriff. Sale by Sheriff, Commission For. Bonds, School District, Election For. School District, Election for Bonds. Jurisdiction in Action Against Corporation. Corporations, Action Against. Justice Court, Jurisdiction, Criminal Action Against Corporation.

1. A sheriff is not entitled to a commission where he has neither sold property, nor received money or property to be applied in satisfaction of an execution or order of sale.

2. The election provided for by Sections 1960, 1961 and 1962 of the Political Code should be conducted in the manner of

conducting elections for school trustees.

3. District courts, alone, have jurisdiction to try a criminal action against a corporation.

Helena, Montana, May 28, 1907.

Hon. D. M. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:—

I am in receipt of your favor of the 14th inst., in which you submit for the consideration of this office the following questions:

1. "Is a sheriff entitled to a commission when he has levied a writ of execution on the property, advertised the same for sale, but, before the sale actually takes place, the parties effect a settlement and the sale is abandoned?"
2. "How should the election provided for by Sections 1960, 1961 and 1962 of the Political Code be conducted?"
3. "What court or courts have jurisdiction to try and punish corporations for the violation of Chapter 43, Acts 1907?"

1. Section 4634 of the Political Code specifies the fees and commissions which a sheriff is authorized to collect. The first part of subdivision II. relates to the commissions collected when the sale of the property is actually made. Subdivision 12 relates to cases where an execution has been issued, but, prior to sale, the party has paid to the sheriff the amount necessary to satisfy the execution, so that no sale is actually made.

In the case you state I understand that the parties made settlement between themselves, and that no money or other property actually passed to the possession of the sheriff for the purpose of that settlement, and in that event the sheriff would not be entitled to receive commissions for receiving and paying over money, for he did not receive any. Nor would he be entitled to a commission on sale, for he did not make a sale. His commission is graduated by the amount of money received by him, and if he did not receive any money there would be nothing on which he could compute the commission, for he would not know the amount for which the property would sell until the sale was made, and if the parties effected a private settlement he would have no means of knowing the amount for which they settled. The section distinctly specifies the amount of fees which must be collected by the sheriff for the levying of the writ, for advertising the property, and for doing each specific act up to the time of the sale. Hence when the sheriff has received all the fees to which he is entitled up to the time when the execution is recalled by the settlement of the case, he can ask nothing more, for the settlement of the case means a satisfaction of the judgment, and the policy of the law is to encourage men to settle their differences between themselves rather than subject their property to forced sale. You may find this matter considered generally, though not on this specific point, in

Jergens vs. Hauser, 19 Mont. 184.

Opinions of Attorney General, 1905-'06, p. 165.

2. The manner of conducting elections provided for in sections 1960, 1961, and 1962, Political Code, is the same as for the election of school trustees, except that no registration shall be required.

Sec. 1962, Pol. Code, as amended, Laws 1901, p. 124.

3. Under the provisions of Sec. 11, Art. 8 of the State Constitution, the legislature has authority to prescribe what cases of misdemeanor may be prosecuted in the justice court, and what cases may be prosecuted in the district court. Section 1400 of the Penal Code, which specifies the jurisdiction of justices' courts seems to be broad enough to cover all misdemeanors committed either by natural or artificial persons wherein the punishment does not exceed six months imprisonment and five hundred dollars fine, but sections 2570 et seq. Penal Code, are equally as authoritative as is Section 1400 of the same Code, and if the two sections are read together the result would be that justice courts have jurisdiction over all misdemeanors wherein the punishment does not exceed five hundred dollars fine and six months imprisonment, except misdemeanors committed by a corporation, and in the latter case the method of procedure specifically provided for by said sections 2570, et seq., must be followed.

There may be some questions raised relative to the validity of the statute making separate provisions for the dealing with artificial persons, but these sections have never been passed upon by our Supreme Court, and until they are held void or inoperative we cannot do otherwise than to follow them. The very recent case of People vs. Palmero Land and Water Company (Cal.) 89 Pac. 723, seems to throw some doubt upon the validity of said sections 2570, et seq., but these sections are still law in this State, and their unconstitutionality, if they are so unconstitutional, is not so apparent as to justify the holding by this office to that effect in advance of the decision thereon by the Supreme Court of our State.

You are therefore advised that proceedings against a corporation for the violation of Chap. 43, Laws 1907, should be conducted in the manner indicated by sections 2570 et seq. Penal Code.

Very truly yours,

ALBERT J. GALEN,

Attorney General.