

**Sheriff—Fees—Chattel Mortgage Sale.**

A sheriff is not entitled to a commission in executing a power of sale in a chattel mortgage, but must pay the same into the County Treasury.

February 22nd, 1919.

Mr. Matt McLain, Sheriff,  
Havre, Montana.

I have your letter of the 18th inst., requesting an opinion as to whether or not a sheriff is entitled to the commission on chattel mortgage sales or whether such commission belongs to the County.

Your letter does not state whether the chattel mortgage sale to which you refer is a judicial sale after foreclosure in court, or whether you refer to the usual procedure in which without any action by the court a sheriff executes a power of sale contained in a chattel mortgage. I assume that you refer to the latter case for there could be no question about the fee in the former belonging to the county.

Section 3112 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, that the same must be collected by him for the sole use of the county and accounted for and paid into the County Treasury. The sole question then is whether or not the commissions which a sheriff collects for executing a power of sale in a chattel mortgage without court proceedings are collected by him for *official service*. I conclude that they are for the following reason. Section 12 of Chapter 86 of the 1913 Session Laws, provides:

“It is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, to execute the power of sale therein granted to the mortgagee, his legal representatives and assignes, in which case the sheriff of such county, at the time of default, at the request of the mortgagee, *must*, and iits hereby made his *duty* to advertise and sell the whole or any part of the mortgaged property.’

It is clear from this law that the sheriff, when executing the power of sale in a chattel mortgage, is performing an official duty which the law says he must do, and in which he has no discretion. It is as much the sheriff's duty under the law to execute such power of sale as it is to perform any other Act which the law directs him to do. It is therefore my opinion that the fees in question are fees collected for an official service and that as such they must be accounted for and paid into the County Treasury.

Respectfully,

S. C. FORD,  
Attorney General.