

**Sheriffs—County Treasurers—Taxation—Personal Property Taxes.**

The right of the county treasurer to appoint the sheriff as his deputy for the collection of personal property taxes is not dependent upon the consent of the sheriff to act as such deputy.

E. M. Child, Esq.,  
County Attorney,  
Kalispell, Montana.

January 10, 1930.

My dear Mr. Child:

You have requested my opinion on the following question:

Is it mandatory upon the sheriff to proceed to collect personal property tax when appointed a deputy for that purpose by the county treasurer, as provided in Section 2239, as amended by Section 2 of Chapter 102 of the Laws of 1923?

Under the general rule of statutory construction, intention of the legislature must be given effect, if possible, and from the provisions of the act in question and from the history of the legislation upon the

subject it appears that it was the intention of the legislature that the county treasurer, for the purpose of making levy upon and sale of personal property for delinquent taxes, could call to his aid the services of the sheriff of the county. Evidently to meet constitutional objections which had formerly been successfully lodged against the law when it provided that when the sheriff is called upon by the county treasurer to perform these services, he shall be appointed a deputy treasurer and act as such, rather than as sheriff, but the duty to so act when called upon arises by virtue of his holding the office of sheriff. It is well settled that the legislature may require a person holding one office to perform the duties of another and separate office unless some constitutional prohibition forbids.

The right of the county treasurer to call upon the sheriff to act as his deputy in the matter of making these levies and sales is not circumscribed by any provision in the law giving the sheriff an option as to whether he will so act. The exercise of the power by the treasurer is left to the discretion of the treasurer alone, and when he exercises it he is merely availing himself of the means provided by law for discharging this particular duty of his office.

The refusal of the sheriff to act when called upon by the treasurer would nullify the power expressly conferred upon the treasurer, and thus make the treasurer's power conditional upon the acceptance of the sheriff, whereas the act is an unconditional grant to the treasurer. No provision for acceptance on the part of the sheriff was necessary, as he, being a public officer, the law can command duties to be performed by him without first obtaining his consent.

The apparent purpose of the legislation being to afford the county treasurer facilities for performing this particular work which he did not have at his command before the enactment of Chapter 102, Laws of 1923, it is my opinion that when called upon by the county treasurer the sheriff must act in the capacity of a deputy treasurer in the levying upon and sale of personal property for delinquent taxes, and that he has no option to exercise in regard to performing the services mentioned in the act.

Very truly yours,  
L. A. FOOT,  
Attorney General.