

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

A sheriff, when appointed deputy treasurer for the collection of personal property taxes, cannot perform those duties through his deputies.

Ralph Ripke, Esq.,
Sheriff,
Kalispell, Montana.

January 27, 1930.

My dear Mr. Ripke:

You have requested an opinion whether in case the sheriff is appointed deputy county treasurer for the collection of personal property taxes under the provisions of Section 2239, R.C.M. 1921, as amended by Section 2 of Chapter 102, Laws of 1923, the sheriff may perform the duties imposed upon him by said section through his deputies.

Said section imposes the duty upon the county treasurer to collect all personal property taxes and when they are reported to him by the assessor as not being a lien upon real property sufficient to secure their payment it is the treasurer's duty immediately upon receipt of said report to levy upon and take into his possession the personal property assessed and sell the same in the same manner that property

is sold by the sheriff on execution. It is further provided by said section: "and the county treasurer may for the purpose of making such levy and sale, designate and appoint the sheriff as his deputy, and such sheriff shall be entitled to receive the same fees, as entitled in making a seizure and sale under execution."

It is apparent that the duties above mentioned are by the statute made a part of the duties of the office of the county treasurer. Formerly the duty of collecting these taxes was placed upon the county assessor by the statute. The change was made because certain constitutional objections were successfully urged against the power of the legislature to provide for the collection of these taxes by any officer other than the county treasurer. The collection of these taxes cannot by law be made a part of the duties of the office of the county sheriff. It is therefore provided that the sheriff may be appointed a deputy county treasurer for this purpose. As used in the statute, the word "sheriff" means the individual who holds the office of sheriff, and not the sheriff as an officer. It is merely descriptive of the person who may be appointed. He is appointed deputy county treasurer as an individual and not in his official capacity as sheriff. In the performance of these duties his power emanates from his appointment as a deputy treasurer, and not from his office of sheriff, and the duties he performs are those pertaining to the office of treasurer and not to the office of sheriff.

As the sheriff in these cases acts as a deputy county treasurer, discharging duties of the treasurer's office, and not as a sheriff discharging duties of the sheriff's office, and inasmuch as a deputy sheriff only acts for his principal, the sheriff, in matters pertaining to the office of sheriff, it follows that a deputy sheriff cannot perform the duties required of his principal when he is acting in the capacity of deputy county treasurer and not as sheriff.

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