

Sheriffs—Fees—Mortgages—Foreclosures.

A sheriff in computing the costs of sale on the foreclosure of a real estate mortgage is not entitled to include a charge of one dollar for the order of sale but may charge a fee of one dollar for advertising, as provided in paragraph 11 of section 4916, R.C.M. 1921, as amended by chapter 111, laws of 1927.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

May 26, 1932.

My dear Mr. Hawkins:

You have requested my opinion on the following question:

“Where a building and loan association has brought an action to foreclose on property covered by a mortgage held by it, can the sheriff in computing the costs of sale make a charge of one dollar for the order of sale?”

And in connection with this inquiry you state that it has been contended that the sheriff does not make a levy of any kind on property, that his sale is conducted by virtue of the expressed directions contained in the decree of court, and that there is no service of the order of sale, so that the sheriff cannot base his charge on paragraph 9 of section 4916, R.C.M. 1921, as amended by chapter 111 of the laws of 1927.

In my opinion, this contention is correct as I find no authorization for such a charge. The sheriff is, however, entitled to charge a fee of \$1.00 for advertising as provided in paragraph 11 of said statute.

Very truly yours,

L. A. FOOT,
Attorney General.