

Opinion No. 172**Sheriffs—Counties—Tax Sales.**

HELD: The sheriff of the county where the property of the delinquent taxpayer is located is the proper officer to seize property in a civil action.

April 14, 1933.

You request our advice on the following: "May a sheriff acting as deputy county treasurer, under Section 2239 R. C. M. 1921 as amended by Ch. 102, Laws of 1923, go outside of his county to seize property to sell for delinquent personal taxes and whether a court writ is necessary in order to levy on the property, other than a statement of the county treasurer of the amounts due for taxes?"

"A sheriff as a general rule has no authority to serve process beyond the limits of his county * * *." 57 C. J. 775—Note. "When the law confers upon a person powers that he, as a natural person, does not possess, that power cannot accompany his person beyond the bounds of the sovereignty which has conferred the power, * * *." 46 C. J. 1032. "The sheriff is without authority to make seizure in replevin outside his county." *DuRant v. Brown Motor Co.*, 144 S. E. 705. "A sheriff cannot serve a subpoena outside his county." *Washoe County v. Humbolt County*, 14 Nev. 123. "A sheriff or constable who seizes property outside of the territory over which his authority extends is to be regarded as though he were a stranger having no writ, and is liable in trespass to the owner." 57 C. J. 821. See also: *Hill v. Haynes*, 54 N. Y. R. 153; *Goetchius v. White*, 75 S. E. 674; *Stephenson v. Wright*, 20 So. 622. "A sheriff's duties are defined by statute and exceptions to such duties cannot be enlarged beyond what the plain language imports." *State v. Clemens*, 40 Mont. 567; 59 C. J. 984.

There are exceptions, however, to the general rule, relating chiefly to

criminal matters. (Sections 11736 and 11737, R. C. M. 1921.) Such exceptions, however, do not in our opinion contemplate civil actions, nor furnish any remedy in such actions, but one who has removed property subject to execution from the county for the purposes of avoiding a lien for taxes may be got on a misdemeanor charge under Section 11433, R. C. M. 1921. Under Section 11737 your sheriff may be authorized to arrest the party if found anywhere in the state and return him to your county for trial. If convicted the penalty is provided by Section 10723, R. C. M. 1921. On a misdemeanor charge, your action must be commenced within one year from the time of the commission of the offense, (11931) but defendant need not be present either at the trial nor when verdict is rendered. (12018).

It is our opinion that if you desire to seize this property in a civil action such seizure would have to be made by the sheriff of the county where property of the delinquent taxpayer is located.