

## Opinion No. 59.

**Taxation—Personal Property Tax,  
Collection of—County Treas-  
urer—Sheriff.**

HELD: 1. It is not necessary that the county treasurer obtain a writ of execution to levy upon personal property for personal property tax but, under Chapter 102, Laws of 1923, the report of the assessor is sufficient.

2. Where the county treasurer designates and appoints the sheriff to act as his deputy for the purpose of levying upon the property and conducting the sale, the sheriff need have nothing more than the treasurer himself, excepting as a matter of caution he should also have in writing the treasurer's appointment of him as deputy.

3. When the treasurer appoints the sheriff to act as a deputy county treasurer the sheriff cannot perform those duties through his deputies.

March 13, 1935.

Mr. Oscar C. Hauge  
County Attorney  
Havre, Montana

This will acknowledge receipt of your letter of March 8, with which you kindly enclosed a copy of an opinion which you have rendered to the County Treasurer of your county relative to the procedure which the Treasurer must follow in the collection of personal property taxes under Section 2239, R. C. M. 1921, as amended by Chapter 102, Laws of Montana, 1923.

Section 2 of Chapter 102, supra, provides: "\* \* \* The county treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into

his possession such personal property against which a tax is assessed and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, 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. \* \* \*"

This provision is mandatory and the treasurer must proceed according to its express language. (State v. De Graff, 162 Wash. 107, 298 Pac. 339.) Sections 2240 to 2246, inclusive, have been repealed thereby. (Perham v. Putman, 82 Mont. 349, 267 Pac. 305.)

It is our opinion that under this section all that the treasurer need have in his possession at the time of levying upon the property is the report of the assessor, which the assessor must make according to Section 2238, R. C. M. 1921, as amended by Chapter 143, Laws of Montana, 1929. While it is true that Section 2 of Chapter 102, supra, requires the sale to be made in the same manner as property which is sold on execution by the sheriff, we do not think it is necessary to obtain a writ of execution. (Thomas v. Thomas, 44 Mont. 102.) The report of the assessor according to Chapter 143, supra, must set forth: "\* \* \* the nature, amount and assessed valuation of such property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same, \* \* \* ." Having this information in his possession, we then believe that the statute itself (Section 2239, as amended by Chapter 102, Laws of 1923) is sufficient warrant for the treasurer to proceed.

As was pointed out by the Supreme Court in the case of Perham v. Putman, supra, such a sale is a treasurer's sale of personal property seized for taxes: "It should be so entitled and should so recite. \* \* \* It was not to be a sheriff's sale and it was not to be an execution sale. It was required to be a county treasurer's sale and was only required to be conducted in the same manner as a sheriff's sale on execution. \* \* \*"

Where the treasurer designates and appoints the sheriff to act as his dep-

uty for the purpose of levying upon the property and conducting the sale, the sheriff need have nothing more than the treasurer himself, excepting as a matter of caution he would also have in writing the treasurer's appointment of him as deputy.

We agree with the opinion of Attorney General Foot (Vol. 13, Report and Official Opinions of Attorney General, p. 220), which you have called to our attention, in which it is held that when the treasurer appoints the sheriff to act as a deputy county treasurer, the sheriff cannot perform those duties through his deputies.

We are enclosing herewith a copy of Opinion No. 172, Vol. 15, Report and Official Opinions of Attorney General, p. 123, rendered by this office, which may be of interest to you in regard to this matter.

Accordingly, we believe that your opinion to the County Treasurer of your county is correct, and it is hereby confirmed.