

3. There is no statute of limitations that bars seizure and sale or the collection of taxes upon personal property.

4. The failure of a county treasurer to levy upon and take into his possession property certified to him by the assessor and failure to collect the tax would, generally speaking, constitute wilful failure and neglect and subject him and his bondsmen to liability for the uncollected taxes unless there are special facts and circumstances making it otherwise.

September 20, 1939.

Hon. W. A. Brown  
State Examiner  
The Capitol

Dear Mr. Brown:

You have submitted the following:

"Your opinion is desired relative to the collection of personal property taxes as provided for by Chapter 200 of the Political Code, R. C. M., 1935, and Section 2238, as amended by Chapter 6 of the 1939 Session Laws, and Section 2239, as amended by Chapter 107 of the 1939 Session Laws, as follows:

"1. Is it mandatory for the assessor to make a report to the treasurer as provided by Chapter 6, 1939 Laws?

"2. Is it mandatory for the treasurer, after receiving the assessor's report as above mentioned, to levy upon and take into his possession such personal property within 30 days, and sell same for taxes if not paid?

"3. In case the treasurer does not levy upon and take into his possession personal property certified to him by the assessor as provided for by Section 6, 1939 Laws, and the said personal property assessment becomes delinquent, is there any statute of limitation that bars seizure and sale?

"4. In case the treasurer fails to levy upon and take into his possession personal property certified to him by the assessor as provided by law, and fails to collect the tax, would these facts constitute willful failure and neglect, and subject him and his bondsmen liable for the taxes?"

#### Opinion No. 140.

#### Taxation—County Treasurer — Counties — County Assessor — Personal Property Taxes—Statute of Limitations — Liability County Treasurer and Bondsmen.

HELD: 1. Section 2238, R. C. M., 1935, as amended by Chapter 6, Laws of 1939, makes it mandatory for the assessor to make a report to the county treasurer of personal property, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes.

2. Section 2239, R. C. M., 1935, as amended by Chapter 107, Laws of 1939, makes it mandatory for the treasurer, after receiving the assessor's report with reference to taxes upon personal property to levy upon and take into his possession such personal property within thirty days and sell same for taxes if not paid.

Answering your questions in the above order, it is my opinion:

1. That it is mandatory for the assessor to make a report to the treasurer as provided for by Chapter 6, Laws of 1939. Section 2238, R. C. M., 1935, as amended by Chapter 6, Laws of 1939, reads:

"It shall be the duty of the assessor, upon discovery of any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the treasurer \* \* \*."

This clearly states the duty of the assessor to make such report. No language is used from which one could conclude that the legislature intended to leave it to the discretion of the assessor as to whether or not he would make such report.

2. That it is mandatory for the treasurer, after receiving the assessor's report, to levy upon and take into his possession such personal property within thirty days and sell same for taxes if not paid.

Section 2239, R. C. M., 1935, as amended by Chapter 107, Laws of 1939, reads:

"The county treasurer must collect the taxes on all personal property, and in the case provided in the preceding Section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. 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, \* \* \*."

Here again mandatory language is used in the words "shall be the duty" and "must." We are unable to conclude

from this language that the legislature intended to lodge any discretion in the county treasurer.

3. This question was specifically answered in the negative in an opinion of the Attorney General dated March 31, 1931, Volume 14, Opinions of the Attorney General, 56, with which we agree.

4. Section 2239 Id., as amended, provides:

"The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon."

While no facts are presented in connection with this question, speaking generally, where the county treasurer fails or neglects to discharge the mandatory duties imposed upon him by this section and taxes on personal property are uncollected for this reason, it would seem, in view of the language quoted, that the county treasurer and his bondsmen would be liable for the taxes levied on such personal property and that such failure or neglect would constitute wilful "failure and neglect" unless there are special facts and circumstances which would make it otherwise.