

**Opinion No. 262.****County Treasurer, Sheriff—Duties of  
County Sheriff—Property—Taxes.**

**Held:** When sheriff is appointed by the treasurer as deputy treasurer to levy upon and sell personal property for taxes, the sheriff has no discretion in whether to act or not, but must act in accordance with Section 2239, Revised Codes of Montana, 1935, as amended.

December 4, 1944.

Mr. E. Gardner Brownlee  
County Attorney  
Ravalli County  
Hamilton, Montana

Dear Mr. Brownlee:

You have requested an opinion of this office relative to whether the sheriff is obligated by law to act as a deputy treasurer when requested by the county treasurer under Section 2239, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1939.

Chapter 107, Laws of 1939, provides as follows:

"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, 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 he is entitled to in making a seizure and sale under execution."

The above statute is mandatory as to the treasurer collecting these taxes in the manner and within the time

prescribed. It provides that the treasurer may appoint the sheriff as his deputy to carry out this duty. It is discretionary with the treasurer as to whether he makes the levy himself or appoints the sheriff, but there is no provision providing for any discretion on the part of the sheriff. This is a duty placed on the sheriff by law and the sheriff at the time of accepting the office knows that this duty may be imposed upon him.

It is permissible under the law to call upon one officer to act for and on behalf of another officer, as all officers are in reality working for and on behalf of the general welfare of the county. It is to be admitted that the law did not intend for any great hardship to be borne by any one officer, but very probably the legislature determined that the sheriff, due to his holding of execution sales for private individuals, was more capable and experienced in this work than any other officer and therefore made the sheriff available to the treasurer for this purpose. The sheriff in so acting is not acting within his capacity as sheriff but in the capacity of deputy treasurer, and is merely carrying out the policy and directions of his superior officer in that instance.

Chapter 107, Laws of 1939, amended Section 2239, Revised Codes of Montana, 1935, only to the extent of making specific the amount of compensation the sheriff was to receive for such service. Therefore, any ruling or decision as to the duty of the sheriff since the amendment of 1923, would be still applicable. In this respect I call your attention to an opinion commencing on page 220 of Volume 13, Report and Official Opinions of the Attorney General, rendered under date of January 10, 1930, which ruling is in accord with the above reasoning.

Therefore, it is my opinion that when the sheriff is appointed by the treasurer as a deputy treasurer to levy and sell personal property for taxes due thereon, under the provisions of Section 2239, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1939, he is obliged to make such levy as directed by said chapter and has no discretion as to whether he will or not.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General