

VOLUME 31

Opinion No. 13

**SHERIFFS; Disposition of Fees—MOTOR VEHICLES; Application for Dealer's License—FEES; Disposition by County Officers—
Sections 25-201, 25-202, 25-203 and 53-118,
R.C.M. 1947.**

HELD: The sheriff must account for and pay the two dollar fee which is paid to him for verification of an application for a dealer's license pursuant to section 53-118, R.C.M. 1947, to the county treasurer.

December 30, 1965

Mr. Albert E. Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion with regard to the following question:

"What disposition should be made by a sheriff of the two dollar fee which is paid to him for verification of an application for a dealer's license pursuant to section 53-118, R.C.M. 1947?"

The section in question provides in part as follows:

"Every person, firm, corporation, or association who for commission or profit, engages in the business of buying, selling, exchanging, or acting as broker of new motor vehicles, used motor vehicles, trailers, or semi-trailers and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the sheriff of the county in which the business is to be conducted, as designated in paragraph (b) below. A fee of two dollars (\$2) shall be paid to the sheriff for such verification. * * *

It is my opinion that the law requires the fees collected by the sheriff pursuant to this section to be collected for the sole use of the county and paid into the county treasury. Section 25-201, R.C.M. 1947, provides that:

"No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided in section 25-303 of this code and shall be credited to the general fund of the county."

The next section, 25-202, R.C.M. 1947, enumerates certain exceptions to the above stated rule. It provides that certain county officers may collect and receive for their own use fees and emoluments for official services. The county sheriff is not listed among them.

"The county surveyor, coroner, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries."

The sheriff, being a salaried county official, would be subject to the provisions of section 25-203, R.C.M. 1947, which states:

"All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, **all the fees now or hereafter allowed by law**, paid or chargeable in all cases, except as provided in section 93-8627, provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody." (Emphasis supplied.)

In 8 Opinions of the Attorney General 51, it was stated:

"It is clear from this law that the sheriff when executing the power of sale is performing an official duty which the law says he must do, and in which he has no discretion. It is as much the sheriff's duty under the law to execute such power of sale as it is to perform any other act which the law directs him to do. It is therefore my opinion that the fees in question are fees collected for an official service and that as such they must be accounted for and paid into the County Treasury."

By virtue of the provisions of section 53-118, R.C.M. 1947, heretofore set out, the sheriff is required to verify applications for licensing as a dealer. This is not a function which he may or may not do, but it is required by law. This being so, it is my opinion that it is an official service and that therefore the fees must be disposed of according to the provisions of section 25-201, R.C.M. 1947.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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