

**VOLUME NO. 35****Opinion No. 79**

**COUNTY TREASURER—Personal property taxes, writ of execution, delivery to sheriff; EXECUTION—Personal property taxes, county treasurer, issued by; OFFICES AND OFFICERS—County treasurer, personal property taxes, writs of execution of; SHERIFF—Executions, levy of; TAXATION—Personal property, execution, levy of. Sections 84-3807, 84-4202 and 93-5809, R.C.M. 1947.**

**HELD: The provisions of sections 84-3807 and 84-4202, R.C.M. 1947, do not apply exclusively to the county where the original tax was assessed, and a writ of execution against a delinquent personal property taxpayer may be issued by the county treasurer to the sheriff of any county in the state of Montana.**

April 16, 1974

Mr. Harold F. Hanser  
Yellowstone County Attorney  
County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Do sections 84-3807 and 84-4202, R.C.M. 1947, as amended, apply in counties other than the county where the original tax was assessed?

Sections 84-3807 and 84-4202, Revised Codes of Montana, 1947, provide the means by which personal property taxes must be collected by the county treasurer. Section 84-4202, R.C.M. 1947, states in pertinent part:

The county treasurer must collect taxes on all personal property, and ... 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, ... levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, 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, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, ...

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; ...

Section 84-3807, R.C.M. 1947, provides:

**Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, ... The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof. (Emphasis supplied)**

Close scrutiny of section 84-3807, supra, indicates that the writ of execution issued by the county treasurer must be served and enforced by the county sheriff in an identical manner as executions issued pursuant to a judgment by a district court. The statutes which prescribe the requirements for the issuance of a writ of execution following a district court judgment are contained in Title 93, Chapter 58, R.C.M. 1947. Specifically, section 93-5809, R.C.M. 1947, provides.

**Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the state.**

Where it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties. (Emphasis supplied)

Furthermore, section 93-5802, R.C.M. 1947, provides that the "writ of execution ... must be directed to the sheriff" of the county where process is to be served. **Merchants Credit Service, Inc. v. Chouteau County Bank**, 112 Mont. 229, 232, 114 P.2d 1074 (1941). Also see: **Stokke v. Graham**, 129 Mont. 96, 281 P.2d 1025 (1955).

THEREFORE, IT IS MY OPINION:

Based upon the above considerations, that the provisions of sections 84-3807 and 84-4202, R.C.M. 1947, do not apply exclusively to the county where the original tax was assessed, and that a writ of execution against a delinquent personal property taxpayer may be issued by the county treasurer to the sheriff of any county in the state of Montana.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General