

**OPINION
67-278**

December 8, 1967 (OPINION)

Mr. Charles E. Crane

State's Attorney

Hettinger County

RE: Taxation - Person Property Taxes - Collection

This is in response to your letter in which you call our attention to Sections 57-22-03, 57-22-21, and other related provisions of law pertaining to collection of delinquent personal property taxes. You then ask the following questions:

- 1) After personal property taxes have been constituted a lien on real estate pursuant to 57-22-21, does the sheriff still have authority to collect the same taxes pursuant to 57-22-03? If such taxes can be collected by either officer which should write the receipt, or can either officer write the receipt?
- 2) If the treasurer collects such tax extended against real estate, does the county sheriff have a right to claim the commission thereon pursuant to his contract with the county commissioners for the collection of personal property taxes?"

By briefly reviewing the method of collection of taxes, we find that the treasurer is the officer with whom reposes the initial responsibility and duty of accepting payment of taxes and issuing receipts therefor. See Section 57-20-07. This section also refers to the treasurer as the collector of taxes, but we believe that the term "collector" is used more in the passive sense rather than in the active sense. He is the person who must accept payment of taxes for the state, political subdivisions, municipalities, and other taxing districts, including special improvement assessments.

The treasurer is also required to give notice that unless the taxes will be paid by a certain time they will be deemed delinquent and will be referred to the sheriff for collection. See Section 57-22-01.

The sheriff, however, has the statutory duty and responsibility of actually collecting delinquent personal property taxes. See Section 57-22-03. To assist the sheriff in carrying out this duty he is given additional powers such as distraint to help enforce collections. In addition to this, the sheriff has other processes available to him such as garnishment, attachment, distress, and other processes of law. See Section 57-22-06.

In addition to this the county commissioners may, when deemed expedient, institute action against a person for delinquent taxes.

See Section 57-22-24. The fees allowed to the sheriff for collection of delinquent personal property taxes, when accomplished by distraint, are set forth in Section 57-22-25.

In addition to the foregoing provisions, Section 57-22-29 authorizes the county commissioners to enter into a contract with the sheriff or any elector of the state to collect delinquent personal property taxes. The commissioners are authorized to pay a commission not to exceed ten percent. It also authorizes the commission to contract with a person other than the sheriff and pay a reasonable salary, expense, or percentage, or a combination thereof, to such person.

As you indicated in your letter, Section 57-22-21 provides for the imposition of a lien upon the real estate of the tax debtor for the unpaid delinquent personal property taxes. The extension of the lien against the real property of the tax debtor is merely an additional remedy for the enforcement of the collection of delinquent, unpaid personal property taxes. By imposing a lien on such property, the duty and obligation of the sheriff to collect personal property taxes has not been extinguished. This duty remains. The tax does not lose its identity.

Thus in response to your first question, it is our opinion that the sheriff still has the duty and authority to collect delinquent personal property taxes even though same have been extended as a lien on the tax debtor's real property by resolution of the county commissioners. This, however, will not prohibit the treasurer from accepting payment of taxes. Where the sheriff collects the taxes, he must issue the receipt required by Section 57-22-07. Where the treasurer accepts payment of the delinquent personal property taxes, he issues the receipt required under Section 57-20-08. In addition thereto, the treasurer should immediately inform the sheriff that certain delinquent personal property taxes have been collected so that the sheriff may annotate the list previously furnished to him. Whatever method employed to accomplish this is a matter of choice.

As to the second question, it is our opinion that where the treasurer accepts payment or collects taxes, even though the delinquent tax has been extended as a lien against the real estate, the sheriff is not entitled to claim any commission on same. The sheriff would be entitled to claim commission or payment only for those taxes that he collects, either under the contract as provided for under Section 57-22-29 or under Section 57-22-03. In essence, the sheriff is entitled to fees or compensation only for those taxes that he collected.

HELGI JOHANNESON

Attorney General