

**OPINION
71-385**

May 12, 1971 (OPINION)

Mr. Linn Sherman

State's Attorney

Kidder County

RE: Taxation - Delinquent Personal Property Taxes - Collection Fee

This is in response to your letter in which you ask for an opinion on the following:

"Under the provisions of Section 57-22-29 of the North Dakota Century Code, as amended, the county commissioners are authorized to contract with the sheriff for the collection of certain delinquent personal property taxes, and pay him a percentage, not exceeding 10 percent, of the amount collected, as compensation for such collection.

"If such a contract is entered into with the sheriff, does that authorize the sheriff to deduct the amount of his percentage from his collections, and pay only the balance into the county treasury, or should the full amount of the tax be paid to the county, and a claim be filed by the sheriff for his collection fee?

"If such a contract is made, when the taxes so collected are distributed to the various taxing districts, is the percentage of the collection fee to be charged to each taxing district involved, such as the school district, county and city, or is the entire amount of such collection charge to be paid from the county's share of the tax? Apparently no permission for such payment of the collection fee is required of any taxing district other than the county."

Section 57-22-29 authorizes the county commissioners to enter into a contract for the collection of delinquent personal property taxes. It also authorizes the commissioners to pay at a rate of up to 10 percent of the amount collected for services rendered. The commission based on the collection of taxes is really a measure of compensation.

Section 57-20-07 provides that the treasurer shall be the receiver and collector of all taxes. This strongly implies that the taxes collected must be turned over to the treasurer.

Under Section 21-05-01 we find that no payments shall be made by a county or township unless the same is reduced in writing and verified. The claim submitted must state the items for which the charge is made. Section 21-05-02 sets out the verification form to which the claimant certifies as to its correctness.

Based on the aforementioned provision of law, it is our opinion that

the taxes collected by the sheriff under contract as authorized by Section 57-22-29 must be paid over to the county treasurer. The sheriff may then file a claim (bill) with the county for the compensation he is to receive for such collections. The claim or bill should set forth the percentage allowed to him pursuant to the contract which is not to exceed 10 percent.

There is a further reason for such procedure. The taxes collected will be reported to the treasurer and the individual taxpayers will receive full credit, whereas if the sheriff is permitted to reduce the amount collected by the percent of commission allowed, the net payment would not reflect full payment of taxes, and even though a notation may be made showing the amount withheld by the sheriff, it could still result in difficulties as to the receipts issued and the amount of taxes collected.

The county is the tax collector through its officials. The normal routine in collecting taxes is performed by the county officials. They are paid by the county for such services. Section 57-22-29 authorizes the county commissioners to employ certain persons to perform those services. It also authorizes the payment. The county commissioners are authorized to budget for the costs involved in collecting the taxes. No provision is made for reducing the distribution of taxes collected. The procedure might suggest an inference, but in attempting to implement a reduction would require considerable bookkeeping entries. If the statute would provide for a proportionate reduction in accordance with the commission allowed or the cost involved we would have no difficulty in concluding that the taxes collected would be distributed on a reduced portion in accordance with the commission allowed.

We are also mindful that Section 57-22-29 allows the commissioners to pay a reasonable salary or expenses. Thus, if a salary or expenses were allowed for the collection of taxes it could become quite a different administrative problem to allocate the expenses for the various taxes collected.

For this reason its our opinion that the commission or salary paid for the collection of taxes must be borne by the county. The county is in a position to budget under its general taxing authority to provide for the necessary revenues to compensate for the commission paid for the collection of the delinquent personal property taxes. Thus, in the end result the cost of collecting the taxes would be borne by all taxpayers proportionately.

HELGI JOHANNESON

Attorney General