

Opinion No. 44-4560

August 11, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. R. L. Ormsbee, State Purchasing Agent, Santa Fe, New Mexico

We are in receipt of your letter of August 8, 1944, in which you ask various questions concerning the sale of surplus property authorized under Section 8, Chapter 124 of the Laws of 1923.

Your first question is as to what is meant by the language "property in his hands" found in that section. These words are contained in the clause "property in his hands **owned by the State or any department thereof.**"

It appears to me that the only meaning this language can have is property owned by the State or any department which is placed in your hands for the purpose of sale. It appears to me that this language also answers your further question as to whether or not all surplus property owned by the State must be disposed of through your office. From reading this section, it is apparent that it is your duty to sell only such property as is placed in your hands by the various departments for that purpose, and that you have no right or obligation to sell any property belonging to any department unless it is placed in your hands for that purpose.

Second, you ask what procedure should be followed under that portion of Section 8 requiring sales as under execution. The pertinent portion of this section is as follows:

"He * * * may sell the same for less than cost thereof to the highest and best bidder for cash after **advertising**, the same in the manner provided by law for the sale of personal property upon execution."

Upon a careful reading of this language, you will observe that you are not required to sell such property in the manner provided for execution sales, but that you are only required to advertise the property in such manner. Thus, you need make no use of the County Sheriff who conducts execution sales, nor need you follow the procedure set forth on execution sales except as to the advertisement.

Section 12-201 of the 1941 Compilation provides that:

"All legal notices in connection with the * * * sale of property under any writ of execution * * * where the amount involved * * * exceeds \$ 300.00, shall be published in the English language in some newspaper of general circulation published in the county where such publication is required to be made once each week for four consecutive weeks * * * the last insertion shall be at least three days before the date fixed in such notice for the taking of the action concerning which the publication is made."

Your attention is also directed to Section 21-204 which provides that where the property seized under execution does not exceed \$ 300.00, notice may be given by posting notices at least ten days prior to the date of sale, in at least five public places in the county, one of which shall be the court house, and the other the place of sale.

While there is some question as a result of Section 12-210 superseding the original section providing for execution sales, it is my opinion that where the property involved does not exceed \$ 300.00 that publication is not necessary, but that posting in the manner provided above is sufficient. The Notice of Sale should contain a statement of the date, hour and conditions of sale to comply with Section 21-203, insofar as it is pertinent. Except as above provided, since the statute does not specify how the sale shall be conducted except that it shall be for cash to the highest and best bidder, and since the duty is imposed upon you to conduct such sales, you would have the discretion to handle all details in connection with such sales.

If any further questions should arise in connection with this matter, please do not hesitate to call upon me.

By ROBERT W. WARD,

First Asst. Atty. General