

Statutes Referenced in AG Opinion 02-053

67-4-109. Action by county against business in violation. —

(a) If any person presumes to sell goods or to exercise any privilege without obtaining the license prescribed, the clerk shall issue to the sheriff, or to any constable, a distress warrant commanding the sheriff or constable to levy, in case of a privilege, a tax double the highest tax imposed upon such privilege, together with costs and charges, by distraining and selling so much of the delinquent's goods and chattels as shall be sufficient for the purpose; or suit for such double tax may be brought in the circuit or chancery court.

(b) Certiorari and supersedeas against an invalid distress warrant lies in the circuit or chancery court.

(c) The officer, to whose hands the warrant shall come, shall immediately execute the warrant on pain of such officer also being held liable, on motion by the clerk in the circuit court, for the double tax, costs and charges lost by the officer's delay.

(d) The officer having seized the goods and chattels of the delinquent shall give ten (10) days' notice of the time and place of sale, which the officer shall make at the time specified, unless the owner at or before the time of sale produces the clerk's receipt for the tax, costs, and charges; in which case the officer shall redeliver the goods to the owner.

(e) In all cases in which the penalty prescribed against breaches of the revenue laws in relation to licenses is recovered, double fees shall be allowed to the clerk or attorney prosecuting the case, but any fee allowed a district attorney general shall inure to the state.

(f)

[Code 1858, §§ 704-707 (deriv. Acts 1847-1848, ch. 161, §§ 23-25; 1849-1850, ch. 122); Shan., §§ 1007-1010; mod. Code 1932, §§ 1734-1738; modified; T.C.A. (orig. ed.), §§ 67-5311 — 67-5315.]

67-4-110. Action by commissioner against business in violation. —

(a) The commissioner is authorized, and it is the commissioner's duty, to issue a distress warrant for the collection of the tax, interest and penalty due from each taxpayer who is delinquent in payment of privilege taxes, collectible by the commissioner. Distress warrants may be addressed and delivered to the sheriff of the county in which such delinquent taxpayer has an office or principal place of business, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent taxpayer may be found.

(b) The sheriff into whose hands such warrant may come, or the sheriff's deputy, may execute the warrant by distraint and sale of personal property belonging to such delinquent taxpayer, and the proceedings in respect to the warrant shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions, and necessary expenses of removing and keeping property distrained as in case of an execution from a court of record.

(c) If the officer cannot find personal property to satisfy the distress warrant, the officer may levy the warrant upon any real estate in the officer's county belonging to such delinquent taxpayer; and if levied on land, the distress warrant, together with the officer's return on the distress warrant, shall be returned to the circuit court of the county in which the land lies, and the land shall be condemned and sold under the orders of the circuit court in the same manner as in case of the levy on land of an execution issued by a general sessions court.

(d) The remedy or procedure prescribed in subsections (a)-(c) is cumulative to any other remedies or procedures now prescribed with reference to any particular privilege tax or taxes. No other remedy prescribed by any particular taxing statute shall be held to be exclusive or to prevent the commissioner from proceeding with the collection of the privilege tax under the provisions of subsections (a)-(c).

(e) Distress warrants issued under subsection (a) for the collection of state taxes, interest or penalty due from a taxpayer may, in the discretion of the commissioner, be addressed to and delivered to an employee or representative of the department for purposes of execution, who shall first make the same amount and kind of bond now required of deputy sheriffs, and such employee or representative shall have the same powers and authority as a sheriff under chapter 1, part 12 of this title and subsections (b)-(d) for purposes of levying and executing such distress warrants. Such employee or representative shall be entitled to the same fees and costs as would accrue to a sheriff for such services, which fees and costs shall be paid to the department and deposited in the general fund of the state treasury.

[Acts 1937, ch. 200, §§ 1-4; C. Supp. 1950, §§ 1613.2-1613.5 (Williams, §§ 1613.7-1613.10); Acts 1955, ch. 317, § 1; impl. am. Acts 1959, ch. 9, § 14; impl. am. Acts 1979, ch. 68, § 3; T.C.A. (orig. ed.), §§ 67-5316 — 67-5319, 67-5321.]

67-4-215. Distress warrants. —

(a) A local collector has the power to issue a distress warrant for taxes collectible by the local collector.

(b) Prior to the issuance of a distress warrant, the local collector shall give not less than ten (10) days' written notice to the taxpayer by either:

- (1) Delivering such notice in person;
- (2) Leaving such notice at the dwelling place or usual place of business of the taxpayer; or
- (3) By mailing such notice to the taxpayer's last known address.

(c) (1) The sheriff into whose hands such distress warrant may come, or the sheriff's deputy, may execute the distress warrant by distraint and sale of personal property belonging to such delinquent taxpayer, and the proceedings in respect to the distress warrant shall be the same as are provided by law for proceedings under execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions and the necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

(2) If the officer cannot find personal property to satisfy the distress warrant, the officer may levy the distress warrant upon any real estate in the officer's county belonging to such delinquent taxpayer. If levied on land, the distress warrant, together with the officer's return on the warrant, shall be returned to the circuit court of the county in which the land lies, and the land shall be condemned and sold under the orders of the circuit court, in the same manner as in case of a levy on land of an execution issued by a general sessions court. Suit or suits may be brought, if necessary.

(d) If any sheriff willfully fails, refuses or neglects to execute any distress warrant directed to the sheriff within the time provided in this part, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer, and, on complaint of any proper officer, this penalty shall be enforced by the attorney general and reporter in any manner permitted by law.

[Acts 1937, ch. 108, art. 3, §§ 5, 13; C. Supp. 1950, §§ 1248.8, 1248.16 (Williams, §§ 1248.141, 1248.142g); Acts 1978, ch. 839, § 20; impl. am. Acts 1979, ch. 68, § 3; T.C.A. (orig. ed.), §§ 67-4325 — 67-4327; Acts 1987, ch. 346, § 2.]

67-1-1201. Issuance of warrant. —

(a) An officer charged with the duty of collecting state revenues is empowered and authorized to issue a distress warrant for the collection of any state taxes, fees, fines, interest, penalties or other revenues, whenever in the officer's discretion the collecting officer deems it necessary to issue a distress warrant to safeguard the revenues of the state.

(b) The distress warrant may be addressed and delivered to the sheriff, any deputy sheriff or constable of the county in which the taxpayer has the taxpayer's office or principal place of business, or to the sheriff or any deputy sheriff or constable of any county in which the collecting officer has reason to believe property of such taxpayer may be found.

[Acts 1941, ch. 36, § 1; C. Supp. 1950, § 1613.6 (Williams, § 1613.11); T.C.A. (orig. ed.), § 67-2201.]

67-1-1202. Execution of warrant. —

(a) The sheriff, any deputy sheriff or constable into whose hands such warrant may come may execute it by distraint and sale of personal property belonging to the taxpayer. The proceedings with respect to the sale shall be the same as are provided by law for proceedings under an execution at law from a court of record. The executing officer shall be entitled to the same fees, commissions, and necessary expenses of removing and keeping the property distrained as in the case of an execution from a court of record.

(b) It is the duty of the sheriff, any deputy sheriff or constable into whose hands such distress warrant may come, to make a return on the distress warrant within thirty (30) days from the date received. In the event any

such officer fails to make the return as required by this section, the officer and the officer's bondspersons shall be personally liable for the amount set forth in the distress warrant.

[Acts 1941, ch. 36, § 2; C. Supp. 1950, § 1613.7 (Williams, § 1613.12); T.C.A. (orig. ed.), § 67-2202.]

67-1-1203. Garnishments. —

Garnishments may be issued and executed by the sheriff, any deputy sheriff or constable in the same manner as garnishments are issued and executed on executions at law. Before issuing a garnishment, the sheriff, any deputy sheriff or constable shall cause such distress warrant to be entered on the docket of any court of general sessions or circuit court of the county, and the procedure in the execution of such garnishment shall be the same as now provided by the statute for the execution of garnishments in civil cases.

[Acts 1941, ch. 36, § 2; C. Supp. 1950, § 1613.7 (Williams, § 1613.12); impl. am. Acts 1979, ch. 68, § 3; T.C.A. (orig. ed.), § 67-2203.]

6-55-301. Purpose. —

If any person or corporation required by law to pay privilege taxes to any municipal corporation, or to obtain a license before engaging in same, presumes to sell goods or exercise a privilege without first obtaining a license as required by law, such clerk, recorder, or collecting officer shall issue to the sheriff, city marshal, or any constable a distress warrant, commanding such sheriff, city marshal or constable to levy, in case of a privilege tax, double the highest tax imposed upon any such privilege, and in other cases double the highest tax imposed on any similar business, together with costs and charges, by distraining and selling so much of the delinquent's goods and chattels as shall be sufficient for the purpose.

[Acts 1891, ch. 57, § 1; Shan., § 1918; Code 1932, § 3330; T.C.A. (orig. ed.), § 6-710.]

6-22-110. Due date of taxes — Tax collector — Distress warrants. —

(a) All taxes due the city, except privilege and merchant's ad valorem taxes and street labor taxes, shall, until otherwise provided by ordinance, be due and payable on November 1 of the year for which the taxes are assessed.

(b) The treasurer shall be custodian of the tax books and shall be the tax collector of the city.

(c) Distress warrants may issue for the collection of taxes and any such distress warrant shall be executed by the chief of police or any police officers of the city by a levy upon, and sale of goods and chattels under the same provisions as prescribed by law for the execution of such process of courts of general sessions.

[Acts 1921, ch. 173, art. 10, § 5; Shan. Supp., § 1997a175; Code 1932, § 3572; T.C.A. (orig. ed.), § 6-2211.]