

# OFFICE OF THE ATTORNEY GENERAL

83-00195



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

FEB 18 1983

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Honorable John L. Aldridge  
Sheriff, Colbert County  
Colbert County Courthouse  
Tuscumbia, AL 35674

Sheriffs -- Executions -- Tax Sales --  
Auctioneers

The expense of hiring an auctioneer to conduct a Sheriff's sale may be deducted from the proceeds of such sale if the services of the auctioneer are a necessary expense incident to the sale.

Dear Sheriff Aldridge:

Reference is made to your letter received October 14, 1982 in which you inquired of this office whether an auctioneer may be employed to conduct a sale of property levied upon by you pursuant to an execution issued by the State Department of Revenue. It is my opinion that an auctioneer may be employed by you and paid for from the proceeds of the sale as a necessary expense incident thereof.

The State Department of Revenue is authorized to issue executions and writs of garnishment to any sheriff of Alabama in order to recover payment of any final assessment or judgment for taxes rendered by the Department of Revenue. Code of Alabama 1975, §40-2-11(17). This may be done whether the final assessment be for sales tax, income tax, franchise tax or any other tax administered by the Department of Revenue. Although writs of garnishment and execution may be issued without the assistance of any courts of Alabama, the procedures governing the issuance of same follow the procedures of the executions and writs of garnishment issued by Alabama circuit courts. The only difference is that the Department of Revenue itself serves in a quasi judicial capacity.

This office has previously held that if the property seized and sold by a sheriff is required to be stored for a period of time prior to sale, this would constitute a necessary expense incident to the sale which should be paid from the proceeds realized, and the payment of such expense should be made prior to delivering the net proceeds remaining over to the tax collector. Quarterly Report of the Attorney General, Volume 104, Page 36. It would seem to follow, therefore, that if it became necessary to hire an auctioneer to maximize the recovery from the sale, the expense of hiring such auctioneer would be deducted from the gross proceeds derived from such sale. It is my opinion that the expense of hiring an auctioneer can be deducted from the proceeds of the sale, but only if the services of such auctioneer are, in the opinion of the sheriff, a necessary expense incident to the sale.

I trust that the above will serve as an answer to the question you have made in this regard.

Yours very truly,

CHARLES A. GRADDICK  
Attorney General

By-

*Charles E. Crumbley*

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