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SPRINGFIELD

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FILE NO. S-1474

REVENUE:
Furnishing of Bond by
Department of Revenue
When Section 5f Warrants
are Issued

James B. Zagel
Director
Department of Revenue
1500 South 9th Street
Springfield, Illinois 62708

Dear Director Zagel:

This responds to your letter wherein you request an opinion with respect to the Department of Revenue's program for issuing seizure warrants under section 5f of the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 444f). You have stated that the Department of Revenue has issued warrants to sheriffs of various counties in this State commanding them to levy upon and sell real and personal property of the taxpayer whose tax liability is unpaid. These warrants are issued pursuant to section 5f of

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the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 444f), which provides as follows:

"In addition to any other remedy provided for by the laws of this State, if the tax imposed by this Act is not paid within the time required by this Act, the Department, or some person designated by it, may cause a demand to be made on the taxpayer for the payment of the tax. If the tax remains unpaid for 10 days after demand has been made and no proceedings have been taken for review, the Department may issue a warrant directed to the sheriff of any county of the State or to any State officer authorized to serve process, commanding the sheriff or other officer to levy upon and sell the real and personal property of the taxpayer, without exemption, found within his jurisdiction, for the payment of the amount of unpaid tax with the added penalties, interest and the cost of executing the warrant. Such warrant shall be returned to the Department together with the money collected by virtue of the warrant within the time specified in the warrant, which may not be less than 20 nor more than 90 days from the date of the warrant. The sheriff or other officer to whom such warrant is directed shall proceed upon the warrant in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and is entitled to the same fees for his services in executing the warrant, to be collected in the same manner. The Department, or some officer, employee or agent designated by it, may bid for and purchase any property sold under this Section.

No proceedings for a levy under this Section may be commenced more than 5 years after the filing of the notice of lien under Section 5b of this Act."

You further indicate that some county sheriffs have stated

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that they will not honor these warrants unless the Department of Revenue either posts a bond or signs a hold harmless agreement to protect the sheriffs from any liability with respect to the levy and sale.

In your first question, you ask whether the Department of Revenue is required to furnish a bond or a hold harmless agreement before the sheriff of any county of this State is required to act upon a warrant issued by the Department pursuant to section 5f of of the Retailers' Occupation Tax Act. I am of the opinion that the Department of Revenue is not required to furnish such a bond or hold harmless agreement.

Section 15 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1977, ch. 125, par. 15) provides in pertinent part:

"Sheriffs shall serve and execute, within their respective counties, and return all writs, warrants, process, orders and decrees of every description that may be legally directed and delivered to them.

* * *

"

Section 43 of "AN ACT in regard to judgments, etc." (Ill. Rev. Stat. 1977, ch. 77, par. 46) provides that in those instances where a reasonable doubt exists as to the ownership of particular goods, or as to their liability to be taken on the execution, the officer may require

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sufficient security to indemnify him for taking them. This remedy, however, is not available to a sheriff when a section 5f warrant is involved. Section 5d of the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 444d) to which you refer, provides in pertinent part:

"The Department is not required to furnish any bond nor to make a deposit for or pay any costs or fees of any court or officer thereof in any legal proceedings nor to pay any costs or fees in connection with the recordation with the recorder of deeds or registrar of titles of any county for any notice or other document filed by the Department under this Act. * * * "

The foregoing statutory provision clearly provides that the Department of Revenue is not required to furnish any bond, make a deposit or pay any costs or fees of any court or officer thereof in any legal proceeding. Specific provisions in a statute control as against general provisions on the same subject appearing therein. (Jansen v. Illinois Municipal Retirement Fund (1965), 58 Ill. App. 2d 97, 105.)

I am therefore of the opinion that the Department of Revenue is not required to furnish a bond or a hold harmless agreement before the sheriff of any county of this State is required to act upon a warrant issued by the Department pursuant to section 5f of the Retailers' Occupation Tax Act.

Even though the Department is not required to furnish a bond or a hold harmless agreement in these in-

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stances, a sheriff is afforded certain protection. Section 2-202 of the Local Governmental and Employees Tort Immunity Act (Ill. Rev. Stat. 1977, ch. 85, par. 2-202) provides that a public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton negligence. The plain meaning of the language of the statute would serve to grant this immunity to an officer executing a section 5f warrant. Consequently, such an officer is liable only for willful and wanton negligence.

Another protection for the sheriff is contained in section 22.1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, par. 301.1) which provides for indemnification of a sheriff, or his deputy, by the county under certain circumstances.

In your second question, which is related to your first question, you inquired about the practice of the Department of Revenue in performing or obtaining a title search before the sheriff of any county of this State conducts a sale with respect to a motor vehicle pursuant to section 5f of the Retailers' Occupation Tax Act. This would seem to be a desirable practice, although the sheriff himself could perform or obtain such a title search. The fact that the Department of Revenue is willing to perform

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this function is a protection for the sheriff and is an additional reason for the sheriff to perform the duties required of him by section 5f of the Retailers' Occupation Tax Act.

In your last question, you ask if the Department of Revenue, rather than the sheriff, performs or obtains a title search on a motor vehicle, what steps the Department should complete before the search would be deemed legally adequate for purposes of section 5 of the Retailers' Occupation Tax Act. Owners of vehicles which are in this State, with certain exceptions, are required by section 3-101 of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95½, par. 3-101) to apply to the Secretary of State for a certificate of title. The minimum steps to be completed would therefore be a check with the office of the Secretary of State which could advise your Department the names of the owners of record and the names of any lien holders. The sheriff may desire to investigate further.

Very truly yours,

A T T O R N E Y G E N E R A L