Mr. Kenneth R. Beesley  
State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis, Indiana  

Dear Mr. Beesley:

This is in response to your request for my Official Opinion concerning the following question:

"In view of Acts of 1957, Ch. 319, Sec. 7, as amended, as found in Burns' (1969 Supp.), Section 49-1059, may county sheriffs retain as their personal fees the damages on tax warrants provided for in Acts of 1933, Ch. 50, Sec. 13, as amended, as found in Burns' (1969 Supp.), Section 64-2613 and in Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 603, as amended, as found in Burns' (1969 Supp.), Section 64-3237."

ANALYSIS

Your question is whether the county sheriff may retain as his personal property, or must he deposit in the county general fund, the statutory damages assessed for the collection of tax warrants issued pursuant to (a) the Gross Income Tax Law and (b) the Adjusted Gross Income Tax Law.

In relation to the Gross Income Tax there is little room for dispute. As originally enacted in 1933 (Acts of 1933, Ch. 50, Sec. 13), the Act provided that the sheriff retained such damages. However, the later County Officers' Salary Act (Acts of 1957, Ch. 319, as amended) fixed the salaries of county and circuit officers and was intended to abolish the fee system of compensation for those officers. Insofar as sheriffs are concerned, Section 7 of that Act, the same being Burns' (1961 Repl.), Section 49-1059, provided in part:

"All mileage for the service of process, foreign writs, process fees for execution and order of sales, unemployment compensation mileage and fees and all damages and mileage from gross income tax warrants
shall be collected, accounted for and paid into the county general fund.”

Subsequent amendments of the statute have not changed the above language. See Burns’ (1970 Supp.), Section 49-1059.

The only argument that could be made to justify the retention by the sheriff of damages collected upon the execution of tax warrants under the Gross Income Tax Law would be that Section 13 of that Act, Burns’ Section 64-2613 has been twice amended since 1957 (Acts of 1963, Ch. 382, Sec. 1; Acts of 1967, Ch. 222, Sec. 1) and the language authorizing sheriffs to retain damages has been repeated in those amendments. However, the mere repetition of one portion of a statute in an act amending another portion of that statute is not considered a re-enactment of the language so repeated, and, if that repeated portion has been superseded by an intermediate act it will still be superseded by that intermediate act despite its repetition in the amendatory act. See Thompson v. Mossburg (1923), 193 Ind. 566, 139 N. E. 307.

The problem with the Adjusted Gross Income Tax Law is somewhat more complex inasmuch as that law (Acts of 1963 [Spec. Sess.], Ch. 32) was enacted subsequent to the County Officers’ Salary Act, and when enacted contained no provision either for the damages or for the retention of such damages. All such provisions were added by the 1969 General Assembly. Acts of 1969, Ch. 326, Sec. 11, amended that section of the 1933 Act dealing with the collection of delinquent taxes (Sec. 603; Burns’ Section 64-3237) by adding, inter alia, the following language:

“Such sheriff [to whom an alias warrant issued by the Department of Revenue is directed] shall levy on choses-in-action by serving notice of such levy upon the debtor of such taxpayer and any payment made to the sheriff by such debtor thereafter upon such choses-in-action shall constitute a discharge of such choses-in-action to the extent of such payment. Such debtor is hereby indemnified against the claims and demands of any taxpayer for amounts so paid or for damages arising from such payment. Such officers shall be entitled to the same fees, to be collected in the same manner,
as is now provided by law for like services. The sheriff shall also be entitled to retain for his services the amount of damages set forth in the warrant and as prescribed herein, but only when the full amount of tax and penalties set forth in the warrant has been collected by him and transmitted to the department."

If considered above, the chronology of the several enactments would lead to the conclusion that a sheriff who executes a warrant under the Adjusted Gross Income Tax Law is entitled to retain the damages collected because:

First: The language on its face is specific and unambiguous;

Second: One session of the General Assembly cannot bind a succeeding session [Blue v. State, *ex rel*, Brown (1934), 206 Ind. 98, 188 N. E. 583], and thus the 1957 Legislature could abolish compensation through fees but could not prevent a subsequent Legislature from re-establishing such compensation;

Third: The 1969 Legislature that added the above language to the Adjusted Gross Income Tax Law also amended the section of the County Officers' Salary Act concerning sheriffs' salary (Acts of 1957, Ch. 319, Sec. 7, set out in part above) to increase that salary, but did not at the same time make any provision for the deposit of damages collected under the Adjusted Gross Income Tax Law even though it is that statute that regulates the deposit of damages collected under the Gross Income Tax Law (See Acts of 1969, Ch. 231, Sec. 1);

Fourth: The Legislature is presumed to know the statutory law both as it exists and as it has been interpreted. See Grave v. Kittle (1951), 122 Ind. App. 278, 101 N. E. (2d) 830. In 1967 O. A. G. No. 8, p. 40, the then Attorney General determined that sheriffs were not entitled to any compensation for executing warrants issued pursuant to the Adjusted Gross Income Tax Law; the very next session of the Legislature amended that law to add the above quoted language concerning damages.
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However, chronology is not the only consideration. Legislative intent must also be considered.

It should be noted that the above language is an exact duplicate, a repetition, of language contained in the Gross Income Tax Law (Acts of 1933, Ch. 50, Sec. 13, as amended; Burns' Section 64-2613). By operation of the County Officers' Salary Act that language as used in the Gross Income Tax Law, results in damages collected under that Law being deposited in the county general fund.

A somewhat similar situation was considered in 1966 O. A. G. No. 12, p. 72. That Opinion considered one section of a purported original general fee Act, a section that, except for increasing the fee, repeated language contained in a different and earlier statute. The distribution of fees to various officers specified in the earlier statute had been superseded and prohibited by, inter alia, the County Officers' Salary Act. After thorough examination of judicial decisions in this area, the then Attorney General concluded that the subsequent, purportedly original, Act did not re-establish the fee retention provisions.

That Opinion and the reasoning on which it is founded are applicable to the instant situation. The use of the specific language used in the Gross Income Tax Law concerning the collection and disposition of damages could indicate a Legislative intent to have damages collected under the Adjusted Gross Income Tax Law to be distributed in the same manner even though the language, on its face, might indicate a different distribution. (It should perhaps be noted here that the 1967 Opinion of the Attorney General referred to above in the fourth point favoring retention by the sheriff, while it determined that the sheriff is not entitled to any fees or damages under the Adjusted Gross Income Tax Law, also stated that all damages retained by the sheriff under the Gross Income Tax Law are to be deposited in the county general fund.)

CONCLUSION

In relation to the statutory damages collected by a sheriff who executes a warrant issued by the Department of Revenue
pursuant to the Gross Income Tax Law, it is my Official Opinion that all such damages are not to be retained by the sheriff but are instead to be deposited in the county general fund.

In relation to the statutory damages collected by a sheriff who executes a warrant issued by the Department of Revenue pursuant to the Adjusted Gross Income Tax Law, the situation is sufficiently ambiguous as to require Legislative or Judicial determination.