

" * * * The bonds issued under authority of this act shall be signed as other county bonds, they shall recite on their face the purpose for which they are issued and that they are issued under this act, they shall be issued in such denominations, and at such rate of interest, not exceeding six per cent, payable semi-annually, and for such period of time *not exceeding ten years* as the county commissioners by resolution may determine, etc. * * *"

The resolution of the county commissioners authorizing the issuance of said bonds provides that \$7,250 shall fall due October 1, 1932.

Therefore, the bond issue, at least to the extent of \$7,250, is in conflict with the provisions of the act under authority of which they are issued.

I therefore advise that the bonds in question, at least in part, are not valid and binding obligations of Hardin county and advise your department not to purchase the same.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2444.

APPROVAL, CONTRACT FOR WILLIAM HENRY HARRISON MEMORIAL
GATEWAY AT NORTH BEND, OHIO.

COLUMBUS, OHIO, September 30, 1921.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Your letter of the 26th was received, returning copies of contract for the William Henry Harrison memorial gateway at North Bend, Ohio.

It appearing that said contract has been entered into according to law, and that funds are available sufficient to meet payments called for by its terms, I have this day noted my approval on said contract (of which there are five copies), and likewise on the bond covering same.

Said contract and bond and all other papers submitted to me in this connection, I have this day filed with the auditor of state.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2445.

REAL ESTATE — PROBATE COURT — WITHOUT JURISDICTION TO
MAKE ANY ORDER RESPECTING TRANSFER OF TITLE OF LANDS
PASSING UNDER STATUTES OF DESCENT — WHEN COUNTY
AUDITOR AND COUNTY RECORDER AUTHORIZED TO ALTER
THEIR RECORDS.

A probate court is without jurisdiction to make any order respecting the transfer of title of lands passing under the statutes of descent. The county auditor and

the county recorder are authorized to alter their records on account of such devolution of title only when the affidavits required by law are presented.

COLUMBUS, OHIO, October 3, 1921.

HON. A. F. ALLYN, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—Sometime ago you transmitted to this department a copy of what purports to be a "certificate for transfer of real estate inherited" which had been received for transfer and record upon the auditor's and recorder's records of Ottawa county, and requested the opinion of this department upon the following questions:

- (1) Is this 'the proper order of a court' within the meaning of section 2573 of the General Code?
- (2) Should the county auditor make the transfer as ordered in this certificate?
- (3) Should the county recorder record this certificate?"

The document enclosed in your letter recites that the judge and ex-officio clerk of a certain probate court in this state certifies that the records of his court show that A, deceased, died intestate, leaving certain described real estate situated in Ottawa county, "and it appearing to the satisfaction of the court that said real estate descended to _____; it is hereby ordered that the same be transferred upon the duplicates of the county to the name of the said heir at law." The instrument is executed and sealed over the signature of the judge and ex-officio clerk of the probate court.

Section 2573 of the General Code relates to the duties of the county auditor, and provides as follows:

"On application and presentation of title, with the affidavits required by law, or the *proper order of a court*, the county auditor shall transfer any land or town lot or part thereof or minerals therein or mineral rights thereto, charged with taxes on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, or minerals therein or mineral rights thereto, as charged in the tax list is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made. The auditor shall indorse on the deed or other evidences of title presented to him that the proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto."

The chapter in which the laws prescribing the course of descent of real estate are found, being sections 8573 to 8605, both inclusive, of the General Code, contains no provision requiring any record to be made in the recorder's office. Sections 10526 and 10527 of the General Code do provide for a record in the recorder's office of transfers by will. This record is initiated by the issuance of a certificate from the probate court of a county to the recorder of the same county, containing the names of the devisees and a description of the real estate, etc. In case a will is admitted to probate in one county, how-

ever, relating to real estate in another county in this state, the proper procedure is to file for record in the office of the probate judge of the county wherein the real estate is located, a certified copy of the will admitted to probate in the other county, and then have the certificate of the probate judge issued from the court of the county in which the certified copy is filed to the recorder of that county. See sections 10526, 10527 and 10530 of the General Code.

These provisions, however, relate solely to wills and their probate. They have nothing to do with intestate successions.

Turning back again to section 2573 of the General Code, first quoted in this opinion, it will be observed that the auditor must make a transfer on his records, either upon the filing of affidavits or upon the proper order of a court. The reference to the "affidavits required by law" is explained by the provisions of section 2768 of the General Code, which relates to the duties of the county recorder. Here we do find specific treatment of the case of the transfer of the title of real estate which has passed under the laws of descent, in the following words:

"The county recorder shall not record any deed of absolute conveyance of land or any conveyance, absolute or otherwise, of minerals or mineral rights until it has been presented to the county auditor, and by him indorsed 'transferred,' or 'transfer not necessary.' Before any real estate the title to which shall have passed under the laws of descent shall be transferred, as above provided, from the name of the ancestor to the heir at law or next of kin of such ancestor, or to any grantee of such heir at law or next of kin; and before any deed or conveyance of real estate made by any such heir at law or next of kin shall be presented to or filed for record by the recorder of any county, such heir at law or next of kin, or his or their grantee, his agent or attorney, shall present to such auditor the affidavit of such heir or heirs at law or next of kin, or of two persons resident of the state of Ohio, each of whom has personal knowledge of the facts, which affidavit shall set forth the date of such ancestor's death, and the place of residence at the time of his or her death; the fact that he or she died intestate; the names, ages, and addresses, so far as the ages and addresses are known and can be ascertained of each of such ancestor's heirs at law and next of kin, who by his death inherited such real estate and the relationship of each to such ancestor and the part or portion of such real estate inherited by each, which such transfers shall be made by the auditor in accordance with the statement contained in such affidavit, and such auditor shall indorse upon such deed or conveyance the fact that such transfer was made by affidavit. Such affidavit shall be filed with the recorder of the county in which such real estate is situated at or before the time when such deed or conveyance shall be filed with such recorder for record and shall be by him recorded in the record of deeds, and such affidavit of descent shall be by him indexed in the general index of deeds, in his office, in the name of such ancestor as grantor and in the name of each of such heirs at law or next of kin as grantees in the same manner as if such names occurred in a deed of conveyance from such ancestor to said heirs at law and for such indexing and recording the recorder shall receive the same fees as are provided by law for the indexing and recording of deeds.

The said record of the affidavit above mentioned, shall, in the trial of any cause, so far as competent, be prima facie evidence with foregoing provision of this act, but the truth of such statements may be rebutted or overcome by any competent evidence. * * *

Here is specific provision for the manner of securing a record chain of title to lands which have passed under the statutes of descent. In this section, construed with section 2573 of the General Code (both of them having been recently amended by the same act, 108 O. L., Part 1, 282), we find complete provision for the respective duties of the county auditor and the county recorder. These provisions must be regarded as exclusive, unless the phrase "or the proper order of a court" occurring in section 2573 be interpreted as authorizing an alternative method of dealing with the same subject. In the opinion of this department this construction cannot be given to the phrase. In the first place, the phrase itself is found only in the section dealing with the duties of the county auditor. No provision is found which could be stretched so as to require the county recorder to do anything of the sort on the order of a court. Having regard to the manifest purpose of the legislature that the records of the county auditor and those of the county recorder should be consistent with each other, this interpretation would therefore, on that account alone, have to be rejected.

Still, the phrase "the proper order of a court" occurring in section 2573 might be given the construction contended for if that construction were necessary in order to clothe the phrase with any meaning. Such, however, is not the case. There are numerous instances in which the order of a court of itself operates as a conveyance of real estate; see, for example, section 11590 of the General Code, which provides as follows:

"When the party against whom a judgment for a conveyance, release, or acquittance is rendered, does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformably thereto."

Here is an order affecting the title to real estate which a court is specifically authorized to enter.

In the opinion of this department the phrase "the proper order of a court" means an order issued by a court in the exercise of jurisdiction committed to it by law. The probate court has no jurisdiction to act in anywise in respect of successions that have taken place under the laws of descent.

It is the opinion of this department, therefore, that the paper a copy of which is enclosed in your letter is not "the proper order of a court" within the meaning of section 2573 of the General Code, and that neither the county auditor nor the county recorder of Ottawa county is authorized to take any action thereunder.

Respectfully,
 JOHN G. PRICE,
Attorney-General.