

2806.

CLERK OF COURTS—CHARGE IN EXCESS OF 25c FOR FILING BILL OF SALE PAID INTO COUNTY TREASURY UNDER SECTION 286, GENERAL CODE.

*SYLLABUS:*

*Clerks of Courts are authorized by section 6310-10, General Code, to charge a sum of twenty-five cents for filing each bill of sale for a new or used automobile. In the event the clerks of courts charge a sum in excess of twenty-five cents, such excess should be paid into the county treasury to be disbursed in accordance with the provisions of section 286, General Code.*

COLUMBUS, OHIO, June 9, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Bills of sale and sworn statements of ownership of motor vehicles are required to be filed with the Clerk of Courts, for which the Clerk is authorized to charge a fee of 25 cents.

QUESTION: In the event a fee of \$1.25 is charged by the Clerk, and 25 cents is accounted for to the county treasurer as fees, may a finding be made against the Clerk for the additional amount to be paid into the county treasury as public moneys in accordance with the provisions of Section 286 of the General Code in which the term ‘public money’ is defined?

It may be that the clerk or his deputy makes out the bill of sale, and that the additional charge of one dollar is for making out such bills or sworn statements of ownership.”

Section 6310-10, General Code, reads in part as follows:

“The clerk of courts shall if such instruments are properly executed and witnessed, affix his official seal and the date of the filing upon each instrument, assign to each set of duplicate bills of sale a distinctive number, which he shall stamp upon both original and duplicate and make an alphabetical index of the grantors and grantees and of the motor vehicles according to make, type and model. The clerk shall thereupon return one copy to the person presenting the bill of sale and place the others in a file to be kept by him for such purpose. Any instrument purporting to be a bill of sale, which does not bear the official seal of the clerk of courts of the county where the sale, gift, transfer, conveyance or passage of title took place shall be null and void. *The clerk of courts of each county shall charge a fee of twenty-five cents for filing each duplicate bill of sale.*”

The legislature having very clearly stated that the clerk of courts is to receive a fee of twenty-five cents for filing each bill of sale, there is, of course, no authority to charge a greater sum. Public officers have only such powers as are expressly given them by statute and such implied powers as are necessary to effectuate the

expressed powers. I am unable to find any provision in the motor vehicle statutes which would permit such additional charge as stated in your letter. It is not clear from your letter why the clerk of courts makes the additional charge of one dollar. If it is merely an overcharge for which there is no statutory authority, it is quite certain that the person who was compelled to make such payment is entitled to recover back such overpayment.

Section 286, General Code, referred to in your letter, reads in part as follows:

"The term 'public money' as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials shall be liable therefor. All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected."

The terms of this statute are sufficiently broad to include overpayments. The person making such overpayment would be entitled to receive this money from the county treasury any time within the statutory five-year period.

However, I am informed that the additional charge of one dollar is being collected by various clerks of courts by virtue of a supplementary provision to the Federal Code of Fair Competition for the Motor Vehicle Retailing Trade, approved by President Roosevelt, October 3, 1933, and filed with the Governor of this State January 11, 1934. This provision is found in Article X of such Code, and reads as follows:

"A fee shall be charged by all dealers upon each new or used motor vehicle transaction for the execution and filing of title papers and/or similar documents, the proper registration of motor vehicle, and the securing and affixing of number plates. The fee applicable in any county or district shall be determined by the majority of the dealers in that county or district, subject to the approval of the State Advisory Committee provided for in Article V-A of this Code."

It is therefore necessary to inquire into the authority of the various clerks of courts to collect any fees which might be assessed by virtue of the above provision. House Bill No. 705, commonly referred to as the Ohio Recovery Act, would be the only authority, if any exists, for the clerks of courts to collect the fees in question. Section 2 of House Bill No. 705 reads as follows:

"To effectuate the policy of this act the governor is hereby authorized to delegate all or any part of the powers and functions hereby vested in him, to any department or departments, or commission or commissions, of the state government as established by law, and to accept and utilize such voluntary and uncompensated services as he may find

necessary, and to prescribe their authorities, duties and responsibilities. The consent of the state is hereby given to the utilization by the president of the United States of the services of such state and local officers and employees as the president may find necessary. The governor, or the director of any department to whom, or any commission to which, the governor may delegate any of his functions and powers under this act, may call upon any research agency maintained by the state or by any educational institution supported in whole or in part by state funds, or upon any officers or employees of any county, municipal corporation, township or school district in this state for aid in carrying out his or its functions under this act."

After an examination of the above section, I am unable to say that it is the duty of the clerks of courts to collect the fees in question. Article X, supra, of the above Motor Vehicle Retailing Code, requires that the dealer shall make a charge for certain services such as the execution and filing of title papers and the securing of license plates. Obviously, the Code contemplates that the dealer should render these services if he is to receive such a fee. This provision is aimed at promoting fair competition by the abolition of the practice of many dealers who in the past have rendered such services free of charge. There is nowhere anything to indicate that the various clerks of courts should assist these dealers in the collection of their fees.

It is therefore my opinion, in specific answer to your question, that clerks of courts are authorized by section 6310-10, General Code, to charge a sum of twenty-five cents for filing each bill of sale for a new or used automobile. In the event the clerks of courts charge a sum in excess of twenty-five cents, such excess should be paid into the county treasury to be disbursed in accordance with the provisions of section 286, General Code.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2807.

POUNDAGE—SHERIFF NOT ENTITLED TO POUNDAGE AT FORECLOSURE SALE WHEN.

*SYLLABUS:*

*Where, in a foreclosure sale, a sheriff does not receive the money from the purchaser to cover the first mortgage holder's claim, but permits the same to be paid directly to said mortgage holder by the purchaser, the sheriff is not entitled to poundage under Section 2845, General Code.*

COLUMBUS, OHIO, June 9, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows: