

passes to the State of Ohio in a case like that here presented. It is sufficient for the purpose to say that in such case when the property owner accepts the award of compensation and damages made by the Director of Highways, or fails to perfect his appeal therefrom, the title to the property is then in the State, and that no transcript of the proceedings in the probate court relating to such appropriation is necessary to complete such title. Such transcript of the proceedings in the probate court, taken in connection with the record of proceedings in the office of the Director of Highways with respect to such appropriation, may properly be considered to be appropriate evidence of the title of the state to the property appropriated, and as such the Director of Highways, under the provisions of Section 1188, General Code, would doubtless be authorized to obtain such transcript and pay for the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2587.

PRISONER—INSOLVENT—OPINION No. 2380, APPROVED AND FOLLOWED.

SYLLABUS:

Opinion No. 2380, dated July 23, 1928, approved and followed.

COLUMBUS, OHIO, September 17, 1928.

HON. F. E. SLABAUGH, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“Referring to your Opinion No. 2380, rendered me on the 23rd day of July, 1928, and in a further attempt to clarify the matter of the imprisonment of insolvent prisoners for a period of more than sixty days in the county jail, I am asking your department for a further opinion upon the effect of the decision of the Supreme Court in *re Boyer, Superintendent, Stark County Work House, vs. The State of Ohio ex rel. Halyburton*, being case No. 20937 on the Opinion No. 1182, cited in Opinion 2380, which opinion was addressed to the Commissioner of Prohibition in Ohio, the syllabus of which reads:

‘Section 11172, General Code, prescribing that a probate court may upon the hearing grant to an insolvent debtor, who had been imprisoned under process for fine, penalty or costs in a criminal proceedings, a certificate of release or dismiss his petition as seems just, vests in the court a legal or judicial discretion to be exercised according to law upon the facts found to be true by such court, and if the court finds that an applicant is in fact insolvent and has complied with all the provisions of the law relative to insolvent debtors, such court may not refuse to grant the certificate provided for in that section.’

Is it the opinion of the attorney general that the probate court has still the authority under Section 11172, G. C., to cause the release of prisoners under confinement in the county jail, who have served sixty days imprisonment and are insolvent, as you advised the state prohibition director?”

In substance you inquire whether, in Opinion No. 2380, under date of July 23, 1928, and addressed to you, my prior opinion No. 1182, dated October 21, 1927, and addressed to the Commissioner of Prohibition of Ohio, was modified.

Opinion No. 1182 was referred to and the syllabus thereof quoted in the opinion addressed to you. Thereafter in that opinion reference was made to the case of *Boyer vs. State of Ohio ex rel.*, decided May 9, 1928, by the Supreme Court and reported in Ohio Bar Association Report for July 10, 1928, and voluminous quotations therefrom were made. The language of the Supreme Court was explicit and clear on the point under consideration, and in view of this holding I expressed my opinion in the following language:

"In view of the case of *Boyer vs. State ex rel. Halyburton, supra*, it is my opinion that a person, who is imprisoned under process for fine, penalty or costs, in a criminal proceeding, if sentenced to remain imprisoned until such fine, penalty or costs are paid, or secured to be paid, or he is otherwise legally discharged, is not entitled to the benefit of the discharge provided by Section 11150, General Code. Such prisoner may only be released by pardon, paying or securing the payment of such fine, penalty and costs or by allowing a credit upon the fine and costs at the rate of one dollar and a half per day for each day's imprisonment. However, in the event the magistrate should impose a fine and costs without ordering such person to be imprisoned until such fine and costs are paid, and the accused be taken into custody upon execution, as provided by Section 13718, General Code, to be confined in jail until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged, in such case the prisoner, after serving sixty days, would be entitled to the benefit of the insolvency act and might secure his discharge as provided by Section 11150, General Code, inasmuch as the judgment of the magistrate did not require his imprisonment until the fine, penalty or costs be paid."

The language of the Supreme Court is clear and I attempted to be equally clear in my recapitulation of the rule deduced, in view of that case. Manifestly this rule is in part inconsistent with the language appearing in my prior Opinion No. 1182, and in so far as such an inconsistency exists, the prior opinion should be disregarded.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2588.

BILL OF SALE—FORMS FOR USED MOTOR VEHICLES.

SYLLABUS:

Discussion of the proper blank forms for the sale of used motor vehicles.

COLUMBUS, OHIO, September 17, 1928.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I have just received from The H. J. Chittenden Company of Toledo, Ohio, the following communication: