

3456.

APPROVAL, BONDS OF PERRY COUNTY, OHIO—\$16,000.00.

COLUMBUS, OHIO, July 24, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3457.

APPROVAL, NOTES OF COAL TOWNSHIP RURAL SCHOOL DISTRICT,
JACKSON COUNTY, OHIO—\$2,000.00

COLUMBUS, OHIO, July 25, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3458.

APPROVAL, SUPPLEMENTAL RESOLUTION FOR ROAD IMPROVE-
MENT IN FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 25, 1931.

HON. O. W. MERRELL, Director of Highways, Columbus, Ohio.

3459.

APPROVAL, AGREEMENT FOR RECONSTRUCTION OF BRIDGE AND
SEPARATED CROSSING IN ATHENS COUNTY, OHIO.

COLUMBUS, OHIO, July 28, 1931.

HON. O. W. MERRELL, Director of Highways, Columbus, Ohio.

3460.

SALE—LANDS AND TENEMENTS TAKEN IN EXECUTION—SHERIFF
AUTHORIZED BUT PARTIES AND ATTORNEYS UNAUTHORIZED
TO DESIGNATE NEWSPAPER IN WHICH NOTICE OF TIME AND
PLACE OF SALE PRINTED.**SYLLABUS:***Under the provisions of Section 11681, General Code, as amended by the act of the 87th General Assembly, passed April 21st, 1927, 112 Ohio Laws, 261, it is*

the duty of the sheriff to designate the newspaper in which the notice provided for in this section is to be made, except in those cases where the court ordering the sale of the property, designated in the order of sale the newspaper in which such notice shall be published, and neither a party in the case nor an attorney acting for such party has any right or authority to designate the newspaper in which such notice is to be published.

COLUMBUS, OHIO, July 28, 1931.

HON. FOREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you, which reads as follows:

“Section 11681 of the General Code of Ohio provides:

‘Lands and tenements taken in execution shall not be sold until the officer causes public notice to be given of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper printed and of general circulation in the county. The court ordering sale may, in the order of sale, designate the newspaper in which such notice shall be published.’

May the attorney in, or party to a case, designate in which paper the sheriff *must* publish such legal advertising.”

The provisions of Section 11681, General Code, were enacted by way of amendment of the original section of the General Code bearing this number, by an act of the 87th General Assembly, passed April 21, 1927, 112 O. L. 261. The only change effected in said section of the General Code by this amendment was the addition of the provision above quoted that “The court ordering sale may, in the order of sale, designate the newspaper in which such notice shall be published.”

In considering the provisions of section 11681, as they now read, it should be noted that by section 11653, General Code, an execution is defined as “a process of the court, issued by the clerk, and directed to the sheriff of the county”; and that by section 11654, General Code, executions include orders of sale. In other words, a sale of real estate on an order of court issued on a final or interlocutory decree of the court is made as though the property were being sold on execution. *Harland vs. Newcomb*, 2 O. C. C. 330.

Prior to the amendment of section 11681 in the manner above indicated, it was held that the sheriff in giving the public notice of the sale of real property required by the provisions of this section, was authorized to select any newspaper he pleased, subject only to the requirement of said section that the newspaper so selected should be one printed and of general circulation in the county. *Augustus vs. Lynd*, 7 N. P. (N. S.) 473.

Under the provisions of this section, as amended, it still remains the duty of the sheriff to designate the newspaper in which the notice provided for in this section is to be made, except in those cases where the court ordering the sale of the property, in the order of sale, designates the newspaper in which such notice shall be published.

It follows from what has been here said that neither a party in the case nor an attorney acting for such party has any right or authority to designate the newspaper in which such notice is to be published; but that in all cases such designation is to be made either by the sheriff or by the court, as above indicated.

In this connection, it is to be observed that where the property is sold on an

order of court, the court in such case, as in other cases, speaks only through its journal by means of an entry approved by the court for the purpose. It is probable that in most cases of this kind such entry is prepared by a party to the action or by his attorney. Nevertheless, such entry, when approved by the court, becomes the act of the court; and if by such entry a particular newspaper is designated in which such notice of sale is to be published, such designation thus made in the entry, is the act of the court, and not of such party or attorney, when the court approves such entry.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3461.

MUNICIPALITY—NEWLY INCORPORATED—SPECIAL ELECTION FOR
 FIRST ELECTION OF OFFICERS—NOTICE OF SUCH SPECIAL
 ELECTON TO BE GIVEN IN ACCORDANCE WITH SECTION 4785-5,
 GENERAL CODE.

SYLLABUS:

Notice of a special election of officers in a newly incorporated municipality should be published as provided in Section 4785-5, General Code.

COLUMBUS, OHIO, JULY 28, 1931.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—Your letter of recent date reads as follows:

“A village has been organized at Geauga Lake, Ohio, under Sections 3520, 3521, 3522, 3523, 3524 and 3525. The village now desires to hold a special election of officers, which I understand from your letter of April 17, 1931, can be held under Section 3536 of Amended Senate Bill No. 16, passed February 23, 1931.

“I am unable to make up my mind as to how notice shall be given of this special election. Will you, therefore, give me your opinion of how notice shall be given of such special election to the electors, as we are very anxious to get this village functioning at the earliest possible date.”

Section 3536, General Code, prior to repeal by the 88th General Assembly, provided that the first election of officers of a newly incorporated municipality was to be held at the first municipal election after its creation. The section further provided that notice of said election should be published in three or more public places within the corporation at least ten days before the election.

The 89th General Assembly apparently recognizing that no provisions had been left in the General Code for the first election of such officers, reenacted this section in a modified form in Amended Senate Bill No. 16. In its present form, Section 3536, General Code, reads as follows:

“The first election of officers for such corporation may be a special election held at any time not exceeding six months after the incorporation