

1970.

MOTOR VEHICLE—SOLD ON EXECUTION BY ORDER OF JUSTICE OF PEACE—BILL OF SALE SIGNED BY CONSTABLE.

*SYLLABUS:*

*Where a motor vehicle is sold on execution issued by a justice of the peace the bill of sale should be issued to the purchaser by the constable conducting the sale.*

COLUMBUS, OHIO, June 12, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion upon the following:

“A car was taken on execution in a court proceeding, judgment, order of sale given, and the car sold at public auction by the constable, and return made to the court. It appears that all the proceedings were regular and according to law.

The question that we wish to ask is: In the case of the sale of a car by the court under judgment and order of sale, who is to give a bill of sale? In the instant case, the Justice of Peace who presided in the case signed a bill of sale in favor of the purchaser at the public sale. The Clerk of Courts refuses to record the same. In event the judgment debtor refuses to sign Bill of Sale, who would execute the same?”

In examining the statutes it will be observed that there is no provision that would seem to authorize a justice of the peace to execute a bill of sale. Under the provisions of Sections 10417 and 10431 of the General Code, executions are issued to the constable and such officer is required to make the sale. It would follow, in so far as the justice's proceeding is concerned, that any action taken relative to conveying title to the purchaser would be vested in the constable and not in any other officer.

In connection with your inquiry you are referred to Section 6310-8 of the General Code, which provides:

“Each buyer, purchaser, transferee or person receiving or obtaining a ‘used motor vehicle’ shall obtain from the owner, vendor or person conveying or transferring such ‘used motor vehicle’, at or before such sale, transfer, conveyance or delivery, the bill of sale in duplicate as provided for in Section 6310-7 and verified as provided for in Section 6310-9. In case of transfer of ownership of a ‘motor vehicle’ or a ‘used motor vehicle’, by inheritance, devise or bequest, or order in bankruptcy or insolvency, replevin or execution sale, re-possession upon default in the performance of the terms of the lease, conditional sale, agreement or otherwise than by the voluntary act of the owner, the ‘bill of sale’ transferring such title as required by this chapter shall be signed by the executor, administrator, receiver, trustee, sheriff or other representative, or successor in interest of the owner in lieu of such owner, and delivered to the transferee together with all former ‘bills of sale’ or statements of ownership, and shall set forth in addition to such other information as is required by law to be contained in the bill of sale, the special facts in the premises.”

It is believed that an analysis of the section last quoted will clearly disclose that, by the terms of said section, in case a motor vehicle is sold under an order of execution

by a justice of the peace, the constable of said court who conducts the sale should properly execute the bill of sale.

In an opinion of my predecessor, found in Opinions of the Attorney General for the year 1928, page 60, Section 6310-8, supra, was under consideration in connection with the sale by a sheriff or other like officer. The conclusion of the then Attorney General, as disclosed by the syllabus, was :

“The provisions of Section 6310-8, General Code, in so far as they require a sheriff, bailiff or other like officer selling an automobile on order of court, to deliver to the transferee ‘all former bills of sale or statements of ownership’ with the bill of sale executed by such officer, do not apply where such officer, in the exercise of the utmost diligence to obtain such former bills of sale or statements of ownership or certified copies thereof, is unable to do so. In such case the bill of sale executed by such officer should contain a full and complete statement of facts showing such impossibility as a part of the ‘special facts in the premises’ provided for in said section of the General Code.”

Without further discussion and in specific answer to the inquiry submitted, it is my opinion that where a motor vehicle is sold on execution issued by a justice of the peace the bill of sale should be issued to the purchaser by the constable conducting the sale.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1971.

APPROVAL, ABSTRACT OF TITLE TO REAL ESTATE OF WALTER E. ISALY, TRUSTEE, IN COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 12, 1930.

*The State Office Building Commission, Columbus, Ohio.*

GENTLEMEN :—Under date of June 6th, 1930, I directed to you Opinion No. 1950 of this office with respect to the title to the south half of an eighty (80) foot parcel of land off of the east end of Inlot No. 114, therein more particularly described. In said opinion, I found that Walter E. Isaly, Trustee, the owner of record of said property, had a good and indefeasible legal title in and to said property, subject only to exceptions therein noted with respect to certain taxes and assessments upon said property.

Since the foregoing opinion was directed to you, I have been advised that said Walter E. Isaly holds the legal title to said property as trustee for Charles W. Isaly and Bertha Isaly, wife of said Charles W. Isaly.

There has, at this time, been submitted to me two deeds conveying the property here in question to the State of Ohio.

The first deed is a warranty deed executed by said Walter E. Isaly, Trustee, and by Henrietta H. Isaly, his wife, conveying this property to the State of Ohio. Upon an examination of said deed, I find that the same has been properly executed and acknowledged by said Walter E. Isaly, Trustee, and by Henrietta H. Isaly, his wife, and that said deed, as to form, is sufficient to convey the property here in question to the State of Ohio, free and clear of all encumbrances except the taxes and assessments due and payable on and after the June, 1930, payment.