

they approve this step is what is required, or does it mean that the electors in each county will be considered separately.

In order to make ourselves clear, we will put it this way:

County 'a' contemplates taking a part of County 'b'; the bill is passed by the General Assembly. It is then at the next general election submitted to the electors in both counties. Supposing County 'a' has three hundred thousand electors, and County 'b' one hundred thousand electors; if a majority of the electors in County 'a' approves the measure, and a majority of the electors in County 'b' disapproves the measure, is it adopted or not—or, do you take the one hundred thousand electors of County 'b' and the three hundred thousand electors of County 'a' as a whole, being in full four hundred thousand, and consider the majority vote of the whole four hundred thousand as an approval or disapproval."

Section 30, article II of the Constitution provides in clear, unambiguous language that "all laws \* \* changing county lines \* \* shall, before taking effect, be submitted to the electors of the several counties to be affected thereby \* \* and be adopted by a majority of all the electors voting at such election in each of said counties". Under this express constitutional provision, it necessarily follows that until a law changing county lines shall be approved by a majority of all the electors voting at the election as provided in the section in each county affected by the change, the law changing the county lines shall not go into effect. There is no provision to the effect that the law shall be effective upon the approval of a majority of the electors voting at the election in all the counties affected, the Constitution requiring that before such a law shall become effective, it must be approved by a majority of the electors voting at the election "*in each of said counties.*"

Applying this constitutional provision to the specific illustration which you present, the law providing the change cannot become effective upon the affirmative vote of a majority of the electors in only one of the two counties affected although such majority may be a majority of the total vote of the two counties.

Specifically answering your question, it is my opinion that under Section 30, Article II of the Constitution, a law changing county lines shall not become effective until adopted as therein provided by the electors in each county affected, even though the aggregate vote cast in all such counties considered together might show a majority for such change.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

103.

POUNDAGE—SHERIFF MAY CHARGE ON SALE OF PERSONAL PROPERTY AT EXECUTION.

SYLLABUS:

*A sheriff can charge poundage as a result of handling money from the sale of chattel property on execution.*

COLUMBUS, OHIO, February 4, 1933.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"I would like to refer the following question for your consideration and decision:

Can a sheriff charge poundage as a result of handling money for the sale of chattel property on execution, or is poundage collected by the sheriff confined to real estate?"

Your question involves the interpretation of section 2845 of the General Code, the relevant portion of which reads:

"For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor: \* \* \* poundage on all moneys actually made and paid to the sheriff on execution, decree or sale of real estate, on the first ten thousand dollars, one per cent; on all sums over ten thousand dollars, one-half of one per cent, but when such real estate is bid off and purchased by a party entitled to a part of the proceeds, the sheriff shall not be entitled to any poundage except on the amount over and above the claim of such party, except in writs of sale in partition he shall receive one per cent on the first two thousand dollars, and one-third of one per cent on all above that amount coming into his hands \* \* \* ."

The precise question presented by you was answered in an opinion by one of my predecessors, reported in Opinions of the Attorney General, 1916, Vol. I, page 865. The early case of *Farrin vs. Creager*, 13 Dec. Rep. 285, 3 Gaz. 267, was cited and it was pointed out that the parties thereto conceded the applicability of the statutory provision to the sale of personal property. Since the leasehold, with right of purchase, involved in that case was considered by the court as an interest in realty, the point now involved was not decided. Following the discussion of the case, this language appears in the opinion at page 867:

"It appears to be conceded by the parties in the foregoing case that the provision of the statute applied to the sale of personal property. Considering this question however, upon the language of the statute itself, I am unable to perceive why its provisions do not include personal property as well as real estate. It plainly provides that all moneys paid to the sheriff on execution shall be subject to the charge of poundage. No execution may issue that is not directed first against the personal property of the debtor. It is only when there is no personal property subject to levy that an execution may be levied upon real estate. This being so, and the statute plainly providing that money received on execution shall be subject to charge, I am unable to see upon what ground it may be held to exclude an execution levied upon personal property and the money received by the sheriff from the sale thereof.

I am therefore of the opinion that the provisions of Section 2845 G. C., hereinbefore quoted, include money received from sales on execution levied upon personal property, and when such money is actually made and paid to the sheriff from the sale of said property, he is entitled to charge the fees therein prescribed as poundage."

Section 2845 has been amended (108 O. L., Pt. II, 1214) since the 1916 opinion, but the portion material to your question was not changed. The section is not entirely free from ambiguity. It is subject to the interpretation that the phrase "of real estate" refers to the word "execution" as well as to "decree" and "sale". No cases involving poundage resulting from the sale of chattel property on execution have come to my attention, although there have been a number of cases, not in point on the present question, involving the sale of real estate. This is a slight indication against the view taken by this office in 1916, although it is very far from being conclusive.

The reason for allowing poundage was stated in the case of *Major vs. Coal Company*, 76 O. S. 200, 209. The court said that poundage was allowed "as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity". Under the court's reasoning, there is no justification for distinguishing between money received from the sale of chattels and that received from real estate.

It has also come to my attention that poundage has been collected in some counties upon sums received from the sale of chattel property. In the absence of judicial decisions to the contrary, this long continued administrative practice should be accorded some weight and should not be overturned in the absence of clear language in the statute.

I am therefore of the opinion that a sheriff can charge poundage as a result of handling money from the sale of chattel property on execution.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

104.

APPROVAL, NOTES OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, February 4, 1933.

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

---

105.

TAX AND TAXATION—PROPERTY PURCHASED BY BENEFICIARY OF WAR RISK INSURANCE POLICY—NOT EXEMPT FROM TAXATION.

*SYLLABUS:*

*Real property is subject to the state's general property tax, although purchased by a beneficiary with money received from the United States government as the proceeds of a war risk insurance policy. The exemption from taxation contained in the War Risk Insurance Act (38 U. S. C. A., sec. 454) does not include such property.*

COLUMBUS, OHIO, February 6, 1933.

HON. C. WOOD BOWEN, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows: