

1912.

APPROVAL, BONDS OF MAPLE HEIGHTS CITY SCHOOL DISTRICT,  
CUYAHOGA COUNTY, OHIO—\$2,500.00.

COLUMBUS, OHIO, November 23, 1933.

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

1913.

SHERIFF — MANDATORY DUTY TO SERVE WRIT OF POSSESSION  
WITHIN TIME PROVIDED BY LAW—DUTY TO DELIVER POS-  
SESSION TO PURCHASER AT JUDICIAL SALE AND REMOVE  
OCCUPANTS.

**SYLLABUS:**

*It is the mandatory duty of the sheriff to serve the writ of possession provided for by section 11654, General Code, within the time required by law. Where the occupants refuse to leave the premises, it is the duty of the sheriff to remove them and their personal property from the premises and to deliver possession to the persons entitled to possession.*

COLUMBUS, OHIO, November 24, 1933.

HON. HOWARD A. TRAU, *Prosecuting Attorney, Bellefontaine, Ohio.*

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

“May I have your formal opinion construing part 3 of the General Code Section 11654, wherein provision is made for the delivery of possession of property, including real property sold under order of sale.

The writ must contain a specific description of the property and a command to the sheriff to deliver it to the person entitled thereto.

The question is, where property has been sold at judicial sale and the sale properly confirmed by the Court, and an execution issued out of the Court of Common Pleas to the sheriff ordering delivery of the possession of the real property, whether or not the sheriff shall deliver the writ to the occupants of the property, said occupants being defendants in the original action wherein the judicial sale was had, or whether it is mandatory for the sheriff to forcibly eject the occupants from the premises and remove from the premises the chattel property of the occupants, in order that the purchaser at the judicial sale may have possession thereof.”

Sections 11653 and 11654, General Code, read as follows:

Sec. 11653.

“An execution is a process of the court, issued by the clerk, and directed to the sheriff of the county. Executions may be issued to the sheriffs of different counties at the same time.”

Sec. 11654.

"Executions are of three kinds: -

1. Against the property of the judgment debtor, including orders of sale;
2. Against the person of the judgment debtor;
3. For the delivery of the possession of real property, including real property sold under orders of sale. The writ must contain a specific description of the property, *and a command to the sheriff to deliver it to the person entitled thereto*. It also may require him to make the damages recovered for withholding the possession and costs, or costs alone, out of the property of the person who so withholds it." (Italics the writer's.)

Your inquiry pertains to the duties of a sheriff where he has in his possession a writ of restitution. It is clear that if the sheriff did not have the right to put the purchaser at a judicial sale in possession of the real estate, then the sale and the order of the Common Pleas Court would be an idle gesture. Subsection 3 of section 11654, General Code, *supra*, takes care of this situation. It provides specifically that the sheriff is to deliver the real estate to the person entitled thereto. Obviously, the language of this section means that if the occupants refuse to move, it is the duty of the sheriff to remove them. If the old occupants leave personal property upon the land, it is likewise the duty of the sheriff to remove that from the real estate. Should the occupants vacate the premises when ordered by the sheriff, there is no reason to forcibly remove them and their personal property. Your question, however, raises the point as to the duties of a sheriff where the occupant refuses to vacate the premises. As above stated, a sheriff by virtue of section 11654, General Code, must then forcibly eject the occupants and remove their personal property from the premises. In this connection, I call your attention to the case of *Kuebler vs. McGuire*, 8 O. N. P. 300. The following language by the court is pertinent to your question:

"It will be observed by these authorities that the law contemplates that the sheriff shall use such force as may be necessary to put the plaintiff in possession of the property in cases where the defendant resists the quiet and peaceable possession of the plaintiff, after judgment in the case.

If the defendant in ejectment quietly submits to the judgment of the court, and offers no resistance to the plaintiff's taking possession, and removes therefrom with all his personal property, there is no occasion for a writ of possession either under our statute or under the common law.

In 7th Am. & Eng. Ency. of Law, page 151, this language is used: "The writ of *habere facias possessionem*, is executed by delivering to the plaintiff full and actual possession of the premises recovered. The defendant and his goods, and all persons claiming under him may and should, if necessary, be removed by the officer, so that the plaintiff may have full and peaceable possession."

These authorities clearly show that all the sheriff is required to do under a writ of possession, is to remove the defendant and his personal property from the real estate recovered in ejectment, or in such case as to which the writ pertains."

It might be well to note the provisions of section 11712, General Code. This section reads as follows:

"The officer to whom an execution is directed shall return such writ to the court to which it is returnable within sixty days from its date."

In my Opinion No. 1038, rendered July 17, 1933, I considered section 11712, General Code, together with sections 11653 and 11654, General Code. The syllabus of that opinion reads as follows:

"1. A writ of restitution for the possession of real estate sold at execution sale is an execution within the meaning of Sections 11653 and 11654 of the General Code.

2. When a writ of restitution has been issued to the sheriff for the restitution of possession of real estate sold in execution sale, there is no statute requiring the sheriff to return such writ prior to sixty days after its date."

Without further extending this discussion, it is my opinion, in specific answer to your question, that it is the mandatory duty of the sheriff to serve the writ of possession provided for by section 11654, General Code, within the time required by law. Where the occupants refuse to leave the premises, it is the duty of the sheriff to remove them and their personal property from the premises and to deliver possession to the persons entitled to possession.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1914.

APPROVAL, BONDS OF WEST PARK VILLAGE SCHOOL DISTRICT,  
CUYAHOGA COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, November 24, 1933.

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

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1915.

APPROVAL, BONDS OF VILLAGE OF GATES MILLS, CUYAHOGA  
COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, November 24, 1933.

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