

1606.

SHERIFF—HOLDING MONEY PENDING FURTHER ORDER OF COURT
SHOULD NOT PAY SAME INTO COUNTY TREASURY.

SYLLABUS:

A sheriff who is ordered to retain money pending order of the court should not pay the same into the county treasury, pursuant to sections 3041 and 3042, General Code, but should hold the same pending further order of the court.

COLUMBUS, OHIO, September 25, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

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

“Section 3041 of the General Code provides that the Sheriff of each county shall make two certified lists of causes in which money has been paid, and which have remained in his hands or of a former sheriff for one year next preceding the first Monday of January. It further provides that a list shall be set up in a conspicuous place in his office for a period of thirty days.

Section 3042 provides that all such advertised money, fees, costs, debts and damages remaining in hands of such sheriff, and all unclaimed money, from the expiration of thirty days from the ending of such time of advertisement, shall be paid into the treasury of the county on the order of the county auditor.

QUESTION: In cases in which the court orders the sheriff to retain money pending order of the court, should such moneys be paid into the county treasury as provided by the above section, in the absence of a further court order making disposition of the same, or should it be held by the sheriff until further order of the court, even though this may be a considerable number of years?”

Sections 3041 and 3042, General Code, referred to in your letter, read as follows:

Sec. 3041

“On the first Monday of January in each year, the clerk of each common pleas and circuit court, each probate judge, and sheriff, shall make two certified lists of causes in which money has been paid, and which have remained in his hands, or of a former clerk, probate judge, or sheriff, for one year next preceding such first Monday of January, designating the amount and in whose hands. One list shall be by such officer set up in a conspicuous place in his office for the period of thirty days, and the other at or on the door of the court house, on the second Monday of January, for the same period of time.”

Sec. 3042

“All such advertised moneys, fees, costs, debts and damages, remaining in the hands of such clerk or probate judge, and all unclaimed moneys, other than costs, remaining in the hands of the sheriff from

expiration of thirty days from the ending of such time of advertisement, shall be, by such officer, or successor of either, paid to the treasurer of the county, on the order of the county auditor, indicating in each item in his cash book and docket the disposition made thereof. Upon ceasing to be such officer, each clerk, probate judge, and the sheriff immediately shall pay to his successor all money in his hands as such officer."

The above sections are among the sections relating to the disposition of unclaimed money. In my judgment, these sections have no application to moneys which the court orders the sheriff to retain pending further order of the court. This situation frequently arises in partition suits, where the court orders the sheriff to retain money pending a final determination of the question of who is entitled to such money. It couldn't be seriously contended that the sheriff is to turn this money into the county treasury under the above quoted sections, since the money is not unclaimed. It is money which is in litigation and is to be kept until the court determines who is entitled to the same, or until the court makes a further order concerning the money. If the sheriff were to turn the money into the county treasury without further order from the court, such action would be unauthorized and might even amount to a contempt of court. It is to be noted that section 3042, *supra*, uses the following language:

"* * * and all unclaimed moneys, other than costs, remaining in the hands of the sheriff * * *."

Most of the situations whereby the judge orders the sheriff to retain money pending further order of the court, do not involve unclaimed moneys. There is a vast distinction between unclaimed money and money which the court is holding pending a final determination of who is entitled to the same. Even in those cases which do not come strictly within the above distinction, but where the court orders the sheriff to hold money pending further order, I do not feel that the sheriff should turn this money into the county treasury but should hold the same until finally disposed of by order of the court.

Hence, it is my opinion, in specific answer to your question, that a sheriff who is ordered to retain money pending order of the court should not pay the same into the country treasury, pursuant to sections 3041 and 3042, General Code, but should hold the same pending further order of the court.

Respectfully,

JOHN W. BRICKER,
Attorney General.