

2304.

POUNDAGE—PARTITION SALE—BUREAU OF INSPECTION—NO JURISDICTION TO MAKE FINDING CONTRARY TO JUDGMENT OF COURT OF COMPETENT JURISDICTION.

SYLLABUS:

The Bureau of Inspection and Supervision of Public Offices is without jurisdiction or authority to make a finding contrary to or inconsistent with the judgment, decree or order of a court of competent jurisdiction.

COLUMBUS, OHIO, July 2, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated June 22, 1928, which reads:

“You are respectfully requested to render this department your written opinion upon the following:

Section 2845, General Code, relating to sheriff's fees contains this provision: ‘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;’

Question: What may the sheriff legally receive in a partition sale when the amount of money coming into his hands is \$9,050.00 and \$3,054.72 of this amount is paid to the party entitled to a part of the proceeds of a sale?

We are enclosing a letter from the sheriff of Coshocton County, which gives in detail the questions which we desire answered.”

The letter which you enclose reads as follows:

“I am submitting the following question for your consideration:

Case No. 7580, *Olga Hall Eppley vs. Leander D. Hall*, Sale in Partition. Olga Hall Eppley and C. A. Eppley, her husband, purchasers. Nine thousand and fifty (\$9,050.00) dollars. Total amount collected by me as sheriff, nine thousand and fifty (\$9,050.00) dollars.

Order of Distribution:

Treasurer, for Taxes.....	\$85 90
Clerk of Courts, for Court Costs.....	111 93
Fisher & Garver, for Attorney Fees.....	301 00
Danville Bank, for Mortgage.....	2,429 14
J. C. Hall, for Dower.....	536 73
Olga Eppley, for Share.....	3,054 72
Leander D. Hall, for Share.....	2,530 58
Total	<u>\$9,050 00</u>

Under Section 2845, I contend that I should have collected the amount of eighty-three dollars and forty-seven cents (\$83.47) as follows:

Fifty-nine dollars and ninety-five cents (\$59.95) on the amount distributed not coming into Olga Eppley's possession.

Twenty dollars (\$20.00) on the 1st two thousand paid to Olga Eppley.

Three dollars and fifty-two cents (\$3.52) on the balance over two thousand (\$2,000.00) dollars paid to Olga Eppley.

Mr. Fisher, attorney for Olga Hall Eppley, claimed that I should receive one per cent on the first two thousand dollars (\$2,000.00) and one-third of one per cent on the balance, making a total of forty-three dollars and fifty cents (\$43.50).

The question was left to Judge Daugherty who decided with Mr. Fisher. Please advise me as to which is correct. If Judge Daugherty and Mr. Fisher are correct, there has been hundreds of dollars collected that would belong to heirs in partition suits in this county."

If I correctly understand the letter of the sheriff, above quoted, the court, in its judgment in the instant case taxed as costs in said case, the amount of forty-three dollars and fifty cents, as a poundage fee for the sheriff.

It is unnecessary to point out that this office is without jurisdiction and that it would be improper for it to assume to review the judgments and proceedings of a court of competent jurisdiction. If a party believe himself to be aggrieved by the judgment or decree of a court, the proper remedy should be pursued in the court rendering such judgment or decree, or in a higher court of competent jurisdiction. In the instant case, if it be desired to take any further action as to the question of court costs, a motion to retax costs should be filed by an interested party and passed on by the court rendering the judgment.

It is also unnecessary to say that the judgment or decree of a court of competent jurisdiction, unless and until reversed or modified, is binding in so far as the parties thereto are concerned; and your department is obviously without authority to question such judgment decree, or to make a finding contrary or inconsistent therewith.

For these reasons, I feel that it would be improper for me to render an opinion in the instance case on the question presented by you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2305.

AGREEMENT—BETWEEN BOARD OF EDUCATION OF CLEVELAND
AND TRUSTEES OF WESTERN RESERVE UNIVERSITY—AP-
PROVED.

SYLLABUS:

Proposed agreement between the City Board of Education of the City of Cleveland, and the trustees of Western Reserve University considered and approved.

COLUMBUS, OHIO, July 2, 1928.

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

GENTLEMEN:—I am in receipt of your letter, enclosing for my consideration a copy of an agreement recently entered into between the board of education of the city