

1548.

APPROVAL, BONDS OF HURON COUNTY, \$4,096.20, TO PAY PROPERTY OWNERS' PORTION OF CONSTRUCTING COLLINS ROAD NO. 155 AND COLLINS ROAD NO. 57.

COLUMBUS, OHIO, May 29, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio*

---

1549.

HOW PERSONAL PROPERTY IN THE HANDS OF AN ADMINSTRATOR SHOULD BE DISTRIBUTED.

COLUMBUS, OHIO, May 29, 1924.

## SYLLABUS:

*The distribution of personal property in the hands of an administrator of the kind referred to in section 8578, General Code, is to be in accordance with sections 8573 and 8574 as said sections read prior to their amendment in 110 Ohio Laws.*

HON. HOMER Z. BOSTWICK, *Probate Judge, Columbus, Ohio.*

Dear Sir:—

I hereby acknowledge receipt of your recent communication, which reads as follows:

“Please kindly consider the following sections of the General Code and favor this office with an opinion concerning the same in answer to certain questions hereinafter propounded.

Section 8583, as amended, 110 Ohio Laws, page 15, relative to the order of descent of real estate which came from an ancestor, paragraph 3, provides, if such intestate leave no husband or wife, relict of himself or herself, or at the death of such relict, the estate shall pass to and vest in the parents of such intestate and the survivor of such parents during the life of such parent and such survivor of them.

Section 8574, as amended, Ohio Laws, page 14, provides, paragraph 5, if such intestate leaves no husband or wife, relict of himself or herself, the estate shall pass to the parents of such intestate and the survivor or such parents during the life of such parents and such survivor of them.

Section 8578 of the General Code provides when a person dies intestate and leaves personal property, it should be distributed in the manner prescribed in section 8574 with further provision that funds arising from the sale of real estate which came by descent shall be distributed in accordance with section 8573.

Question 1:

Is distribution of personal property in the hands of an administrator of the kind referred to in section 8578 to be in accordance with sections 8573

and 8574 as amended, or as said section read prior to the amendments of 110 Ohio Laws?

Question 2:

If, in your opinion, such personal property is to be distributed in accordance with said sections as amended, 110 Ohio Laws, then in the event said personal property is to be distributed according to paragraph 3, of either of said sections, has the probate court the right to appoint a trustee to hold the corpus of said property and pay only the income to said parent or parents during his or their lives?

Question 3:

In such event, has the probate court the right to direct distribution of the life estate, and remainder of said personal property as determined by mortality tables?"

Section 8573, General Code, paragraph 3, formerly read as follows:

"If such intestate leave no husband or wife, relict of himself or herself, or at the death of such relict, the estate shall pass to and vest in the brothers and sisters of the intestate who are of the blood of the ancestor from whom the estate came, or their legal representatives, whether such brothers and sisters be of the whole or half blood of the intestate."

Section 8573 as amended in 110 O. L., page 13, paragraph 3, reads as follows:

"If such intestate leave no husband or wife, relict of himself or herself, or at the death of such relict, the estate shall pass to and vest in the parents of such intestate and the survivor of such parents during the life of such parents and such survivor of them. If there are no such parents or upon the death of both of such parents, the estate shall pass to and vest in the brothers and sisters of the intestate who are of the blood of the ancestor from whom the estate came, or their legal representatives, whether such brothers and sisters be of the whole or half blood of the intestate."

Section 8574, General Code, paragraph 3, formerly read as follows:

"If such intestate leaves no husband or wife, relict of himself or herself, the estate shall pass to the brothers and sisters of the intestate of the whole blood, and their legal representatives."

Section 8574 as amended in 110 O. L., page 14, paragraph 3 now reads as follows:

"If such intestate leaves no husband or wife, relict of himself or herself, the estate shall pass to the parents of such intestate and the survivor of such parents during the life of such parents and such survivor of them. If there are no such parents, or on the death of both of such parents, the estate shall pass to the brothers and sisters of the intestate of the whole blood, and their legal representatives."

Section 8578, General Code, reads as follows:

"When a person dies intestate and leaves personal property, it shall be distributed in the manner prescribed in section 8574, as to real property

which came not by descent, devise or deed of gift from an ancestor; saving, however, such right as a widow or widower may have to any part of such personal property. But a fund in the hands of an administrator, guardian, assignee or other trustee, arising from the sale of real estate which came to such intestate by descent, devise or deed of gift from an ancestor, shall descend according to the course of descent prescribed in section 8573, for ancestral real estate."

Section 8578, General Code, by referring to and adopting the manner of distribution provided in sections 8573 and 8574 made said manner of distribution a part of its own provisions.

"Where one statute adopts the particular provisions of another by specific and descriptive reference to the statute or provisions adopted, the effect is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute."

Sec. 257 Sutherland Stat. Cons. (Citing Phoenix Assur. Co. vs. Fire Dept. 117 Ala. 631.)

To the same effect is Johnson vs. Ludlow, 3-0-553.

"When so adopted, only such portion is in force as related to the particular subject of the adopting act, and is applicable and appropriate thereto."

Sec. 405 Sutherland Stat. Cons. (Citing Matthew vs. Sands, 29 Ala. 136.)

The subsequent amendment of sections 8573 and 8574 and the modifying of the manner of distribution did not affect the provisions adopted by reference in section 8578, General Code.

"Such adoption takes the statute as it exists at the time of the adoption and does not include subsequent additions or modifications of the statute so taken, unless it does so by express intent."

Darmstetter vs. Moloney, 45 Mich. 621.

Schmandecker vs. Marshall, 72 Pa. St., 200.

Postal Cable Co. vs. Southern Ry. 89 Fed. 190.

"In referring to section 2864 for a statement of parties to whom a cause of action might inure and for rules of procedure, section 2866 adopted the statute to which it referred in its then existing state and, by failing to declare that subsequent amendments or modifications of that statute should apply also to the referring statute, such amendments or modifications should not be held to have been intended to extend to the referring statute in the absence of an expressed declaration to that effect."

Grohn vs. Telephone Co., 131 Mo. App. 315.

"As a rule the adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted."

Culver vs. The People ex rel., ets. 161 Ill., page 89.

It is clear from the foregoing authorities that the provisions in former sections 8573 and 8574, General Code, became by reference and adoption a part of section 8578 when said last named section was passed, and that the subsequent amendment and modification of said sections 8573 and 8574, General Code 110 O. L., page 13, did not affect said provisions as theretofore adopted.

You are therefore advised that the distribution of personal property in the hands of an administrator of the kind referred to in section 8578, General Code, is to be in accordance with sections 8573 and 8574 as said sections read prior to their amendment in 110 Ohio Laws.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

---

1550.

COSTS MAY BE TAXED AGAINST DEFENDANT IN ALL CRIMINAL CASES—SECTION 12375 G. C. CONSTRUED.

COLUMBUS, OHIO, May 29, 1924.

*SYLLABUS:*

*Section 12375 G. C. authorizes the taxing of costs against the defendant in all criminal cases. In the absence of any provision upon the subject in a municipal court act, the above section applies. Opinion for year 1921, page 497, concurred in.*

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

Gentlemen:—

Your recent communication is as follows:

“The Criminal Court of Lima, Ohio, was established in 106 O. L. 112, being sections 14740-24 to 14740-34 of the General Code. The penalties assessed by this court in both state and ordinance cases do not include costs of prosecution on the theory that the law creating the court does not provide for the taxing of such costs as a part of the judgment.

Opinion No. 1480, to be found on page 844 of the 1920 Opinions advised the Bureau that section 14740-28 of the Lima Criminal Court act fixes the fees in such court but does not provide for their being taxed as costs and their inclusion in the sentence in a criminal case.

The Bureau was advised in Opinion No. 2154 to be found on page 497 of the 1921 Opinions of the Attorney General that:

“Although court costs and fees are not specifically provided in the act establishing a municipal court, it is intended that the costs and fees should be collected unless otherwise provided for therein.

The court costs and fees in a municipal court are the same as in section 2898 et seq. G. C., unless therein otherwise provided.”

This conclusion seems to have been reached on the theory that the Middletown municipal court was a court of record and that section 2898 et seq. G. C., were applicable.