

motorist commonly designated as "hit-skip" driver, who, with a consciousness of his guilt, fails to stop after a motor vehicle accident.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4658.

OLD AGE PENSION LAW—"PUBLIC SALE" AS USED IN SECTION 1359-6, G. C., DISCUSSED.

SYLLABUS:

Discussion of "public sale" as used in Section 1359-6, (Old Age Pension Law) of the General Code.

COLUMBUS, OHIO, September 14, 1935.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"Will you please give this Division your opinion on the proper procedure to be followed by the Division of Aid for the Aged in selling

first: real estate

second: personal property

which have been transferred or assigned to the Division in trust as a condition precedent to the payment of aid.

Section 6, second paragraph, General Code, 1359, of the Law governing the payment of Aid to the Aged, provides that:

'All property conveyed to the Division in trust, upon the death of the person or persons entitled to use or reside upon such property as above provided, shall be sold by the Division at public sale, and the proceeds applied in the following order: first, the costs of sale; second, all valid taxes and assessments which are a lien upon said property; third, repay to the Treasurer of State all amounts paid under this act to the person who conveyed or transferred the property to the Division, and all such amounts paid to his or her spouse, with interest at four per centum per annum; fourth, all other valid debts in order according to

law; and the balance, if any, to be distributed to the heirs or other persons by law entitled thereto.'

We wish an interpretation of this section of the law in order that we may know how, upon the death of the person or persons who have transferred in trust to this Division property, real or personal, we may legally dispose of that property."

Although Section 1359-6, General Code, is quite definite in describing how the proceeds from the sale of property held by the Division shall be distributed, the Old Age Pension Law is silent as to the manner in which such property shall be sold except to state that "all property conveyed to the Division in trust, upon the death of the person or persons entitled to use or reside upon such property * * shall be sold by the Division at public sale. * *"

It is therefore necessary to determine the elements involved in a "public sale." Section 1359-29, General Code, provides that "this act shall be liberally construed to accomplish the purposes thereof."

It was stated in *Robins vs. Bellas* (Pa.) 4 Watts. 255, 258, that "a 'public sale' is a sale in pursuance of a notice, by auction or public outcry."

It was also held in *Hlebanja vs. Brewe*, 236 N. W. (So. Dak.) 296, that "public sale" is synonymous with "public auction". In *Union and Mercantile Trust Co. vs. Harnwell*, 250 S. W. (Ark.) 321, the court defined public sale as:

"A public sale is one made at auction to the highest bidder, while a private sale is one not made by public auction, but by private negotiation, and is always voluntary, while forced sales are always public."

In *Dulin vs. National City Bank*, 130 N. E. (Ind.) 426, the court said:

"A sale to be a 'public sale' must be held in a public place, a place to which the public as such has access, and must be made pursuant to some notice of the time and place of such sale in order that the purchasers may advise themselves in the terms and the title to the property and be able to bid intelligently."

It is stated in 50 C. J., 861, that:

"A public sale, as *contra* distinguished from a private sale, is one made at auction to the highest bidder; a sale where all persons have the right to come in and bid, where bids are not held open, except with the bidder's consent, and where notice inviting bids is publicly given. It must be held in a public place and there must also

be some notice of the time and place of the sale in order that purchasers may avail themselves of the terms and title of the property and be able to bid intelligently.”

With reference to the notice required as a necessary element of a public sale, Allen, J., in the case of *Findlay vs. Investment Company*, 115 O. S., 235, said :

“Now a sale by ‘public auction’ necessarily means a sale of which some notice has been given. Unless notice is given of the sale, the fact that it is held in a public place does not render it accessible to the public. Freeman on Execution, states: ‘Inasmuch as the sale is generally required to be public, it has also the requirement that due public notice shall be given of the proposed sale in order to attract purchasers. Without due notice, which usually means by publication in newspapers, there is not much use in having the sale public.’ The fatal objection to this sale is that no public notice whatever was given as to the time and place where it would be held. Hence we are compelled to hold the sale is invalid.”

From these authorities it is apparent that a “public sale” includes (1) public notice of the time, place and what is to be sold, (2) a public auction in a public place, (3) competitive bidding, (4) the award must be made to the highest bidder. For your guidance in conducting a public sale it is suggested that you refer to 4 *Ohio Jurisprudence*, page 556, which contains information bearing on the conduct and validity of a sale. Such statement is too long to quote here. See also 2 *Ruling Case Law*, page 1122 et seq. for an extended discussion on auctions.

Section 10509-91, General Code, provides the procedure by which personal property may be sold by an executor or administrator and it is suggested that as to the sale of personal property the provisions of this section be employed. In so far as pertinent Section 10509-91, General Code, reads :

“Public sales of personal property shall be at public auction, and, unless otherwise directed by the probate court, after notice of such sale has been given :

1. By advertisement appearing at least three times in a newspaper of general circulation in the county during a period of fifteen days next preceding such sale, or

2. By advertisement posted not less than fifteen days next preceding such sale, in at least five public places in the township or municipality where such sale is to take place, or

3. By both such forms of such advertisement.

Such advertisement so published or posted shall specify generally the property to be sold and the date, place and terms of sale.
* *”

Statutory provisions relating to the sale of real property by executors or administrators are contained in Sections 10510-37 and 10510-38, General Code. In so far as pertinent, Section 10510-37, General Code, reads:

“The real estate * * * shall be sold either in whole or in parcels at public auction at the door of the Courthouse in the county in which the order of sale was granted * * * and such order shall fix the place, day and hour of sale. * * *.”

And Section 10510-38, General Code, reads:

“If the sale is to be public, the executor, administrator or guardian must give notice of the time and place of such sale by advertisement, at least four weeks successively in some newspaper printed in the county where the lands are situated.”

Inasmuch as the Old Age Pension Law is silent as to the manner in which the public sale is to be conducted, it is apparent that all those elements generally constituting a “public sale” must be present. The statutes quoted supra, although not directly applicable to the Old Age Pension Law, do provide a guide as to procedure which, if followed, would meet the legal requirements of a “public sale” as contemplated in the Old Age Pension Law. It is believed that a more specific answer to your question may not be given.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4659.

FORECLOSURE — SPECIAL ASSESSMENTS RECEIVE SAME PRIORITY AS TAXES IN DISTRIBUTION — MUNICIPAL LIEN ON REAL PROPERTY FOR TAXES.

SYLLABUS:

1. *In foreclosure proceedings, to enforce the lien for taxes, brought under the provisions of Section 5713, et seq., of the General Code, all special assessments are of the same priority as taxes, in the distribution of the proceeds of the sale of the property.*