

necessary, and to prescribe their authorities, duties and responsibilities. The consent of the state is hereby given to the utilization by the president of the United States of the services of such state and local officers and employees as the president may find necessary. The governor, or the director of any department to whom, or any commission to which, the governor may delegate any of his functions and powers under this act, may call upon any research agency maintained by the state or by any educational institution supported in whole or in part by state funds, or upon any officers or employees of any county, municipal corporation, township or school district in this state for aid in carrying out his or its functions under this act."

After an examination of the above section, I am unable to say that it is the duty of the clerks of courts to collect the fees in question. Article X, supra, of the above Motor Vehicle Retailing Code, requires that the dealer shall make a charge for certain services such as the execution and filing of title papers and the securing of license plates. Obviously, the Code contemplates that the dealer should render these services if he is to receive such a fee. This provision is aimed at promoting fair competition by the abolition of the practice of many dealers who in the past have rendered such services free of charge. There is nowhere anything to indicate that the various clerks of courts should assist these dealers in the collection of their fees.

It is therefore my opinion, in specific answer to your question, that clerks of courts are authorized by section 6310-10, General Code, to charge a sum of twenty-five cents for filing each bill of sale for a new or used automobile. In the event the clerks of courts charge a sum in excess of twenty-five cents, such excess should be paid into the county treasury to be disbursed in accordance with the provisions of section 286, General Code.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2807.

POUNDAGE—SHERIFF NOT ENTITLED TO POUNDAGE AT FORECLOSURE SALE WHEN.

SYLLABUS:

Where, in a foreclosure sale, a sheriff does not receive the money from the purchaser to cover the first mortgage holder's claim, but permits the same to be paid directly to said mortgage holder by the purchaser, the sheriff is not entitled to poundage under Section 2845, General Code.

COLUMBUS, OHIO, June 9, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

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

"In the case of *Laura Steiner, et al., vs. the Round Lake Estates Company, Inc., et al.*, Case No. 20319, in the Court of Common Pleas of Ashland County a foreclosure action, the Shearer heirs held a first mortgage on one tract of land and the First Central Trust Company of Akron held a first mortgage on the other tract, the title to both tracts being held by the Round Lake Estates Co., Inc., and the two tracts constituting its entire realty holdings. T. E. Steiner, Fred R. Ormsby, G. Lloyd Weil and Laura Steiner were the principal stockholders in the Round Lake Estates Company, Inc.

Before the day of sale each of the above named first mortgagees entered into agreements with T. E. Steiner, et al, as above, these agreements being substantially as follows:

In the agreement with the First Central Trust Company of Akron the terms were as follows:

(1) 'That Fred R. Ormsby, G. Lloyd Weil, T. E. Steiner and Laura Steiner or any person on their behalf, shall be permitted to purchase and shall purchase the realty now owned by the Round Lake Estates Company, Inc., at the time of the foreclosure sale.

(2) That the purchaser shall hold the title thereto as a trustee for the benefit of the First Central Trust Company, Fred R. Ormsby, G. Lloyd Weil, T. E. Steiner and Laura Steiner, under the terms thereof.'

In the agreement with the Shearer heirs the terms were as follows:

'That the legatees, devisees, and heirs at law of said Sarah J. Shearer, deceased, agree to allow and permit the said T. W. Steiner, et al, for said proposed company to buy said real estate above mentioned at said sheriff's sale and take the deed in the name of said company.'

Both agreements then proceeded to provide that T. E. Steiner, et al, and a new corporation to be formed should, regardless of the bid upon which the property was sold, pay all taxes, attorney fees of the first mortgagees and Court costs and execute the first mortgagees' notes and mortgages in the original amount of the indebtedness, i. e., balance due at the commencement of suit plus accrued interest to the day of execution, on the respective tracts originally mortgaged to each.

Pursuant to these agreements the two tracts, being separately sold, were bid in by T. E. Steiner, the title being taken as provided in each agreement, the Round Lake Recreation Club, Inc., being the new corporation. Each tract was bid in and sold at the Sheriff's sale for a sum less than the indebtedness to the first mortgagee of that tract.

No money was handled by the Sheriff, the taxes, attorney fees and Court costs, exclusive of poundage, having been paid to the Treasurer, attorneys and Clerk of Courts as agreed and the notes and mortgages having been executed as agreed.

Your opinion will be appreciated as to whether poundage is legally taxable by the Sheriff as costs on either tract based either on the amount bid on each or on any other basis."

Statutory authorization for the charging and collection of fees for certain services performed by a sheriff is found in Section 2845, General Code. This section was formerly Section 1230 of the Revised Statutes, being carried over into the General Code as Section 2845. Such section was amended by an act appar-

ing in 102 O. L. 277, and a later act to be found in 108 O. L. Pt. II, 1203 (1214). Said section, in so far as material to your inquiry, now provides:

Sec. 2845. "For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor: * * * *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 percent; 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; * * *

(Italics the writer's.)

In determining whether or not the sheriff is entitled to poundage under the facts stated in your inquiry consideration must be given to the meaning of the words "all moneys actually made and paid to the sheriff". According to the statement of facts outlined in your inquiry, no money was handled by the sheriff, the taxes, attorney fees and court costs, exclusive of poundage, having been paid to the County Treasurer, the Clerk of Courts and the attorneys as stipulated in the agreement between the parties and the notes and mortgages having been executed as per the agreement.

Poundage was defined by Crew, J. in the case of *Major, Sheriff, vs. The International Coal Co. et al.*, 76 O. S. 200, "as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity."

There is no debatable question as to the right of the sheriff to charge and receive poundage where the proceeds of the foreclosure sale are actually received, handled and disbursed by him. However, an entirely different situation is presented when the purchaser of the property at the foreclosure sale pays the money directly to the person or persons entitled to the proceeds of the sale, no part of the money being received, handled or disbursed by the sheriff.

The case of *Major, Sheriff, vs. The International Coal Co. et al.*, *supra*, is authority for the statutory construction of Section 1230, Revised Statutes (now section 2845, G. C.) that where no money is received and no risk incurred, no compensation by way of poundage is earned and none can be allowed or charged. The Court said at page 207:

"Obviously it was the principal purpose and intention of the legislature to thereby provide, that upon sales of real estate, poundage should be allowed to the sheriff only upon money actually made and paid to him, and that in no case should poundage be allowed to, or charged by the sheriff, when the real estate sold by him is bid off and purchased by a party entitled to a part of the proceeds, except on the amount over and above the claim of such party. Language more strict and certain by which to express such purpose, could hardly have been employed, and unless the provisions of this section are to receive this interpretation, they are entirely without meaning or effect."

In *Trumbull S. & L. Co. vs. Jones*, 27 O. N. P. (N. S.) 469 the Court held as disclosed by the syllabus:

“The statutory provisions for allowance for poundage to a sheriff requires strict construction and permits such an allowance only on money made and paid, and where property is sold at sheriff’s sale to the second mortgagee, and by arrangement the first mortgagee accepts a new mortgage for the amount of its claim and no money at all is paid to the sheriff, there can be no allowance made for poundage.”

At page 472, the Court said:

“This section of the statute relative to poundage being allowed to the sheriff is to be strictly construed. It was not the intention of the legislature to permit the sheriff to charge poundage on a sale of property in foreclosure on account of the sale alone, but only in the event is he entitled to poundage where the money was made and paid by the sheriff, as provided by the statute. The conclusion, therefore, is that under the facts in this case the sheriff is not entitled to poundage as no money was made and paid by the sheriff. See the *Home Building & Loan Co., vs. William H. Hoskins, et al.*, 6 N. P. Reports p. 274; *Ruggles vs. Bingham, et al.*, 14 O. N. P. Reports (N. S.) 333; *Joseph Vance vs. Bank Columbus*, 2 O. R. p. 214; *John Fiedeldey vs. Albert D. Disernes*, 26 O. S. p. 312; *Major, Sheriff, vs. International Coal Co., et al.*, 67 O. S. p. 200; *N. W. Lumber Co. vs. Remusat, et al.*, Ohio Law Abstract, Vol. 6, p. 466; *State ex rel. Thompson vs. Prince, Sheriff*, 37 Pac. Reporter p. 291; *Perry vs. Wright, Sheriff*, 45 Pac. Reporter p. 46.”

It was stated by Bigger, J. in *Ruggles vs. Bingham, et al.*, 14 O. N. P. (N. S.) 333:

“In my opinion the sheriff is only entitled to poundage on the amount of money actually paid into his hands.”

The precise question in issue has also been the subject of opinions by former Attorneys General. After quoting at length from *Major, Sheriff, vs. The International Coal Co. et al.*, *supra*, a former Attorney General held in an opinion appearing in Opinions of the Attorney General for 1928, Vol. II, p. 852, as disclosed by the syllabus:

“The fees of a sheriff for poundage provided by section 2845, G. C., are allowed and given as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity. Where no money is received and no risk incurred, no compensation by way of poundage is earned.”

This opinion was reviewed and affirmed in O. A. G. 1928, Vol. II, p. 1098. See also O. A. G. 1928, Vol. IV, p. 3078, and O. A. G. 1929, Vol. II, p. 965.

My immediate predecessor in office discussed the question at length in an opinion to be found at page 97, Vol. I, Opinions of the Attorney General for 1930. The second branch of the syllabus reading:

"In the event the sheriff does not require the money to be paid to him, but on the other hand agrees that the purchaser shall pay the first mortgage holder direct, under such circumstances poundage could not be charged."

Under the fact set-up presented in your request for my opinion, clearly it is the duty of the sheriff to collect the money and distribute the same as provided by law. It follows necessarily that he would be entitled to poundage on said claim in the event he makes the collection and the distribution. However, in view of the authorities cited herein, if in fact, he does not receive the money he would incur no risk in handling and disbursing the same, and for that reason would not be entitled to poundage.

In the light of the court decisions and the Opinions of the Attorney General cited herein, it is clear that if the property sold at foreclosure sale is purchased by "one entitled to the proceeds of the sale" the sheriff is not entitled to poundage. It is likewise clear that if the property is purchased by a person not entitled to the proceeds of the sale, the sheriff is entitled to poundage in the event that he collects the money and distributes the same as provided by law. However, if the sheriff does not receive the money from the purchaser at foreclosure sale he incurs no risk in handling and disbursing the same, and consequently is not entitled to poundage.

It is therefore my opinion, in specific answer to your inquiry, that where a sheriff does not receive the money from the purchaser to cover the first mortgage holder's claim, but on the other hand permits the same to be paid directly to the said mortgage holder by the purchaser, the sheriff is not entitled to poundage under Section 2845, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2808.

APPROVAL, BONDS OF CITY OF WASHINGTON C. H., FAYETTE
COUNTY, OHIO—\$5,799.00.

COLUMBUS, OHIO, June 9, 1934.

Industrial Commission of Ohio, Columbus, Ohio.

2809.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS
COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, June 9, 1934.

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