

4871.

## AUCTION—SALE UNDER STATE AUCTIONEER'S LICENSE ON VACANT LOT—NOT REQUIRED TO HAVE PEDDLER'S LICENSE.

## SYLLABUS:

*The holder of a state auctioneer's license who makes sales by auction according to law on vacant lots or plots of ground is not required to obtain a peddler's license or an itinerant vendor's license.*

COLUMBUS, OHIO, January 6, 1933.

HON. L. C. YOUNG, *Prosecuting Attorney, Caldwell, Ohio.*

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

“Persons or corporations of near by cities have been transporting by motor trucks into this county numerous articles and merchandise such as furniture and hardware and disposing of same by sale at public auction. These articles are as a rule repossessed household furnishings. They are sold on a commission basis by licensed auctioneers.

The above mentioned persons have no fixed location or place of business in this county. These sales are had at various points throughout the county and vacant lots or plots of ground are secured for the purpose.

Under this statement of facts are those persons and corporations itinerant vendors or peddlers under G. C. 6347 and subsequent sections of chapter 26 of the General Code of Ohio.”

Section 5866, General Code, is as follows:

“A person shall not exercise the occupation of auctioneer or sell by public auction, vendue or outcry, any property or effects, except utensils of husbandry, household furniture, real estate, produce, horses, sheep, hogs and neat cattle, without a license as herein provided. Whoever exercises such occupation or sells or attempts to sell, by public vendue, auction, or outcry, any property or effects, except as herein provided, without such license, shall forfeit and pay not more than five hundred dollars nor less than one hundred dollars, to be recovered in the name of the state.”

Section 5868, General Code, provides:

“The court of common pleas, or a judge thereof in vacation, may appoint and license suitable persons residing in the county, to exercise the occupation of auctioneer and make sales by auction, according to law, for one year from the date of such appointment. Such person so appointed may exercise such occupation in any county in the state during such appointment.”

From the last sentence of the section just quoted it is apparent that an auctioneer's license authorizes a person to make sales by auction according to law in any county of the state. It follows therefrom that by the terms of said section, a person holding such license, although not a resident of Noble County, may auction merchandise according to law within that county.

Your inquiry suggests the question of whether or not hardware and furniture may be brought into a county by a corporation and sold at auction by a person possessing an auctioneer's license without obtaining a peddler's or itinerant vendor's license.

By the terms of Section 5866, General Code, above quoted, utensils of husbandry, household furniture, real estate, produce, horses, sheep, hogs and neat cattle may be sold without an auctioneer's license.

With respect to hardware, Section 5870, General Code, should be noted. That section provides:

"Property exposed to sale by public auction, with the exceptions mentioned in sections fifty-eight hundred and sixty-six and fifty-eight-hundred and sixty-seven, shall be subject, each time they are struck off, to duties at the following rates, calculated on the sums for which such property is struck off, namely:

\* \* \*

\* \* \*

4. Dry goods, hardware, and cutlery, and other articles not included in the foregoing classes, at the rate of two dollars for each one hundred dollars."

It is apparent therefrom that one possessing an auctioneer's license, and upon compliance with such section, may sell hardware at auction in any county in the state during the term of such license.

Coming now to the question of household furniture and whether or not it is necessary for a person holding an auctioneer's license to obtain an itinerant vendor's or peddler's license in order to sell such furniture in Noble County, it is believed that Section 6354, General Code, is dispositive of the question of the applicability of the statutes relative to peddler's licenses in such a situation. That section reads:

"A license to peddle shall not authorize the person named therein to sell goods, wares or merchandise at auction, vendue or public outcry, nor to sell them by the agency of another person."

As to the question of whether or not, under the circumstances presented by your communication, the persons and corporations must take out licenses as itinerant vendors, it is necessary to examine the pertinent portions of Section 6361, General Code, which reads in part as follows:

"\* \* \* the words 'itinerant vendor,' for the purposes of this chapter, shall mean and include all persons, both principals and agents, who engage in or conduct, in this state, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise with the intention of continuing in such business in any one place for a period of not more than one hundred and twenty days, and who, for the purpose of carrying on such business, hire, lease, or occupy, either in whole or in part, a room, building, or other structure, for the exhibition and sale of such goods, wares and merchandise."

It is apparent that the persons and corporations mentioned in your communication do not fall within the definition of itinerant vendors since they do not

hire, lease or occupy, either in whole or in part, a room, building, or other structure for the exhibition and sale of such goods, wares and merchandise.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that the holder of a state auctioneer's license who makes sales by auction according to law on vacant lots or plots of ground is not required to obtain a peddler's license or an itinerant vendor's license.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4872.

BOND ISSUE—ORDER OF PAYMENT WHERE PREVIOUS BONDS  
UNPAID AT MATURITY—BOARD OF EDUCATION MAY ENTER  
INTO PERSONAL SERVICE CONTRACTS ALTHOUGH MONEY  
NOT APPROPRIATED.

SYLLABUS:

1. *There is no priority or preference among the holders of individual bonds which make up an issue of "term bonds," so far as their being paid is concerned; the order of presentation determines the order of payment.*

2. *When an issue of bonds to fall due in a series is made, a levy of taxes should be made each year sufficient to redeem the bonds next thereafter maturing. The levy of each year must be applied to the payment of the bonds for which the levy is made, although the bonds maturing prior thereto have not been paid in full.*

3. *A contract of a board of education for personal services such as contracts with teachers, bus drivers and janitors, is good, providing these persons are paid by regular payroll, even though the money to pay the same is not appropriated under paragraph (b) of Section 5625-33, General Code, and there is no certificate of the fiscal officer as provided by paragraph (d) of Section 5625-33, General Code.*

COLUMBUS, OHIO, January 6, 1933.

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

GENTLEMEN:—This will acknowledge the receipt of your request for my opinion in answer to the two following questions which have been submitted to you by the Board of Education of the City School District of Maple Heights, Ohio:

"1. What are the legal rights of holders of bonds on which the board has defaulted payment, to secure a preference over bonds falling due now out of this next tax settlement?

2. What guarantee must the Clerk of the Board have as to the funds available for that purpose in entering into a contract for personal services covering the ensuing year?"

With reference to your first question, it may be stated that there is very