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SHERIFF—ENTITLED TO POUNDAGE ON MONEY PAID TO HIM BY JUDGMENT DEBTOR—WHERE DEBTOR CONTACTED AND ADVISED BY SHERIFF THAT FOREIGN WRIT OF EXECUTION IS IN HIS HANDS FOR ENFORCEMENT AND SHERIFF IS PAID THE MONEY IN SATISFACTION OF WRIT—SECTION 2845 G. C.

SYLLABUS:

A Sheriff is entitled to poundage under Section 2845, General Code, on money paid to him by a judgment debtor, who, upon being contacted and advised by the Sheriff that a foreign writ of execution is in his hands for enforcement, pays the money to the Sheriff in satisfaction of the writ.

Columbus, Ohio, March 1, 1947

Hon. Julian E. Clark, Prosecuting Attorney
Preble County, Eaton, Ohio

Dear Sir:

This will acknowledge receipt of your letter relating to the authority of a Sheriff to charge poundage on money collected by him from a judg-

ment debtor in satisfaction of a foreign execution. Your letter reads as follows:

“The Sheriff of our county received an execution from a foreign county. The Sheriff contacted the judgment debtor and without making a levy was advised the judgment would be paid immediately. Within an hour’s time from the time of contacting the debtor the full amount of the judgment and costs was in the hands of our Sheriff.

The attorneys for the judgment debtor contend that such a payment is not the type implied by Section 2845 of the General Code whereby the Sheriff is entitled to receive poundage since he did nothing to make the money. It is my contention that Section 2845 covers all moneys paid as well as made to the Sheriff and it is not necessary for him to levy on property to be entitled to poundage.

Will you favor me with an opinion on this matter?”

Section 2845, General Code, so far as pertinent to your inquiry, reads as follows:

“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, one per cent; on all sums over ten thousand dollars, decree or sale of real estate, on the first 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, * * * .”

I have been unable to find any reported court opinion or opinion of this office on the exact question presented by your letter. The reported opinions relating to poundage under Section 2845, General Code, may be divided into four classes, namely: Those in which a levy had been made, and thereafter the amount of the judgment was paid by the judgment debtor to the judgment creditor direct without a sale of property; those in which property had been sold under the writ, and the purchase money paid by the purchaser to the judgment creditor direct; those in which a sale had been made, and the purchase money paid to the Sheriff; and those in which the property was bid in by lien-holders for the amount of the liens. See *Vance v. Bank of Columbus*, 2 Ohio, 214; *Fiedelvey v.*

Disrens, 26 O.S., 315; Major v. Coal Co., 76 O.S., 200; Opinions of the Attorney General for 1933, page 106; and for 1928, pages 852 and 1098. However, all of the opinions are to the effect that poundage under Section 2845 is allowed for the risk incurred by the Sheriff in the handling and disbursing of money paid to him on execution, and that where no money is received or risk incurred compensation by way of poundage is not allowed. I quote the following from the syllabus in Opinions of the Attorney General for 1928, page 852:

“The fees of a Sheriff for poundage provided by Section 2845, General Code, 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.”

I also quote the following from Vance v. Bank of Columbus, supra:

“The phrase, ‘money made on execution,’ can only relate to such sums as are actually paid into the Sheriff’s hands, upon the execution. The money is not made by the officer, when paid directly by the debtor to the plaintiff. * * * We agree with the counsel, that it is given as a compensation for services really performed. When this is not done compensation can not be claimed.”

I have found no case which either allows or denies poundage where the judgment debtor satisfies the execution upon being advised by the Sheriff that he has the writ in his hands for enforcement, nor have I found any case which holds that money may only be “made” under the poundage clause of Section 2845 by an actual seizure and sale of the judgment debtor’s property.

Your letter discloses that the Sheriff, at the time the money was paid to him by the judgment debtor, had in his hands for enforcement a foreign writ of execution, and that the judgment debtor, upon being advised by the Sheriff to that effect, satisfied the execution by paying the amount of the judgment and costs to the sheriff. There is no question that the judgment debtor paid the money to the Sheriff solely on account of and in satisfaction of the foreign execution, and then only after he had been contacted and advised by the Sheriff that he had the execution in his hands for enforcement, or that the Sheriff performed services

relating to the enforcement of the writ when he contacted and advised the judgment debtor as aforesaid, or that in receiving the money a risk was incurred by the Sheriff in handling and disbursing it. In view of the facts and circumstances referred to, it seems to me that it may very properly be said that, as between the Sheriff and judgment debtor, the money was "actually made and paid to the Sheriff on execution," within the meaning of Section 2845, General Code.

You are therefore advised that a Sheriff is entitled to poundage under Section 2845, General Code, on money paid to him by a judgment debtor, who, upon being contacted and advised by the Sheriff that a foreign writ of execution is in his hands for enforcement, pays the money to the Sheriff in satisfaction of the writ.

Respectfully,

HUGH S. JENKINS,
Attorney General.