2. Under such circumstances, it is not necessary that the agricultural society give its formal consent to such a proceeding. However, the desires of the society may have a bearing upon the question of fact as to whether such land is necessary for its purposes.

3. Under such circumstances, when the title is vested in the county, the proceeds from such a sale should be paid into the county treasury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1831.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN BELMONT AND GEAUGA COUNTIES.

COLUMBUS, OHIO, May 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1832.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN HAMILTON AND SUMMIT COUNTIES.

COLUMBUS, OHIO, May 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1833.

MOTOR VEHICLE—SEIZED BY OFFICERS WHILE BEING USED FOR TRANSPORTATION OF INTOXICATING LIQUOR—WHEN OWNER IS ENTITLED TO ITS RETURN.

SYLLABUS:

The owner of an automobile which has been seized by authority of Section 6212-43, *of he General Code, is entitled to the return of such vehicle upon a showing of good cause before such vehicle is ordered sold in a forfeiture proceeding.*

COLUMBUS, OHIO, May 7, 1930.

HON. E. P. MCGINNIS, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"General Code, 6212-43 provides for the confiscation and sale of vehicles which have been seized by officers while being used in the transportation of intoxicating liquor. If the vehicle was owned by a third person who did not know of the use of the car for transporting liquor should the car be turned over to him upon proof of this fact and his ownership or should it be sold and require the owner to set his claim up in the same way that the liens are established?"

Section 6212-43 of the General Code, provides in part, as follows:

"When the commissioner of prohibition, his deputy, inspectors, or any officer of the law, shall discover any person in the act of transporting in violation of law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer named herein, he shall take possession of the vehicle and team, or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the law of the state prohibiting the liquor traffic, in any court having jurisdiction under such law, but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond with sufficient sureties, in a sum equal to the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide by the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lien or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall distribute the balance as is distributed money arising from fines and forfeited bonds under the law of the state prohibiting the liquor traffic. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. * * *"

You will observe from a reading of this section, that the Legislature has classified the persons who may protect their rights in a proceeding in forfeiture brought under the provisions of this section. First, the owners of property seized, and second, bona fide lienors of such property. The owner must show good cause to the contrary, whereas the lienors must show that the lien is bona fide and as having been created without them having any notice that the carrying vehicle was being used or was to be used for the illegal transportation of liquor. In the case of a lienor the property is sold but his lien is transferred to the proceeds of the sale. It will be further observed that the officer making the sale after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale pays only liens out of the proceeds. It is apparent that only lienors can recover from the proceeds of the sale. The language of the statute seems to me to be very clear that the owner must show good cause to the court before the sale of the property, for the statute provides:

"The court * * * unless good cause to the contrary is shown by the owner shall order the sale by public auction."

The remedy of an owner is to prevent a forfeiture, whereas that of a lienor is to share in the proceeds of the sale.

The provisions of Section 6212-43 of the General Code, are identical with those of Section 26, Title 2 of the National Prohibition Act. In the case of *United States* vs. *Smith*, 295 Fed. 625, the court in construing the provisions of Section 26, Title 2 of the National Prohibition Act, says:

"It will be observed that the rights of two classes are thus saved and protected from the forfeiture: First, the owner, who shows good cause to the contrary; and second, bona fide liens 'created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor.' Again, the innocent owner may reclaim his property and avoid a sale, while a mere lien is simply transferred from the property to the proceeds of the sale, and the liens are paid out of such proceeds according to the priorities, after deducting the expenses of keeping the property, the fee for the seizure and the cost of sale."

In Blakemore on Prohibition at page 1066, it is said:

"There is a distinction in this section between the provisions applicable to owners and those applicable to lienors. It is not unreasonable to suppose that the Legislature had in mind the fact that an owner may determine who shall have the use of a vehicle and thus in a measure control such use while a lienor may not because he is at no time entitled to its possession. Therefore the good cause required to be shown by the owner means something more than the lack of notice of illegal use required on the part of the lienor."

See also *United States* vs. *Sylvester*, 273 Fed. 253; *United States* vs. *Burns*, 270 Fed. 681.

What is "good cause" is not defined in Section 6212-43 of the General Code. It has been defined by Judge Westenhaver in 272 Fed. 492, as follows:

"In my opinion, however, good cause is not shown unless the owner can prove clearly and satisfactorily that his automobile was used, not only without his knowledge and consent, but in excess of any authority, express or implied, which may have been conferred by him upon the person using it. I am further of the opinion that the owner must remove any imputation that he negligently entrusted his automobile to an employe or other person under circumstances from which a careful and prudent person ought to have foreseen that it was likely to be thus illegally used."

Judge Bouquin, in 273 Fed., 278, defines "good cause" as follows:

"An owner may assert that he is free from complicity in the illegal use, and had no notice such use was contemplated, and yet, by reason of neglect, indifference, consent or acquiescence manifested in advance, or condonation, or ratification afterwards, or other fault or inequitable conduct, he may fail to show good cause against forfeiture and sale."

Blakemore on Prohibition, in Section 1069, says:

"The statute is definite in respect to what shall be proven by the lienor; indefinite in respect to an owner. This difference in statutory phraseology, and the greater accountability of an owner, indicates that the 'good cause' that must be proven by an owner is something other and more than the lack of notice at a particular time that must be proven by a lienor. An owner may assert that he is free from complicity in the illegal use, and had no notice such use was contemplated, and yet by reason of neglect, indifference, consent, or acquiescence manifested in advance, or condonation or ratification afterward, or other fault or inequitable conduct, he may fail to show good cause against forfeiture and sale."

In support of this statement Blakemore cites *U. S.* vs. *Kane*, 273 Fed. 275 and *Jackson* vs. *U. S.*, 295 Fed. 621.

It is apparent from a reading of the authorities that proof of ownership and lack of knowledge of the use of the car may not be sufficient to show good cause to relieve the owner of forfeiture of his vehicle. What is "good cause" cannot be definitely declared in advance. Each case must depend upon its own facts and circumstances. A determination of what is "good cause" is within the discretion of the court, to be arrived at from the circumstances, the owners conduct before, during and in respect to the case.

In specific answer to your inquiry, in view of the authorities cited herein, I am of the opinion that the owner of an automobile which has been seized by authority of Section 6212-43 of the General Code, is entitled to the return of such vehicle upon a showing of good cause before such vehicle is ordered sold in a forfeiture proceeding.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1834.

LEASE—GRANTING TO LESSEE RIGHT TO TAKE WATER FROM STATE CANAL AND USE CERTAIN LANDS IN CONNECTION THEREWITH FOR 25 YEARS—INVALID AS STATUTE THEN AUTHORIZED TERM OF 15 YEARS ONLY.

SYLLABUS:

Where a lease is executed by the Superintendent of Public Works, granting to a corporation the right to take a specified amount of water from one of the canals of the State at a certain point, for a term of twenty-five years, as authorized by Section 14009, *General Code, provisions in said lease granting and demising to such company the right to use and occupy certain described canal lands at said point during the term of said water lease, are invalid where, under the statutory provision in effect at such time and applicable to such canal land lease, such canal lands can be leased for a term of fifteen years only.*

COLUMBUS, OHIO, May 8, 1930.

HON. A. T. CONNAR, *Director of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which reads as follows:

"Under date of December 3, 1926, a lease was made by George F. Schlesinger, Director of Highways and Public Works, to the Harding-Jones Paper