

time they entered the military and naval service of the United States, which was prior to the declaration of war, and also that they continued in such service without break or interruption after their entrance, including the period of time between the dates of April 6, 1917 and November 11, 1918.

In *Graham vs. Commonwealth*, 51 Pa. St., 255, the court held that the absence of a person in the military service of the United States was but temporary in character, and that a soldier continues to be a resident of the state of which he was a resident at the time of his enlistment. In the opinion the court, among other things, said:

"His usual residence was not changed by the fact that he obeyed the call of the president and volunteered to fight for his country at her command. To hold the contrary would be against the spirit of all our legislation. A soldier is regarded as a voter, because a citizen of the residence he left before entering the service, and he votes there wherever he may be. \*\*\*\* It would be as ungracious as unreasonable to hold that the citizen who absents himself in obedience to the call of his country, thereby loses the advantage of residence by such an act. This is not so; his residence remains whether it operate for or against him. \*\*\* A soldier in the field has no residence there; \*\*\* He is obliged to go where he is ordered, and cannot, if he desired it ever so much, dwell at his usual place of residence."

On the facts stated in your letter, you are advised that the men in question are included in the expression, "persons resident in Ohio at the time of the commencement of service," etc., and, if otherwise qualified, are entitled to adjusted compensation, as provided for in section 2a of Article VIII of the Ohio Constitution. In other words, these men did not cease to be residents of Ohio by entering the military and naval service of the United States prior to the entrance of the United States into the world war.

Respectfully,  
 JOHN G. PRICE,  
 Attorney-General.

---

3777.

INTOXICATING LIQUORS—CONFISCATION OF CONVEYANCE UNDER SECTION 6212-43 G. C.—DOUBTFUL IF COURT AUTHORIZED TO CONFISCATE WHEN PROSECUTION IS UNDER CITY ORDINANCE—WHO CONDUCTS SUCH SALE—BOND REFERRED TO IN SECTION 6212-43 G. C. SHOULD BE GIVEN TO ARRESTING OFFICER.

1. *It is very doubtful whether a court is authorized under section 6212-43 to order the confiscation of a conveyance seized under said section when the prosecution is instituted under a city ordinance.*
2. *Under the provisions of section 6212-43, the court may authorize the arresting officer or any other officer to conduct the sale of confiscated conveyances.*
3. *The "officer" referred to in said section refers solely to the arresting officer*

4. *The bond referred to in said section should be given to the officer making the arrest, and such officer is the proper custodian of such bond, although a proper practice would be to file the bond with the papers in the case.*

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

GENTLEMEN:—In your recent communication you request my opinion as follows:

“Section 6212-43 G. C., as enacted 109 O. L. 95, provides that any officer of the law discovering liquor transported in a vehicle shall seize the vehicle and arrest the person in charge thereof under the laws of the state prohibiting liquor traffic. It further provides that the person in possession of the vehicle may give good and sufficient bond to the officer and thereupon may retain the machine in his possession until the date of the trial of the liquor charge. Upon conviction the court may order the sale by public auction of the vehicle and after payment of prior liens and expenses of sale, the proceeds shall be deposited in state and local treasuries in the same manner as those received from prosecutions under the Crabbe act.

The statute is vague in its designation of the officer who shall make the sale of the vehicles and this has given rise to the following questions:

*Question 1.* Must the arresting officer conduct the auction sale of the vehicles confiscated under authority of section 6212-43 G. C., or shall the court designate the officer to make such sale?

*Question 2.* Is it the meaning of said section that the chief of police representing the police authority of the city, is the officer within the meaning of the above section?

*Question 3.* To whom shall bond be given by the possessor of such confiscated vehicle; what officer shall have the custody of such bond, shall it be the arresting officer or the chief of police?

*Question 4.* The City of Columbus passed ordinances prohibiting the sale, possession, etc., of intoxicating liquors but does not provide for the confiscation of vehicles transporting. Several automobiles have been seized by the police officers of said city and prosecutions brought against the persons in charge thereof under the city ordinances and the machines confiscated and sold under authority of state law, that is, section 6212-43 G. C. May a police officer seize an automobile under section 6212-43 G. C., and then prosecute the person in charge thereof under the city ordinances?

*Question 5.* May vehicles seized by police officers be confiscated and sold under the provisions of section 6212-43 G. C., when the prosecution for the unlawful possession of the liquor was brought under a city ordinance?

*Question 6.* If your answer to the above question should be in the negative, what disposition should be made of the funds arising from the sale of automobiles already consummated when prosecution of the person in charge thereof was under a city ordinance. Should such moneys be returned to the owners of such vehicles or should such moneys be deposited under the provisions of section 6212-43 of the General Code?”

Section 6212-43 G. C., 109 O. L. page 95, which is the basis of your inquiry provides :

"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 the 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 lienor 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. If, however, no one shall be found claiming the team, vehicle, water or air craft, automobile or other conveyance, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or if there is no newspaper published in such city or county, in a newspaper having a circulation in the county, once a week for four weeks and by hand bills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expense and costs shall be distributed as hereinbefore provided in case there was a claimant for the said vehicle or conveyance."

In substance this section provides that it is the duty of "any officer of the law" to seize the conveyance of any person found engaged in the unlawful transportation of liquor and arrest the person in charge thereof. Such officer is further required to "proceed against the person arrested under the law of the state prohibiting the liquor traffic, in any court having jurisdiction under such law." Such officer under this statute is authorized to return to the owner the conveyance seized in the event that a bond is furnished, which said bond shall be approved by said officer and conditioned to return the conveyance to the custody of said officer on the day of trial, etc.

The difficulty your fourth question presents, which will be considered first, grows out of the proper construction to be placed upon the phrase "the law of the state" as used in that part of the section relative to the procedure of the officer to prosecute the person arrested. In other words, the question is whether the legislature in the use of this expression had reference to state statutes, or whether it was the general expression relating to constitution, statutes and any rule adopted in pursuance thereof. Blackstone has defined the word "law" as

"A rule of civil conduct prescribed by the supreme power in the state commanding what is right and prohibiting what is wrong."

Bouvier's Law Dictionary, Vol. 3, p. 1876.

Cyc. also among others, gives the following definition of the word "law":

"An act, enactment, ordinance or statute prescribed by the legislative power as opposed to rules of civil conduct deduced from the customs of the people or judicial precedents."

It will be generally conceded that in the use of the term "law," as it is ordinarily used, reference is had to the constitution of the state and the laws enacted thereunder. The authority of municipalities to enact ordinances within certain limitations regulating the same subject upon which there is statutory enactments, is well known. It has been frequently held by the courts that a municipality may enact an ordinance making a misdemeanor of an offense which is specifically punishable by the state statutes.

"'Law of this state,' as used in Pen. Code, Sec. 435, providing that every person carrying on business, trade, profession or calling for which a license is required by any law of this state, without taking out or procuring such license, is guilty of a misdemeanor, should be construed to include a city ordinance requiring a person to pay a tax carrying on business as a liquor dealer."

Words and Phrases, p. 4020, citing 11 Pac. 217, 69 Cal. 608; 24 Pac. 747, 85 Cal. 208.

There are a number of other instances cited in which the opposite conclusion would be justified.

It will be observed the officer in the section which you mention is not required to elect the court in which he will prosecute the accused prior to his seizure of the conveyance and arrest of the accused. The only limitation placed upon him in the exercise of this power is the finding of a person violating the law of the state in the traffic of intoxicating liquors.

In the construction of statutes a technical meaning will not be attributed to the language of the legislature, and the ordinary meaning will be given to such language unless from other sources it appears that a technical meaning was intended.

It now becomes appropriate to consider the further use of the same expression "the law of the state prohibiting the liquor traffic" as used by the legislature in the same section in indicating how the funds arising from the sale of confiscated conveyances should be distributed. By the use of this expression section 6212-19 of the Crabbe Act is adopted and there is strong argument in favor of the position that wherever the expression in question was used, it was intended to relate to the

*state statutes* relating to the prohibition of the liquor traffic. In other words, it is logical to contend in this use of the term the legislature disclosed its intention to be that the statutes relating to prohibition law were referred to only, wherever the expression was used in the statute.

In view of the foregoing, I am very doubtful whether a court in a case prosecuted under an ordinance prohibiting the traffic of intoxicating liquors, has power to order the confiscation of a conveyance. However, inasmuch as it seems that the practice has been of a number of courts to exercise such authority, in view of the difficulty that the question presents and the fact that there are no Ohio decisions in point, I hesitate to advise that such authority does not exist. However, there is no doubt in my mind but that as a matter of future practice or policy under the circumstances, such cases in which confiscation is contemplated should be instituted under the state statute.

It is believed that the foregoing will dispose of your fourth and fifth questions.

Further replying to your first inquiry as to what officer shall make the sale under the statute, it would seem that the court is authorized to order the sale made. There is not necessarily any connection between the authority of the seizing officer and the power to sell. The officer is authorized to make the seizure and required to accept a bond or keep the custody of the conveyance for the purpose of presenting it at the time of trial. At such time the individual authority of the arresting officer ends. In the event that the court should order the sale, it is believed that any proper officer of the court could be designated to make the sale. The details of the sale is not provided, with the exception that it must be at public auction. This will dispose of your first inquiry.

In further reply to your second inquiry it is my opinion that the officer mentioned in the section under consideration does not necessarily refer to the chief of police except in those cases in which he is the actual arresting and seizing officer.

In reply to your third inquiry, you are advised that it seems to be the contemplation of the statute that the officer who makes the seizure and arrest is to receive the bond which he is required to approve, and he is held responsible for the delivery of the conveyance to the court at the proper time for trial. No provision is made as to who shall be the custodian of such bond, but in view of the fact that such officer is held responsible for the conveyance, it would seem proper that he should have the custody of the bond, and in the event that the conveyance is not produced at the time of trial, he should present the bond in lieu thereof. Of course, as a matter of practice, it is believed that a proper method would be to file the bond with the other papers in the case in the court in which the action is prosecuted. However, as above suggested, the statutes do not seem to specifically require such procedure.

In view of the foregoing, it would seem unnecessary to give further consideration to your sixth inquiry.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*