

1037.

APPROVAL, CERTAIN RESERVOIR LAND LEASE AT PORTAGE LAKES,
FOR THE RIGHT TO OCCUPY AND USE FOR BOATHOUSE, DOCK-
LANDING AND WALKWAY PURPOSES—ALMA A. SEYDELL.

COLUMBUS, OHIO, July 17, 1933.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from the Chief of the Bureau of Inland Lakes and Parks, with which he inclosed for my examination and approval a certain reservoir land lease in triplicate executed by the Conservation Commissioner to one Alma A. Seydell of Akron, Ohio.

By this lease, which is one for a stated term of fifteen years, and which provides for an annual rental of six dollars, payable in semi-annual installments, there is leased and demised to the lessee above named the right to occupy and use for boathouse, docklanding and walkway purposes only, the water front and State land in the rear thereof that lies immediately in front of Lot No. 32 of the Oak Point Addition, East Reservoir, Portage Lakes.

Upon examination of this abstract, I find that the same has been properly executed by the Conservation Commissioner and by Alma A. Seydell, the lessee therein. I further find upon examination of the terms and provisions of this lease, and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of the General Code of this State relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1038.

WRIT OF RESTITUTION—FOR POSSESSION OF REAL ESTATE SOLD
AT EXECUTION SALE IS AN EXECUTION—SHERIFF NOT RE-
QUIRED TO RETURN WRIT PRIOR TO SIXTY DAYS AFTER ITS
DATE.

SYLLABUS:

1. *A writ of restitution for the possession of real estate sold at execution sale is an execution, within the meaning of Sections 11653 and 11654 of the General Code.*

2. *When a writ of restitution has been issued to the sheriff for the restitution of possession of real estate sold in execution sale, there is no statute requiring the sheriff to return such writ prior to sixty days after its date.*

COLUMBUS, OHIO, July 17, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent request for opinion which reads:

"In view of the general trend of legislation of Congress and State Legislators to give to every home owner the fullest opportunity to save his home and preserve his equity in the property for which he had invested his life's earnings, in many cases, and which laws are now in their initial state of organization to do the humanitarian task of saving homes of those who are in dire distress due to unemployment conditions; and, in view of the fact that full opportunity should be given to those in distress, to make effective to meet the financial provisions of the home mortgage act, and other laws, passed for their relief that public officials may well abstain from seeking to dispossess home owners who are in arrears, therefore, we desire your written opinion upon the following question:

Question: May the sheriff of a county, in his discretion, having in his hands a writ of restitution for possession of real estate sold at sheriff's sale, use the entire sixty days allowed him to make return of said writ to the Common Pleas Court to complete the requirements of said writ under Sections 11654 and 11712, G. C.?"

Section 11712, General Code, referred to in your inquiry reads:

"The officer to whom an execution is directed shall return such writ to the court to which it is returnable within sixty days from its date."

There evidently is some question in your mind as to whether a writ of restitution is an execution within the meaning of this section. An execution is defined by statute, Section 11653, General Code, as follows:

"An execution is a process of the court, issued by the clerk, and directed to the sheriff of the county. * *"

Section 11654, General Code, reads in part, as follows:

"Executions are of three kinds:

* * * *

(3) For the delivery of the possession of real property, including real property sold under orders of sale. * *"

In the case of *Tetterbach vs. Myer*, 19 W. L. B. 221, 10 O. D. Repr. 212, the court had before it a question as to whether or not Section 11654, General Code, as it originally stood as Section 5373, Revised Statutes, would include a writ of restitution. The third type of execution was described in such Revised Statutes section as follows: "For the delivery of the possession of real property." Subsequently, this section was amended (87 O. L. 187) by the insertion of the language including "real property sold under orders of sale."

In the case of *Tetterbach vs. Myer*, cited above, the court held that such section without the insertion of the language later added by the legislature, did

not include writs of restitution, but that the court, independent of such section and by virtue of the usages of equity, had the authority to issue a writ of restitution.

It is never to be presumed that the legislature amends a statute by the language added thereto without intending a change of meaning to the extent of the language so added. The evident legislative purpose in the amendment of such section was to make it definitely appear that the legislative intent was to include a writ of restitution within the meaning of the term "execution" as that term is used in the procedural sections of the General Code. It is highly probable that the motivating cause for such amendment was the construction placed upon such section by the courts prior to the amendment.

Section 11712, General Code, is contained in the same chapter of the Code as Sections 11653 and 11654, that is, the chapter with reference to execution. I find no other provision of statute which limits or attempts to fix the date of the return of execution other than that contained in Section 11712, General Code. It would therefore appear that the intent of the legislature was to authorize the sheriff to return the writ at any time after its execution within sixty days after its issuance.

I am assuming, for the purposes of this opinion, that the court, in the issuance of a writ of restitution, has not fixed a date for its return. I am not herein considering, and express no opinion on the question as to whether the court has the jurisdiction to fix an earlier date for the return of the writ than the sixty day period nor do I express any opinion as to whether the court of common pleas has the authority to compel the sheriff to return the writ at an earlier date than sixty days after its date.

Specifically answering your inquiry, it is my opinion that:

(1) A writ of restitution for the possession of real estate sold at an execution sale is an execution, within the meaning of Sections 11653 and 11654 of the General Code.

(2) When a writ of restitution has been issued to the sheriff for the restitution of possession of real estate sold in execution sale, there is no statute requiring the sheriff to return such writ prior to sixty days after its date.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1039.

STATE EDUCATIONAL EQUALIZATION FUND—BOARD OF EDUCATION MAY PARTICIPATE AND LEVY TAX OUTSIDE FIFTEEN-MILL LIMITATION PURSUANT TO VOTE OF ELECTORS BEYOND TIME SPECIFIED IN INITIAL RESOLUTION TO SUBMIT QUESTION TO ELECTORS.

SYLLABUS:

A board of education may continue to participate in the state educational equalization fund and levy a tax outside of the fifteen mill limitation pursuant to vote of the electors as provided by Section 5625-18a, General Code, as enacted by the