

3834.

EXPENSE OF SELLING CONFISCATED AUTOMOBILES MUST BE PAID
FROM FUNDS DERIVED FROM SUCH SALE.

SYLLABUS:

Where an automobile is ordered confiscated under section 6212-43 and sale price is insufficient to pay costs of sale, there is no way whereby such costs may be paid.

COLUMBUS, OHIO, November 22, 1926.

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

GENTLEMEN:—Your recent letter requesting my opinion, reads as follows:

"The following incident has come to our attention. Three automobiles were confiscated by the police department of the city of _____ in connection with the illegal transportation of liquor. In accordance with the provisions of section 6212-43 G. C. the municipal court ordered the vehicles sold. The expense of advertising the sale of each car together with the storage due thereon amounted to \$60.20. \$22.00 was received leaving a balance of \$38.20 of expense which must be paid in some manner.

Question: May such expense be paid from subsequent sales of confiscated cars or may it be paid from an appropriation made by council out of the general fund of the city?"

Section 6212-43, which relates to the confiscation of automobiles, 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 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, but 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. 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 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."

It will be observed that this section requires the court "to order a sale by public auction of the property seized." Under the statute the expenses of keeping the property, the fee for seizure and the cost of sale are first payable out of the funds. If there is not a sufficient amount realized, there seems to be no method to pay such costs. The sale proceedings arise in connection with a criminal case, and in the event the costs are not recovered, it is believed they are in the same status as other lost costs.

The statute requiring the court to make such order, the officers undoubtedly are relieved from liability.

It would appear that when the property is exhausted in a given case that the matter ends in so far as recovery is concerned. It would be wholly illegal to deduct such an amount from funds arising from other cases. As to whether or not city council could legally appropriate money to make up such losses is very doubtful. It is a proceeding under a state law. The fact that a municipal court makes such an order would seem in no wise to make it a municipal obligation.

It would therefore follow that there is no legal nor moral obligation on the municipality to make such a payment, and therefore no proper basis for such an appropriation.

Respectfully,
C. C. CRABBE,
Attorney General.

3835.

APPROVAL, BONDS OF SALISBURY TOWNSHIP RURAL SCHOOL DISTRICT, MEIGS COUNTY, \$4,000.00.

COLUMBUS, OHIO, November 23, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3836.

APPROVAL, BONDS OF CITY OF NILES, TRUMBULL COUNTY, \$15,883.51.

COLUMBUS, OHIO, November 23, 1926.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.