

F. M. DOTSON
DIRECTOR OF LAW
NELL F. COX
SECRETARY

CITY OF TOLEDO

DEPARTMENT OF LAW

ASSISTANTS
CHARLES T. LAWTON
MARTIN S. DODD
STANLEY A. KONCZAL
CARL J. CHRISTENSEN

June 1, 1926.

Mr. Harry Jennings,
Chief of Police,
Toledo, Ohio.

Dear Sir:

Answering your inquiry of May 27th, requesting a written opinion concerning the sale of confiscated cars in liquor cases, will say that such sales are governed by the provisions of section 6212-43 of the General Code of Ohio. This section has two provisions for sale of a conveyance taken in a liquor violation, viz:-

First: The sale where the owner is known and who has given a valid bond with sufficient sureties in lieu of the property until the day of sale.

Second: The sale of a conveyance where no one is found claiming the vehicle.

In the first case the law provides that:

"The Court upon conviction of a 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 expense 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 any other proceedings brought after said publication,
*****"

This section says nothing more with reference to the manner of sale of property coming within the first class. The law, on the face of it, seems to leave it to the judgment of the Court to fix the terms and manner of sale. It would seem, however, that in a case of this kind, the law relating to the sale of chattels taken under execution should govern and be followed, and we therefore suggest and advise that in such cases as come within the first class named herein the proceedings for sale, and the notice thereof, should follow the provisions of the Code relating to the sale of chattel property taken on execution.

In the second class, where the name of the claimant is not known, and no claimant appears for the property, the manner of sale is different, and is fully set forth in the act itself in the following language:

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"If, however, no one shall be found claiming the team, vehicle, water or air kraft, 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 4 weeks, and by hand-bills posted in three public places near the place of seizure, and if no claimant shall appear within 10 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 the second class of cases coming under the provision of the law just quoted, it definitely provides how the notice shall be given, and that the sale in such cases shall take place 10 days after the last publication of the advertisement.

In our opinion, a sale of property that comes within the second class of cases prior to 10 days after the last advertisement would not be in compliance with the law in such cases, and therefore would be invalid.

Yours very truly,



Director of Law.

FMD/W