

OPINION NO. 71-006**Syllabus:**

An agency of the state may not become a tenant in common by purchase of an undivided interest in land without express authority to do so. Thus, Section 5507.01, et seq., Revised Code, does not give the Ohio Highway Transportation Research Center Board or the Ohio Transportation Research Center the authority to purchase a fractional undivided interest in real property.

To: F. P. Neuschwander, Chairman, Ohio Highway Transportation Research Board, Columbus, Ohio
By: Paul W. Brown, Attorney General, January 7, 1971

Your request for my opinion asks in part:

"Does Section 5507.01, et seq., of the Revised Code give the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center the authority to purchase in the name of the State, a fractional undivided interest in real property?"

Section 5507.05, Revised Code, gives authority to the Ohio Highway Transportation Research Center Board to acquire sites needed for the research and development activities of the Ohio Highway Transportation Research Center, such acquisition to be made by purchase, lease, or otherwise. The issue which confronts us is whether this general grant of authority includes authority to acquire an undivided interest in real property.

The purchase of an undivided interest in real property results in the creation of a tenancy in common. In Tabler v. Wiseman, 2 Ohio St. 207 (1853), the court discussed tenancy in common when it referred to the writings of Justice Blackstone and included the following at page 211:

''[T]enants in common are such as hold

by several and distinct titles, but by unity of possession; because none knoweth his own severalty, and, therefore, they all occupy promiscuously."

In a tenancy in common, each tenant is an owner of an undivided interest in the whole. It is a relationship which both restricts and creates rights. One of the rights created is discussed in Section 5307.01, Revised Code, which provides:

"Tenants in common, and coparceners, of any estate in lands, tenements, or hereditaments within the state, may be compelled to make or suffer partition thereof as provided in sections 5307.01 to 5307.25, inclusive, of the Revised Code."

Section 5307.06, Revised Code, goes on to state in regard to the statutory right to partition:

"In making a partition the commissioners provided for in section 5307.04 of the Revised Code must view and examine the estate and, on their oaths, having due regard to the improvements, situation, and quality of the different parts, set it apart in such lots as will be most advantageous and equitable."

(Emphasis added.)

The court in Lauer v. Green, 99 Ohio St. 20 (1918), stated at page 25:

"* * * The difficulty of making partition and the inconvenience resulting to other tenants furnish no sufficient reason for denying it."

Thus, when a tenancy in common is created, the right to partition exists statutorily. The right is to be enforced through the principles of equity, but as Lauer v. Green, supra, stated, the inconvenience of the partition does not cause its denial.

The various agencies of the state have differing grants of authority to acquire land, authority whose extent is determined by the functions and needs of the agencies as limited by the legislature. When Section 5507.05, Revised Code, grants authority to the Ohio Highway Transportation Research Center Board to acquire sites for research and development activities, this grant of authority does not include the right to become a tenant in common. Becoming a tenant in common with the intent to ask for partition pursuant to Section 5307.01, supra, is no guarantee that the later partition, if granted, will result in the desired site becoming the property of the Board.

It is therefore my opinion, and you are hereby advised, that

an agency of the state may not become a tenant in common by purchase of an undivided interest in land without express authority to do so. Thus, Section 5507.01, et seq., Revised Code, does not give the Ohio Highway Transportation Research Center Board or the Ohio Transportation Research Center the authority to purchase a fractional undivided interest in real property.