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COUNTY COMMISSIONERS—LEASE OF COUNTY-OWNED LAND FOR TERM LONGER THAN ONE YEAR UNDER SECTIONS 307.09 AND 307.10 RC—DEPARTMENT OF THE ARMY, UNITED STATES OF AMERICA *NOT* A “GOVERNMENTAL SUBDIVISION” UNDER SAID SECTIONS.

SYLLABUS:

The Department of the Army, United States of America, is not a governmental subdivision, within the purview of Sections 307.09 and 307.10 of the Revised Code, relating to the granting by the county of leases of county land for a greater term than one year.

Columbus, Ohio, June 3, 1957

Hon. Joseph W. McNerney, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Under Ohio Revised Code Sections 307.09 and 307.10, the Board of County Commissioners may sell any real estate belonging to the county and not needed for public use after advertisement, to the highest bidder. The Board may also “grant leases, rights and easements to municipal corporations or *other governmental subdivisions* for public purposes or to corporations not for profit for hospital or charitable purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement is not deemed by the Board to be inconsistent with the need of such land for public use by the county.” These leases are granted without public notice and may be for such terms as the Board deems for the best interest of the public.

“Muskingum County owns a farm adjoining its County Home, three and one-half acres of which the United States of America, Department of the Army, wishes to lease for a long term, preferably 99 years, to build a Reserve Training Center.

“The questions upon which I would like your opinion, and which I believe to be of general interest, are whether the Department of the Army, United States of America, is a governmental subdivision within the meaning of Revised Code Sections 307.09 and 307.10 and if so, would this use, that of an Army Reserve Training Center, be for public purposes within the meaning of these sections?”
(Emphasis yours.)

A county is a subdivision of the State, created by the legislature. Generally speaking, its function is to serve as an agency or instrumentality of the State for purposes of political organization and local administration. 14 Ohio Jurisprudence 2d, 203.

At page 204 of the above mentioned authority it is said:

“* * * Except as restricted by the state Constitution, the power of the legislature, through which the sovereignty of the state is represented and exercised, over counties, is supreme, and that body may exercise plenary power with reference to county

affairs, county property, and county funds. Counties, therefore, possess only such powers and privileges as may be delegated to or conferred upon them by statute. *These powers and privileges must be strictly construed*, and may, in general, be modified or taken away.” (Emphasis added.)

Citing *Lake County v. Ashtabula County*, 24 Ohio St., 393; *Portage County v. Gates*, 83 Ohio St., 19 and other cases.

Turning to the statutes which control the powers of county commissioners with reference to lands owned by the county, we note Section 307.09, Revised Code, which, so far as pertinent, reads as follows:

“If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use, or may lease it, but no such lease shall be for a longer term than one year; provided the board may grant leases, rights, and easements to *municipal corporations or other governmental subdivision for public purposes or to corporations not for profit for hospital or charitable purposes*, including among other such purposes memorial structures and underground structures, on or in lands owned by the county *where such lease, right, or easement is not deemed by the board to be inconsistent with the need of such land for public use by the county*. Any such lease, right, or easement granted to a municipal corporation or other governmental subdivision, or to corporations not for profit for hospital or charitable purposes, may be *for such length of time, upon such terms, for such purposes*, and may provide for *such renewals thereof as the board deems for the best interests of the public*.” (Emphasis added)

Section 307.10, Revised Code, requires that every such sale be made pursuant to advertisement and to the highest responsible bidder, and further provides that leases authorized by the preceding section to public subdivisions may be made without advertising.

It is evident, therefore, that as to leasing county owned lands the county commissioners are limited to a lease for one year, except in the case of a lease to “municipal corporations or other governmental subdivision” or to “corporations not for profit for hospital or charitable purposes.” To these exempted bodies the county may lease without advertisement for such period and for such consideration as the commissioners deem to be in the interests of the county.

We have then to decide whether the Department of the Army, U. S. A., is a governmental subdivision within the meaning of the sections of the law which I have quoted.

There is certainly no ambiguity in these statutes which could even raise a question whether the United States Government or one of its agencies is to be regarded as a governmental subdivision of the state, such as municipal corporations, counties, townships, school districts, *etc.* for which the legislature has provided. It would seem to me to be absurd to try to construe the language used by the statutes as including the federal government or any of its departments. The strictness with which the courts refuse to indulge in speculation as to what the legislature intended, or undertake to substitute their own judgment as to what might have been desirable, is well illustrated by the case of *Slingluff v. Weaver*, 66 Ohio St., 621. There the court was confronted by a statute which appeared by its terms to deprive the Supreme Court of practically all of its appellate jurisdiction. The court held as shown by the second paragraph of the syllabus:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

In Opinion No. 318 which I issued on April 9, 1957, I was confronted with the question whether the statutes referred to in your letter were broad enough to permit a lease for a long term to the State of Ohio. Realizing the absurdity of granting authority to grant a long term lease to any of the subdivisions created by the state while denying the power to grant such lease to the state itself, I gave what I considered the most liberal construction of these statutes possible, by holding as shown by the second paragraph of the syllabus:

“Under Section 307.09, Revised Code, a board of county commissioners may lease county owned land to the State of Ohio for a term of fifty years and grant an option to renew that lease for an additional fifty years.”

In support of that holding I said in the course of the opinion:

“The state is divided into the several governmental subdivisions, and is in fact the sum of these subdivisions. It would be illogical to take the position that each of the parts has an authority but the whole does not. Thus, if a lease is authorized to a

component part of the state, it would follow that a lease with the state itself would likewise be authorized.”

I can see no possibility of applying the reasoning of that opinion to the question you present. It is quite plain that the United States Government and its several departments are in no sense political or governmental subdivisions of the state of Ohio.

The question which you have submitted includes an inquiry whether the intended use, as proposed by the army, would be a “public purpose” as stipulated in Section 307.09 and 307.10, Revised Code. In view of my conclusion as to the non-applicability of these sections to the United States Army, I do not consider it necessary to discuss that second question.

Accordingly, it is my opinion that the Department of the Army, United States of America, is not a governmental subdivision, within the purview of Sections 307.09 and 307.10 of the Revised Code, relating to the granting by the county of leases of county land for a greater term than one year.

Respectfully,
WILLIAM SAXBE
Attorney General