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COURT HOUSE — REPAIRS — COUNTY COMMISSIONERS HAVE AUTHORITY TO MAKE REPAIRS—IF COST TO BE PAID FROM BOND ISSUE, AMOUNT OF ISSUE WITHOUT VOTE OF ELECTORS LIMITED TO TWENTY THOUSAND DOLLARS WITHIN FIVE YEAR PERIOD—IF COST OF REPAIRS TO BE PAID OUT OF AVAILABLE FUNDS WITHOUT BOND ISSUE, NO LIMIT UPON AMOUNT TO BE EXPENDED —SECTIONS 133.05, 307.02 RC.

SYLLABUS:

The commissioners of a county have authority under Section 307.02, Revised Code, to make needed repairs to the Court House, and if the cost thereof is to be paid from an issue of bonds, the amount of bonds that may be issued without a vote of the electors, is limited by Section 133.05, Revised Code, to twenty thousand dollars within a period of five years. But if the cost of such repairs is to be paid out of available funds without the issuance of bonds, the law places no limit upon the amount that may be so expended.

Columbus, Ohio, May 21, 1954

Hon. Bernard T. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

I have before me your letter requesting my opinion, reading as follows:

“The Court House of this County has for many years been in need of substantial repairs due to its unsafe and dilapidated condition.

“The Commissioners of this County have requested an opinion as to what limitation, if any, is imposed by law as to the amount that the County Commissioners may expend for repairs to the County Court House out of available funds.

“This office has studied the matter and the following citations are submitted, which seemingly do not reveal the answer to this question:

“Sections 153.21, 153.31, 307.02 and 133.05 of the Revised Code of Ohio, and 1950 A. G. O. No. 2615 and 1952 A. G. O. No. 1573.”

Section 153.21, Revised Code, 2333 G. C., to which you refer, reads as follows:

“When the board of county commissioners has determined to *erect a courthouse* or other county building *at a cost to exceed twenty-five thousand dollars*, it shall submit the question of issuing bonds of the county therefor to a vote of the electors of such county. If the question is determined in the affirmative, within thirty days thereafter, the board may apply to the judge of the court of common pleas of the county who may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and serve until the courthouse or other county building is completed. Not more than two of such appointees shall be of the same political party.” (Emphasis added.)

You will observe that the scope of this section is limited to a situation where the commissioners have determined to “erect a courthouse or other county building” and nothing in its terms appears to apply to the improvement or repair of such building. In Opinion No. 5148, Opinions of the Attorney General for 1942, page 383, this section was referred to with the following comment:

“This statute, according to its terms, applies only when the county commissioners have determined to ‘erect’ a court house or other county building, and then only when a bond issue is contemplated. It has no application to the purchase of a court house or other building already constructed, or to the alteration or extension of any such existing building.”

It appears, therefore, that we may disregard this section entirely as having a bearing on the question you submit. The limitation as to cost cannot apply in any way to the situation under consideration.

The section of the Revised Code which appears to me to be directly applicable is Section 307.02, 2433 G. C. This section reads as follows:

“The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, *enlarge, improve, rebuild*, equip, and furnish a *courthouse*, county offices, jail, county home, juvenile court building, detention home, public market houses, county children’s home, and other necessary buildings, and sites therefor; such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress; such copies of any

public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county.”

(Emphasis added.)

The word “repair” is not used, but certainly it would be included within the meaning of the word “improve” and I have no doubt that the legislature so intended. It is obvious that an “improvement” to a building may go beyond repair but certainly every “repair” of a building is an improvement thereto. That, I think, is implicit in the definition of “repair” as given by Webster, to wit:

“To restore to a sound or good state, after decay, injury, dilapidation or partial destruction.”

There is nothing in this section which suggests any limitation on the sum that may be expended either in constructing or rehabilitating a court house. If we were dealing with the erection of a new court house we would have to consider Section 153.21 and 307.02 supra, as being in *pari materia* and as offering alternative procedures for the *erection* of a court house. See Opinion No. 5184, Opinions of the Attorney General for 1942, page 383; Opinion No. 1573, Opinions of the Attorney General for 1952, page 487. In the latter opinion it was held:

“County commissioners may construct a court house pursuant to Section 2433, General Code, out of any available funds, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$25,000.00, the provisions of Section 2333 must be followed.”

Your letter indicates that the proposed repairs are to be made out of available funds, from which I infer that you expect the cost to be covered without the necessity of issuing bonds. If it is found necessary to issue bonds then they would be issued under the provisions of the Uniform Bond Law, in which case the provisions of Section 133.05, Revised Code, 2293-16, G. C., would appear to be applicable. That section first defines the net indebtedness which any county is authorized to create or incur without a vote of the electors. Then follows the special provision:

“Except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty thousand dollars in any period of five years for the acquisition, construction, improvement, enlargement, or extension of any one county building,

including the acquisition of a site therefor, but this limitation does not apply to buildings for a district consisting of two or more counties.”

It seems obvious that the limitation contained in the section last quoted is confined to the issuance of bonds by the county commissioners without a vote of the people, and the necessary inference is that with a vote of the people any desired amount above \$20,000 might be authorized.

As to a limitation on the amount that may be expended for the purpose of repairing the court house where the funds are available without the issuance of bonds, I can see no provision in any of the statutes which places a limitation on such amount.

Accordingly, in specific answer to your question it is my opinion and you are advised that the commissioners of a county have authority under Section 307.02, Revised Code, to make needed repairs to the court house, and if the cost thereof is to be paid from an issue of bonds, the amount of bonds that may be issued without a vote of the electors, is limited by Section 133.05, Revised Code, to twenty thousand dollars within a period of five years. But if the cost of such repairs is to be paid out of available funds without the issuance of bonds, the law places no limit upon the amount that may be so expended.

Respectfully,

C. WILLIAM O'NEILL

Attorney General