

1062.

COUNTY COMMISSIONERS—IN GOOD FAITH WITHOUT FRAUDULENT INTENT — MAY LEASE BUILDING — HOUSE COUNTY OFFICES—PERIOD TEN YEARS—REASONABLE RENTAL — ADVANTAGEOUS TO COUNTY — SECTION 2433 G. C.

*SYLLABUS:*

*A board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code, enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the court house, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county.*

COLUMBUS, OHIO, August 19, 1939.

HON. THOMAS J. O'CONNOR, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR: Your request for my opinion reads:

“About the middle of this month our Board of County Commissioners submitted to me a proposed lease of a building formerly occupied by the Toledo News-Bee and situated at the corner of Huron and Jackson Streets, just one block from the county court house.

I am enclosing a copy of this proposed lease which you will find provides for:

- (a) A term of ten years, beginning with September 1, 1939.
- (b) Annual rental of \$13,500.00 payable in 12 equal monthly installments of \$1125.00 each.
- (c) Option vested in lessee to purchase property during term of lease for \$135,000.00, plus cost of improvements, alterations and repairs.
- (d) Rentals paid to be applied on purchase price, less, however, 5%.
- (e) Lessee to pay all taxes and assessments during term of lease.

On July 22, my assistant, Joel S. Rhinefort, drafted an opinion and in it indicated the uncertainty of the authority of the Board to enter into this lease. After receipt of this opinion from my office, the board of commissioners requested that I ask

you to rule on this matter, and in order to assist you in considering it, I am enclosing a copy of Mr. Rhinefort's opinion."

Section 2433, General Code, with reference to the duties of the taxing authority of a county, reads:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress;  
\* \* \*"

From an examination of the copy of the indenture of lease submitted, it would appear that the purpose of the lease is to provide quarters for county offices which may not now be accommodated in the county court house. The recitals of such lease read:

"WHEREAS, the Board of County Commissioners of Lucas County, Ohio, has the duty of providing quarters in the City of Toledo for the following agencies: Automobile Bill of Sale Registration Bureau, Bureau of Aid for Dependent Children, Bureau of Aid to the Blind, County Board of Education, County Board of Health, Soldiers and Sailors Relief, County Agriculture Agent, Metropolitan Park Board, Board of Elections and other public agencies; and

WHEREAS, certain of said agencies are presently occupying space in the Court House needed for other departments; and

WHEREAS, certain other agencies are occupying leased quarters at divers places in the City of Toledo outside of the Court House; and

WHEREAS, the Board of County Commissioners of Lucas County, Ohio, is desirous of providing more permanent quarters for the agencies now located outside of the Court House and of providing additional quarters to house agencies now located in the Court House; and

WHEREAS, the said Board of County Commissioners of Lucas County, Ohio, desires to place all of said departments in

one building as nearly contiguous to the Court House as possible for the convenience of the public and the more efficient administration of said departments.”

The board of county commissioners is the taxing authority of the county (subparagraph (c) of Section 5625-2, General Code).

Under the statute above quoted, it is apparent that the board of county commissioners not only has the power to purchase but to “lease” or to “lease with option to purchase” county offices “and other necessary buildings, and sites therefor.” I have no opinion as to whether the rental reserved under the lease is or is not a reasonable annual rental for the property proposed to be leased. You submit no information from which such opinion could be formulated. Such fact is one to be determined by the board of county commissioners by use of its discretion.

Since the statute grants to boards of county commissioners express authority to lease property for an intended purpose, I consider only the question as to whether a board of county commissioners has the power to lease property for proper county purposes for a period of ten years, or for a longer period than the present term of office of its members.

You will note that the section above quoted does not place any express limitation upon the term for which the property may be leased for such purpose. In the decisions we find many statements purporting to look with disfavor upon the power of a board to make contracts binding upon its successors in office. On the other hand, we find many decisions which expressly held that certain contracts so entered into were valid.

In *Heirs of Reynolds vs. Commissioners of Stark County*, 5 Ohio, 204, the court decreed specific performance by a board of county commissioners of a contract entered into by a prior board of county commissioners to lease certain county property, even though the lease had not been executed prior to the end of the term of the commissioners who entered into the contract for the lease.

In the case of *Bennett vs. Petroleum County*, 87 Mont., 436, the Supreme Court of Montana had before it a question as to the validity of a lease of county property, not needed for county purposes, by the board of county commissioners when the term thereof extended beyond the term of the board. In holding the lease valid the court said:

“The statute specifically confers the power to so contract upon the board of county commissioners, the body existing at the time, and the mere fact that the term of office of a member of the body which so contracts may expire before the contract does not in any manner affect its validity. Were the rule of law otherwise, the business of counties would be very greatly hampered, and at times suspended, with resulting damage. The board of county commissioners functions for the municipal corpora-

tion in its authorized powers as a continuous body, and, while the personnel of its membership changes, the corporation continues unchanged. The county has power to contract, and its contracts are the contracts of its board of county commissioners, not of the individual members thereof."

The holding of the court in this cause finds support not only in the cases cited in such opinion but in the following additional authorities :

Mantey vs. Scott, 108 Minn., 142;  
 Biddeford vs. Yates, 104 Me., 506;  
 Picket Publishing Co. vs. Carbon County, 36 Mont., 188.

From my analysis of the cases examined, it would seem to be a fair statement of the rules to be deduced therefrom that the board of county commissioners may not contract in reference to matters which are purely personal to a successor board if the contract is to be performed after the expiration of the term of office of its members. One line of cases lays down the rule that if the board of county commissioners has the authority to enter into a particular type of contract, the mere fact that the contract was entered into a short time before the expiration of the term of office of its members and extends far into the term of office of their successors, does not make such contract void as contrary to public policy; and, in the absence of fraud, such contract is binding upon the successor boards. Another line of cases takes the view that a contract is entered into by the county commissioners in the exercise of a governmental function and if it is to be performed chiefly in the term of a successor board it will be presumed to be against public policy and will not be upheld unless it be shown that such action by the board was necessary by reason of public interest and was entered into in good faith for the public interest. See 14 Am. Jur., 210, sec. 41. It would seem, from the authorities above referred to, that if the board of county commissioners enters into a contract of lease which may not be performed within the term of office of its members in good faith for the purpose of promoting the public welfare, such indenture of lease is not necessarily void. We find in Section 2433, General Code, the authority to enter into a lease, either with or without an option to purchase the leased premises.

Section 2419, General Code, provides that :

*"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. \* \* \*"*  
 (Italics the writer's.)

In business practice it is generally recognized that a business block may be rented at more advantageous terms when the term is for a long

period of time rather than a short period. In fact, it is seldom that an entire business block may be obtained on a lease for a short period.

On the other hand, a short term lease on an entire office building may be of great disadvantage to the county. It is almost inconceivable that an office building can be found that is of such nature that the trade fixtures of county offices may be placed therein without adaptation. If the lease is for a short period the lessor is entitled to possession at the end of the term, at which time other equally convenient and suitable quarters may not be readily available. If they are so available, some additional expense must necessarily be incurred to adjust the space to public office use.

If the premises in question are suitable in location and structure for county offices and the price is reasonable therefor, I have found no authorities which would hold that a lease for a period of ten years is beyond the power of such board. Especially does this appear to be true by reason of the fact that a board of county commissioners in Ohio is a continuous one. The term of one or more of the members may be terminated by an election but the terms of all the members never end at the same time.

Specifically answering your inquiry, it is my opinion that a board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code, enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the court house, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county.

Respectfully

THOMAS J. HERBERT,  
*Attorney General.*

1063.

LAW LIBRARIES—MAINTENANCE—FUND—COLLECTION,  
FINES, PENALTIES, COSTS, BONDS, FORFEITURES—  
COUNTY — MUNICIPALITY — INTERPRETATION AND  
CONSTRUCTION SECTIONS 3056, 3056-1, 3056-2, 3056-3,  
3056-4, 3058, G. C.

**SYLLABUS:**

*Interpretation and construction of Amended Senate Bill No. 46, 93rd General Assembly, enacting sections 3056, 3056-1, 3056-2, 3056-3, 3056-4, and 3058, General Code, to provide a fund for the maintenance of law libraries.*

COLUMBUS, OHIO, August 19, 1939.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, wherein you request that I interpret Amended Senate Bill