

terms of the constitutional amendment referred to. Likewise is the payment of the bonds, and interest obligations thereon, issued and sold for the purpose of providing funds to pay that adjusted compensation. It seems clear, therefore, that, inasmuch as the world war compensation fund is a fund available for state purposes and there is a temporary surplus therein, in accordance with the statute, the Auditor of State is authorized to make a temporary transfer from that fund to the maintenance and repair fund of the highway department.

I am of the opinion, therefore, that the proposed transfer may lawfully be made by the Auditor of State under authority of Section 249-1, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2408.

RENTED OFFICE SPACE—REPAIR OF BUILDING OCCUPIED BY PROSECUTING ATTORNEY—COUNTY COMMISSIONERS AUTHORIZED TO EXPEND MONEY FOR SUCH WORK WHEN THERE ARE NO SUITABLE ROOMS IN COURT HOUSE.

*SYLLABUS:*

*County commissioners are authorized under Section 2419, General Code, to expend money in repairing rented office buildings for the prosecuting attorney where there are no suitable rooms in the courthouse for said office, so long as the repair work is necessary and the cost is reasonable.*

COLUMBUS, OHIO, October 3, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Will you kindly give me your opinion on the following proposition?

Would the county commissioners be authorized under Section 2419, General Code, to expend money in repairing rented office buildings for the prosecuting attorney where there are no suitable rooms in the court house for said office?”

It is a well settled rule of law that county commissioners have no powers except such as are expressly given by statute or necessarily implied from the powers so expressly given. *State ex rel. vs. Commissioners*, 8 N. P. (N. S.) 281; 20 O. D. (N. P.) 679; affirmed *Ireton vs. State ex rel.*, 12 C. C. (N. S.) 202; 21 O. C. D. 412; affirmed without opinion *Ireton vs. State*, 81 O. S. 562; *Elder vs. Smith, Auditor, et al.*, 103 O. S. 369, 370; *State ex rel. vs. Kraft*, 19 O. A. R. 454, 456. Having in mind this principle, Section 2419, General Code, which is referred to in your communication, should be examined. Said section provides as follows:

“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. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They

shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

The above section has been construed by several former Attorneys General as giving implied authority for county commissioners to go outside the courthouse and rent offices for county officers, if said offices cannot be supplied in the courthouse. See Opinions of Attorney General for 1917, Volume 1, page 833.

Now it is a general rule of law that a lessor is under no obligation to repair premises if he has not covenanted to do so.

See *Grace vs. Williams*, 8 Abstract 430, decided by Hamilton County Court of Appeals, February 24, 1930, citing 16 R. C. L. 552; *Goodall vs. Deters*, 121 O. S. 432. Hence, if a lease does not contain a provision binding the landlord to keep the property in repair, the obligation falls on the lessee to make any repairs that are necessary for an adequate use of the property. Certainly the implied power to rent office space must carry with it the equal power to preserve and maintain the property, so that it may be kept in a condition for use throughout the period of rental. Of course, such a power cannot be carried to extremes. The power to maintain the property would not justify unreasonable expenditures on the part of the commissioners, under the guise of necessity. The county commissioners, like other public officials and boards, possess discretion in the carrying out of their powers, but that discretion must not be abused or their acts will be subject to review by the courts. While you do not state in your communication the nature of the repair work to be done, I assume that it is necessary and that the cost will be reasonable.

In view of the foregoing and in specific answer to your question, I am of the opinion that county commissioners are authorized under Section 2419, General Code, to expend money in repairing rented office buildings for the prosecuting attorney where there are no suitable rooms in the courthouse for said office, so long as the repair work is necessary and the cost is reasonable.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2409.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE D. W. McGRATH & SONS COMPANY, COLUMBUS, OHIO, FOR GENERAL WORK ON TEACHERS' TRAINING BUILDING AND EQUIPMENT ON CAMPUS OF OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$339,645.00—SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, October 3, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of the