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LIMITATION OF FUNDS—FOR USE OF COUNTY HISTORICAL SOCIETY APPROPRIATED BY COUNTY COMMISSIONERS. § 307.23, R. C.

SYLLABUS:

Section 307.23, Revised Code, places a limitation on the funds that a board of county commissioners may appropriate annually for the use of a county historical society, and this limitation prevails over agreements and contracts entered into previously which conflict therewith.

Columbus, Ohio, September 16, 1959

Hon. Anthony J. Bowers, Prosecuting Attorney
Allen County, Lima, Ohio

Dear Sir:

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

“We would like to have your opinion regarding the following:

“Whether the Allen County Commissioners, under an agreement to maintain the county museum, are in any way limited in their appropriation for such purposes by Section 307.23 of the Revised Code or whether the funds provided by said section may be furnished to the Historical Society in addition to any funds appropriated for the maintenance of the museum under the terms of the deed from the Grantors of said premises.

“The County Commissioners of Allen County, Ohio, by resolution at a special meeting held March 2, 1940 accepted a grant by way of deed with certain conditions, reservations and limitations

hereinafter set forth from the heirs of William J. Wemmer for a tract of real estate in Lima, Ohio. This deed was accepted by the County Commissioners upon said terms and conditions, which the Commissioners as Grantees bound themselves to comply with, upon the authority of an Opinion of the Attorney General of Ohio dated April 5, 1939 and bearing Number 398. A copy of said Opinion, together with a copy of the Opinion rendered in 1931, which is referred to in the 1939 Opinion, are enclosed herewith.

“The conditions set forth in said deed are as follows :

(1) Within five years from the date of the deed, to raze the residence dwelling on the premises and commence the construction of a modern fire-proof building suitable to house the offices, headquarters and property of The Allen County Historical Society, an Ohio corporation not for profit, serve as a museum and civic center and for such other uses as may be necessary or desirable for the public benefit and welfare of the State of Ohio, County of Allen or City of Lima.

(2) Plans and specifications of such building to conform to good architectural plans, the same to be submitted to the Grantors for their approval.

(3) Upon completion of the building to place a plaque or memorial in the entrance or foyer in honor of William J. Wemmer, deceased, a former resident and citizen of Lima, Allen County, Ohio.

(4) To pay or cause to be paid the cost and expense of hereafter properly and suitably maintaining the premises so conveyed, together with any and all buildings which now are or may hereafter be constructed thereon and to pay or cause to be paid any and all expenses of operating, caring for, repairing, heating, cleaning, lighting, providing curators, custodians and janitors therefor, and in any other manner maintaining and keeping up any and all such buildings and said premises.

“After receiving this grant, and relying upon said Attorney General’s opinion, the Commissioners accepted the same and bound themselves to comply with the terms and conditions of said grant, finding that the same were reasonable and that it would be to the best interests of Allen County, Ohio and the people thereof that said deed be accepted upon said terms, conditions, limitations, restrictions and reservations as contained in said deed and ordered that said deed be recorded.

“Thereafter The Allen County Historical Society wholly, on its own initiative and of its own expense, raised by popular subscription from the citizens of Allen County approximately \$200,000; caused the old residence on said premises to be razed; and contracted for, financed and saw to the construction of a beautiful modern fire-proof building on said premises. Said Historical

Society also carefully saw to the satisfaction without cost to Allen County, Ohio of the terms and conditions as set forth in Paragraphs Numbers (1), (2), and (3) above.

“All of the foregoing occurred over a period of years between 1939 and 1953, the intervening wars and inflated building costs being responsible for the delay. However, after the completion of the building in 1953, the Commissioners assumed the maintenance and expense of keeping up said museum as provided in Paragraph (4) of the conditions above set forth, and have each year appropriated funds from the General Fund of Allen County for such purposes. These funds have been dispersed on requisition approved by the County Commissioners and paid by Auditor’s Warrant, under the usual arrangement followed by the Commissioners in maintaining and operating other County institutions, but confining the expenditures to purposes within the limits of the conditions of said deed of conveyance.

“Small additional tracts, to square out the property and to give ingress and egress on the cross street east of said premises said tracts being four (4) in number, have, since the original grant, been acquired and accepted by the Commissioners on exactly the same conditions and under the same procedure followed in accepting the original grant.

“The budget for museum purposes in 1959 was something over \$20,000. As the Commissioners approach the consideration of the budget for 1960, they have been considering Section 307.23 of the Revised Code of Ohio, which provides for the payment to an Historical Society of \$8,000 per year in a county the size of Allen County, for the promotion of historical work and for the collection, preservation and publication of historical material and to disseminate historical information of the county and in general to defray the expense of carrying on historical work in such county, such funds not to be used for the construction of buildings. It is to be noted that in 1939 and 1940, when this deed of conveyance was offered and accepted, the then General Code section comparable to 307.23 of the Revised Code, being General Code Section 2457-1, provided for only \$100 instead of \$8,000 for the purposes therein set forth.

“During the period in which the Historical Society has been operated by the County Commissioners pursuant to the agreement as provided in the acceptance of the deed, they have paid all the maintenance in the operation of the society which has always exceeded the amount as provided in Revised Code 307.23.

“The Commissioners are wondering whether they may appropriate the funds provided for under Revised Code No. 307.23 in addition to any funds appropriated for the maintenance and upkeep of the historical museum under the terms of the grant from

the Wemmer heirs. They also are wondering whether Section 307.23 of the Revised Code imposes any limitation on what they may appropriate for the maintenance of the museum.

“We therefore request your formal opinion as to whether the Allen County Commissioners, under their agreement to maintain said museum, are in any way limited in their appropriation for such purposes by Section 307.23 of the Revised Code or whether the funds provided by said section may be furnished to the Historical Society in addition to any funds appropriated for the maintenance of the museum under the terms of the deed from the Grantors of said premises.”

The question presented in your request is: can the Board of County Commissioners of Allen County provide more funds to maintain the historical museum of the county than authorized by Section 307.23, Revised Code, in view of the agreement and conditions set forth in the deed for the property involved when the same was acquired on or about March 2, 1940, from the heirs of William J. Wemmer.

Section 307.23, Revised Code, reads as follows:

“The board of county commissioners of any county having a population of less than twenty-five thousand, according to the next preceding United States census, may appropriate, out of the revenue fund not otherwise appropriated, a sum not exceeding five thousand dollars annually; in counties having a population of more than twenty-five thousand and not more than one hundred thousand, according to such census, the board may appropriate a sum not exceeding eight thousand dollars annually; in counties having a population of more than one hundred thousand and not more than three hundred thousand, according to such census, the board may appropriate a sum not exceeding fifteen thousand dollars annually; in counties having a population of more than three hundred thousand, according to such census, the board may appropriate a sum not exceeding twenty-five thousand dollars annually, to be paid to the historical society of such counties respectively, to be used for the promotion of historical work within the borders of the county, and for the collection, preservation, and publication of historical material, and to disseminate historical information of the county, and in general to defray the expense of carrying on historical work in such county.

“Such funds may not be used for the construction of buildings. No board may appropriate any funds for the benefit of any county historical society unless such society is incorporated not for profit under the laws of the state. Application for the funds shall be made in the form of a certified copy of a resolution adopted by the applicant society.”

The last United States census (1950) for Allen County shows the population as 88,183. Thus the limitation of the appropriation from the general revenue fund by the Board of County Commissioners to the Allen County Historical Society under the provisions of Section 307.23, Revised Code, would be \$8,000 annually.

Section 307.23, Revised Code, is an outgrowth by reenactments of Section 2457-1, General Code. In the year 1940, at the time of agreement and conveyance of the property, Section 2457-1, General Code, read as follows:

“The county commissioners of any county having therein an historical or pioneer association, incorporated not for profit, with a board of trustees or directors legally constituted, may allow and pay out of the general fund in the county treasury, not otherwise appropriated, the cost expended by such incorporation in collecting, compiling and publishing in pamphlet or book form, papers, memoranda and data of historical value, together with the regular proceedings of such incorporation, not exceeding one hundred dollars in any one year.”

It will be noted that the 1940 provision, *supra*, permitted the Board of County Commissioners to pay \$100 annually to an incorporated historical society for compiling, collecting and publishing in pamphlet or book form, papers, memoranda and data of historical value, together with the regular proceedings of such incorporation.

This statute makes no specific provision for a museum of preservation or storage of historical objects.

Before entering into the agreement and its terms, your predecessor in office requested an opinion from this office, which resulted in Opinion No. 398, Opinions of the Attorney General for the year 1939, a copy of which was attached to your request, the syllabus of which read as follows:

“County commissioners may accept a gift of a museum site conditioned upon the razing of the present building and the erection of a museum thereon within a five-year period, and the subsequent maintenance of the museum, if the gift is accepted at a regular or special session of the commissioners after a finding in good faith that the conditions imposed are reasonable.”

It is presumed that the procedures outlined in that opinion were followed.

In *State, ex rel. Crabbe, Atty. Genl. v. Massillon Savings & Loan Co.*, 110 Ohio St., 320, paragraph 3 of the syllabus reads as follows :

“3. While the state may not impair a completed contractual obligation, a building and loan company cannot so enter into contracts, reaching into the future, touching the sale of its stock and memberships, as to deprive the state, in the proper exercise of its police power, from controlling such sales in the future.”

In the opinion the Court quoted from three cases from the Supreme Court of the United States as follows :

“In *Dillingham v. McLaughlin*, 264 U. S., 370 (44 Sup. Ct. 362), decided this month by the United States Supreme Court, Mr. Justice Holmes said, at page 374 :

‘We do not agree with the court below as to present contracts. The operation of reasonable laws for the protection of the public can not be headed off by making contracts reaching into the future. *Manigault v. Springs*, 199 U. S. 473, 480, 26 Sup. Ct. 127, 50 L. Ed. 274; *Louisville & Nashville R. R. Co. v. Motley*, 219 U. S. 467, 482, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N.S.) 671; *Atlantic Coast Line R. R. Co. v. Goldsboro*, 232 U.S. 548, 558, 35 Sup. Ct. 364, 58 L. Ed. 721; *Denver & Rio Grande R. R. Co. v. Denver*, 250 U.S. 241, 244, 39 Sup. Ct. 450, 63 L. Ed. 958.’

“In *Northern Pacific Ry. Co. v. Minnesota*, 208 U. S. 583, 28 Sup. Ct. 341, 52 L. Ed. 630, Mr. Justice Day, delivering the opinion, said at page 596 (28 Sup. Ct. 345) :

‘There can be no question as to the attitude of this court upon this question, as it has been uniformly held that the right to exercise the police power is a continuing one; that it cannot be contracted away, and that a requirement that a company or individual comply with reasonable police regulations without compensation is the legitimate exercise of the power and not in violation of the constitutional inhibition against the impairment of the obligation of contracts.’

“And in *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 28 Sup. Ct. 529, 52 L. Ed. 828, 14 Ann. Cas. 560, Mr. Justice Holmes, in treating of Article I, Section 10, of the federal Constitution, said at page 357 (28 Sup. Ct. 531) :

‘One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter.’”

Further on in the opinion of *State, ex rel. Crabbe v. Massillon Savings & Loan Co. supra*, the court quoted from the case of *Union Dry Goods Co. v. Georgia Pub. Serv. Corp.*, 248 U. S. 372, as follows:

“And to the same effect is the decision announced by the same court in *Union Dry Goods Co. v. Georgia Pub. Serv. Corp.*, 248 U.S. 372, 39 Sup. Ct. 117, 63 L. Ed. 309, 9 A.L.R. 1420. In that case the public service company had entered into a private contract with the dry goods company to supply the latter with electric light and power for the period of five years. About two years after this contract was made, the state, acting through its commission, charged a higher rate. The dry goods company sought to enjoin the action of the commission in charging the higher rate, as the contract had three years yet to run. In sustaining the action of the commission, that court, at page 375 (39 Sup. Ct. 119), through Mr. Justice Clarke, quoted the following with approval:

‘It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from properly exercising such powers * * * for the general good of the public, though contracts previously entered into between individuals may thereby be affected.’

“And he closes his opinion in the following language:

‘These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the State.’”

The Legislature of this State has deemed it expedient to the public welfare to limit the amount of money that a board of county commissioners may appropriate for furthering the operation of a county historical society according to the population of the county by enacting Section 307.23, *supra*.

In the case of *The Massillon Savings & Loan Co. v. The Imperial Finance Co.*, 114 Ohio St., 523, the syllabus reads as follows:

“1. Where a contract is legal when made, and subsequently such contract or its performance is prohibited by statute, performance thereof after the time when such prohibitive law becomes effective is illegal, and neither party can recover for breach of the contract.

“* * *”

From the foregoing decisions it appears that the action of the Legislature in enacting Section 307.23, Revised Code, *supra*, places a limitation

on the amount of money that a board of county commissioners may appropriate annually for the use of a county historical society, and that limitation would prevail over a contract or agreement previously entered into.

Accordingly, it is my opinion and you are hereby advised that Section 307.23, Revised Code, places a limitation on the funds that a board of county commissioners may appropriate annually for the use of a county historical society, and this limitation prevails over agreements and contracts entered into previously which conflict therewith.

Respectfully,
MARK McELROY
Attorney General