

4576.

COUNTY COMMISSIONERS—MAY LEASE COUNTY OWNED BUILDINGS UNDER CERTAIN CONDITIONS.

SYLLABUS:

A county owned building, erected under the provisions of Sections 2333 et seq., General Code, may be legally leased by the county commissioners from year to year for a period of years subject, however, to the reservation that upon reasonable notice the county commissioners may terminate the lease if and when the public interests require it.

COLUMBUS, OHIO, August 24, 1935.

HON. A. L. CHATFIELD, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“I hereby submit for your formal opinion a question dealing with the authority of the County Commissioners to lease for part time, the auditorium of a County Building.

About two years ago in this County a Federal Project enabled the County Commissioners of Vinton County to erect a new building, under favor of Sections 2333 et seq., of the General Code. In said building is an auditorium that is open for public gatherings under proper rules and regulations of the County Commissioners governing the use thereof. Among other things, the auditorium is used by the schools for basket ball, plays and other school functions, and by various private organizations for an occasional dance or banquet.

The question now arises as to the authority of the County Commissioners to lease this auditorium for two or three nights a week over a long period of time to a man who desires to equip the auditorium and operate a moving picture theater therein. It seems certain that school activities, dances and banquets will no longer be possible once seats are fastened to the floor and sound picture equipment installed. I find no authority other than Section 3624 of the General Code, by which the Commissioners can enter into such a lease contract.

The Commissioners join with me in requesting your formal opinion as to their authority in the matter above indicated.”

As stated in your letter this building was erected under the provisions

of Sections 2333 et seq., General Code. No express statutory authority exists for the leasing of such buildings. However, County Commissioners have express statutory authority to sell any real estate belonging to the County which is not needed for public use. See Sections 2447 and 2447-1, General Code. It is significant to note that a municipal corporation has express authority to lease real estate belonging to the corporation when such real estate is not needed for any municipal purpose. See Section 3698, General Code.

Your inquiry raises the question of whether or not the County Commissioners have implied power to lease the building in question and if so, under what terms such lease may be executed.

This question was first passed upon in an opinion to be found in *Opinions of the Attorney General for 1924*, page 110. The syllabus of that opinion reads as follows:

“1. It is in the discretion of the county commissioners as to what use shall be made of an abandoned children’s home, so long as it is a proper county use.

2. The county commissioners may lease any unused lands or buildings of the county. Such a lease should be made in accordance with section 2447-1, which relates to a sale.

3. If in the opinion of the county commissioners a county home is no longer needed, the same may be disposed of by sale or lease in the manner provided in section 2447-1.”

The following appears at page 112:

“It will be evident that the leasing of the land is granting less power than the sale of such land. It would be inconsistent with the holding of land for public benefit if it were permitted to lie idle when proper business management would require the same to produce an income for the public use.”

In the case of *The Minamax Gas Co. vs. State, ex rel. McCurdy*, 33 O. App., 501, it was held as disclosed by the second and third branches of the syllabus:

“2. County commissioners may temporarily lease real estate owned by county, subject to repossession when public needs require, without complying with Section 2447 et seq., General Code, requiring competitive bids after due advertisement in case of sale of real estate not needed for public use.

3. County commissioners cannot lease real estate owned by

county for definite term and thereby embarrass themselves or their successors in using the property for public purposes.”

A motion to certify in this case was overruled by the Supreme Court. In the opinion of the Attorney General for the year 1924 above referred to, it was indicated that the lease should be made in pursuance of competitive bidding. However, the Minamax Gas case, *supra*, overruled the Attorney General in that respect.

In an opinion to be found in *Opinions of the Attorney General for 1931*, Vol. II, page 948, it was held as disclosed by the syllabus:

- “1. Where county commissioners have the title to lands acquired under the provisions of section 9898, of the General Code, they may legally lease the same from year to year, for a period of years, with the right of the lessee to sublet the premises subject, however, to the reservation that upon reasonable notice the county may terminate the lease if and when the public interests require it.
2. Such a lease need not be upon the premises as a whole, but may be made upon different parts thereof.”

This opinion was based on the holding of the Minamax Gas case, *supra*. From the opinion at page 950, I quote the following pertinent language:

“From the foregoing, it would appear to be clear that county commissioners may lease property owned by the county which is not needed for public use. However, it would appear that such lease should contain a provision requiring the surrender of the property upon reasonable notice when the public interests would demand that the county take possession of the same. It would further appear that in making such lease other than as above stated, the commissioners may exercise much the same powers as an individual would in granting a lease. In other words, there would be nothing to prevent the lessee from subletting the premises so long as the use of the same was not inconsistent with the original lease. For a rather complete discussion of the power of county commissioners to sell and lease real estate, see 11 Ohio Jurisprudence, page 486.”

In view of the above authorities it would follow that the county commissioners may enter into the proposed lease if such lease can be drawn as not to embarrass the present county commissioners and their successors in using the property for public purposes.

Without further extending this discussion it is my opinion, in specific answer to your question, that a county owned building erected under the

provisions of Sections 2333 et seq., General Code, may be legally leased by the county commissioners from year to year for a period of years subject, however, to the reservation that upon reasonable notice the county commissioners may terminate the lease if and when the public interests require it.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4577.

APPROVAL, NOTES OF EDENTON RURAL SCHOOL DISTRICT, CLERMONT COUNTY, OHIO, \$869.00.

COLUMBUS, OHIO, August 24, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4578.

APPROVAL, BOND FORMS IN CONNECTION WITH FINANCIAL RESPONSIBILITY LAW OF OHIO.

COLUMBUS, OHIO, August 24, 1935.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“I am enclosing form of surety bond marked ‘A’ for your opinion and ask if it can be used in compliance with the Financial Responsibility Law of Ohio, being Amended Senate Bill No. 67, and direct your attention to Section 6, thereof.

Also enclosed is a form bond for individual sureties as provided for in Section 6 of said Bill. Will you kindly give me your opinion on this Bond relative to its sufficiency in compliance with said Bill, and in this connection, also I refer you to Section 6, thereof.”

The enclosed bond forms are as follows: