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1. ADJUTANT GENERAL — WITHOUT AUTHORITY TO LEASE PORTIONS OF ARMORY PROPERTY IN HIS CUSTODY NOT IMMEDIATELY NEEDED FOR ARMORY PURPOSES.

2. DEPARTMENT OF PUBLIC WORKS, WITH CONSENT OF ADJUTANT GENERAL, HAS AUTHORITY TO LEASE PORTION OF STATE ARMORY NOT IMMEDIATELY NEEDED FOR ARMORY PURPOSES — SECTION 154-40 G. C.

SYLLABUS :

1. The adjutant general is without authority to lease portions of armory property in his custody, which are not immediately needed for armory purposes.

2. When a portion of a state armory is not immediately needed for armory purposes, the department of public works has authority with the consent of the adjutant general, to lease such portion of said property, pursuant to the authority of Section 154-40, General Code.

Columbus, Ohio, October 8, 1948

Major General Chester W. Goble, Adjutant General
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Public Law 829 passed by the 80th Congress permits the War Assets Administration to turn over to the several states properties being held by the War Assets Administration for liquidation, for use by the National Guard of the several states.

“This department is desirous of securing under the provisions of PL 829, the Ridgewood Forge Plant located in Cincinnati, Ohio. Our request to the War Assets Administration for certain portions of this plant has been approved by the Secretary of the Army and certified to the War Assets Administration, however, the War Assets Administration has ruled that PL 829 only applies to complete installations and not parts thereof.

“This department feels that acquisition of the entire Ridgewood Forge Plant would be in excess of our current needs. A plan has been suggested that we take the entire plant and appoint

a board of officers, similar to an armory board, to run this plant with the idea of renting those portions of the plant not needed for National Guard purposes to various and sundry business concerns in Cincinnati for storage purposes. The proceeds of such rentals to be administered by the board to maintain both the rented and the National Guard portions of the plant.

“This department requests that you advise us whether the plan enumerated above is permissible under Ohio laws.”

Public Law No. 829 to which you refer, was passed by the 80th Congress and approved June 29, 1948. By this act the Surplus Property Act of 1944, was amended, by adding a new paragraph, reading as follows:

“(3) Surplus property certified by the Governor of the State in which the property is situated and by the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as the case may be, as being suitable and needed for use in training and maintaining any civilian component of the armed forces under his jurisdiction may be disposed of to the states, their political subdivisions or tax-supported instrumentalities, subject to such terms and conditions as the Administrator determines to be necessary to properly protect the interests of the United States. Such disposal shall be without monetary consideration — *Provided* That the Government shall be reimbursed for such costs incident to the disposal of the property as the Administrator may deem proper, including the expense of removal of any machinery, equipment, or personal property not transferred as a part of such disposal.”

It will be noted that if the property to which you refer is acquired from the Federal Government, it will be without monetary consideration, subject only to the possible expense of removal of machinery and equipment which may not be included in the gift.

Sections 5237 to 5252, both inclusive, of the General Code, relate to the acquisition, custody and management of state armories. Section 5238, General Code, makes the Adjutant General the Director of State Armories and authorizes him to provide grounds and buildings for such armories. This section provides in part, as follows:

“He shall provide for the management, care and maintenance of such grounds, armories and buildings and may adopt and prescribe such rules and regulations for the management, government and guidance of the organizations occupying them as may be necessary and desirable.”

I do not find in the statutes any express authority conferred upon the Adjutant General to lease in whole or in part any properties that have been acquired for armory purposes.

Section 154-40, General Code, relating to the powers and duties of the Department of Public Works, contains among others:

“(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof, excepting school and ministerial lands.”

It is to be noted that the authority here given to lease unused lands or other property, extends to any property under control of the state or any department, office or institution thereof, excepting school and ministerial lands. The scope of the authority thus given would clearly include property acquired by the state for armory purposes, and on the face of it would appear to give authority to the Department of Public Works to lease such portions of such armory property as are not immediately needed for armory purposes. However, a subsequent paragraph of said Section 154-40, General Code, provides as follows:

“Nothing in this section or in General Code sections 154-37 or 154-41 shall interfere with the power of the adjutant general to purchase military supplies, or with the custody of the adjutant general of property leased, purchased or constructed by the state and used for military purposes, or with the functions of the adjutant general as director of state armories, or with the director of highways in preparing plans and specifications for and constructing such buildings as he may require in the administration of his department.”

It is clear from this last quoted provision, that the Director of Public Works could not at his own instance interfere with the custody and control of an armory building which is vested in the adjutant general. However, I cannot see that there would be any interference with the authority of the adjutant general if with his consent and at his request, the department of public works should make a lease or leases of such portions of an armory building as are not in the judgment of the adjutant general immediately needed for armory purposes.

I do not find in the statutes of the state any authority for the plan which you suggest, of appointing a board of officers to take charge of the

armory property in question and to rent those portions of the plant not needed for armory purposes, but do think that the plan which I have suggested, of cooperation with the department of public works, would be within the law.

Accordingly, it is my opinion and you are advised :

1. The adjutant general is without authority to lease portions of armory property in his custody, which are not immediately needed for armory purposes.

2. When a portion of a state armory is not immediately needed for armory purpose, the department of public works has authority with the consent of the adjutant general, to lease such portion of said property, pursuant to the authority of Section 154-40, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.