1724.

MUNICIPALITY—AUTHORITY TO COMPROMISE CLAIM ASSERTED BY OCCUPYING TENANTS UPON ABANDONED MIAMI AND ERIE CANAL LANDS.

SYLLABUS:

The question as to the power and authority of the City of Dayton, Ohio, to compromise and settle certain claims asserted by occupying tenants in and upon a tract of abandoned Miami and Erie Canal lands known as the D. Z. Cooper lot, considered, and held: That said city as a municipal corporation has the legal power and authority to compromise and settle such claims by proper action of the city commission of said city, and to expend in good faith out of the public funds of said city such sums of money as may be necessary to effect the compromise and settlement of said claims.

COLUMBUS, OHIO, April 3, 1930.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication in which you request my opinion as to the authority of the city of Dayton, Ohio, to expend certain public funds in the compromise and settlement of certain controversies which have arisen and now exist with respect to the title to a certain one and onee-half acre tract of abandoned Miami and Erie Canal lands, which tract of land was purchased by said city of the State of Ohio, under authority of Sections 14177, 14177-1, 14177-2 and 14177-3, General Code, as enacted by act of the 87th General Assembly, April 4, 1927, (112 O. L., 120) which act was amended as to Section 14177-1 by an act of the 88th General Assembly, passed April 6, 1929, (113 O. L., 513). The controversies referred to are between the city of Dayton, the owner of record of the fee of said tract of land, and certain persons and corporations who have erected substantial buildings on said tract of land and who are occupying the same under a ninety-nine year lease, renewable forever, executed on November 1, 1835, by the State of Ohio to one D. Z. Cooper, under and through whom said occupants now claim.

The question as to the authority of the city of Dayton to compromise and settle its controversies with the occupying claimants above referred to is presented to you by a communication from Hon. J. B. Harshman, City Attorney of Dayton. This communication sets out quite fully the underlying facts relating to these controversies, as well as the terms of the proposed settlement of the same. The communication of the city attorney is as follows:

> "We would like to have a ruling of the Bureau of Inspection and Supervision of Public Offices concerning an expenditure of public funds which the city commission desires to make. The purpose of this proposed expenditure is to acquire immediate possession and a clear title to portions of a tract of land known as the State Lot which are necessary for street relocation in connection with grade crossing elimination.
>
> The question as to the validity of an expenditure for this purpose grows out of the following set of facts. Said acre and one-half lot is occupied by a number of different persons claiming title under various assignments and sub-leases of an original lease from the State of Ohio to D. Z. Cooper, dated November 1, 1835. The acre and one-half lot described in said lease lies adjacent to and on the east side of the Mad River Feeder branch of the Miami and Erie Canal on both sides of East Fifth Street.

After the passage by the Legislature of the canal abandonment act of March 25, 1925, the city of Dayton applied for the lease of the canal lands within and for some distance beyond the corporate limits of the city of Dayton, which application was granted and two leases were executed, one for all of said lands except a certain specified portion of the Mad River Feeder branch and the other lease for the said specified portion of the lands of the said Mad River Feeder branch of the canal. In this second lease, as a part of said Mad River Feeder branch, this acre and one-half lot was described.

On April 4, 1927, the General Assembly passed an act to provide for the sale to the city of Dayton of the abandoned Mad River Feeder Canal, being a part of the Miami and Erie Canal system within the corporate limits of said city. This act provided for the sale to the city of Dayton of so much of the Mad River Feeder Canal within the limits of said city as will be required or will be helpful in any alteration or relocation of any street, alley or other public way or any railroad or railroads or for any other purpose in carrying out any scheme for the elimination of railway grade crossings or for the elevation of railway tracks within said city. Section 2 of this act, G. C. Section 14177-1, provided that the sale was made subject to the rights of the present owners of the lease of the one and one-half acre lot or tract of land leased by the State of Ohio to D. Z. Cooper by lease dated November 1, 1835.

While the appraisers were engaged in appraising the canal lands for the purpose of leasing the same to the city pursuant to the canal abandonment act of 1925, Edward C. Turner, Attorney General, rendered an opinion to Honorable George F. Schlesinger, Director of Highways and Public Works, dated July 27, 1927. This opinion was in response to inquiry of the appraisers as to how to appraise the D. Z. Cooper lease. Mr. Turner held that this lease was not intended to, could not and did not create any obligation on the part of the State, nor any right in the lessee, which will survive the abandonment of the canal and the determination not to reserve any portion of the canal in question for hydraulic purposes, and the lease of the abandoned canal property to the city of Dayton, and therefore that the said lease to D. Z. Cooper will terminate upon the lease or sale of the property to the city of Dayton, and that the appraisement now being made should be made without regard to the Cooper lease. Mr. Turner gave consideration to the clause from Section 14177-1, above quoted, but held that that did not affect the situation and said: "This enactment does not assume to grant any additional rights, but seeks only to provide for the sale subject to the rights of present owners of the Cooper lease, whatever those rights may be."

The 88th General Assembly amended Section 14177-1 by providing that the sale of said land should be free from any and all claim or claims of right by former owners of the said D. Z. Cooper lease. (113 Volume Ohio Laws, page 513.) This act also provided for the Attorney General to co-operate with the City Attorney in litigation respecting the title of canal lands sold to the city of Dayton under said act and provided for a refunder to the city of Dayton of a portion of the purchase price in case of the loss of right, title or possession of any part of said lands as the result of the culmination of any such litigation or the compromise thereof made as herein provided.

Pursuant to said acts the city of Dayton has purchased the said Mad River Feeder Canal lands and the deed includes and describes said one

and one-half acre tract. The city has also instituted an ejectment suit against the occupants and claimants of the said State Lot. The Attorney General appears in said action as an attorney of record with the City Attorney. Said action is now pending in the Court of Common Pleas of Montgomery County, Ohio. The grade crossing elimination project hereinbefore referred to is so far under way that to await the final determination of this ejectment suit before acquiring possession of the parts of said State Lot necessary for street relocation will cause irreparable injury to the city of Dayton and very serious inconvenience and danger to the traveling public.

Accordingly, the city passed a resolution declaring the intention to appropriate in fee simple those parts of the State Lot necessary for street relocation. This resolution recited that the city of Dayton claimed title and right to immediate possession of said land but found others in possession thereof and claiming title thereto, and that the city was therefore instituting appropriation proceedings seeking to appropriate the fee simple title of said real estate and to acquire immediate possession thereof for said public improvement, and to thereby avoid the delay incident to doubt as to the ownership of said property, and to pay the compensation awarded by the jury for the value of the fee simple title thereof into court, and to have said money take the place of said land, and to have the city of Dayton and other claimants thereto interplead with respect thereto and have the same distributed, all in accordance with Sections 3686 and 3690 of the General Code of Ohio.

An ordinance to proceed with the appropriation was passed by the commission, but before the proceedings could be filed in court an application was made for a restraining order and upon a preliminary hearing a temporary injunction was issued and that case is now pending in the courts. The ground for the application seemed to be that the city could not appropriate land which it already claimed to own. The court did not finally pass upon that point, but gave it sufficient consideration to issue a temporary injunction. If the court should refuse a permanent injunction the other parties would appeal the case to the Court of Appeals so that it is not possible to tell how soon we could prosecute our condemnation case even if we are successful in being allowed to prosecute it.

At this stage of the proceedings a tentative compromise settlement has been negotiated by Mr. Lewis R. Smith who has acted throughout as negotiator for the railroads and the city in acquiring property for this project. A copy of said tentative proposed compromise settlement is hereto attached. It will be noted that by the said compromise settlement the city effects a considerable saving over what the cost will be to it if the litigation over the title to the State Lot should result in a decision against the city and in favor of the occupying claimants.

The commission of the city of Dayton upon due and careful consideration has determined and decided that in its opinion it is for the best interest of the city of Dayton to enter into this compromise settlement. The railroads who have to pay 65% of the cost of the real estate used for street relocation, upon careful consideration by their committee of engineers, have also concurred in a desire to effect this compromise settlement.

Honorable Gilbert Bettman, Attorney General, in a letter dated November 20, 1929, has set forth his concurrence in the opinion of his predecessor, Edward C. Turner, hereinbefore expressed, to the effect that the Cooper rights in the land were entirely incidental to his lease of surplus canal water

and that the abandonment of the canals effect a termination of Cooper's and his sub-lessees' rights in the land, and that therefore he is unwilling to recommend a surrender by the State of any part of the purchase price received for this land from the city of Dayton.

Our proposed compromise settlement, therefore, cannot be made under the authority of the act of April 6, 1929, (113th Volume Ohio Laws, page 513), but must be made under the general power of local self-government possessed by the city to compromise litigation involving its property rights. The city commission, of course, understands that in view of this situation the city will not receive any refunder from the State for any part of the purchase price which it paid for this land and it agrees to make the proposed compromise settlement with that understanding and to make no application for any such refunder.

Therefore, the question on which we desire a ruling from the Bureau of Inspection and Supervision of Public Offices is as to the validity of the expenditure of public funds of the city of Dayton for the purpose of acquiring the right of immediate possession and a clear title to the real estate hereinbefore referred to for the purpose aforesaid.

You will notice in the attached statement with respect thereto that there is some surplus real estate involved. That is sought as a matter of good business judgment because the part actually necessary is so related to the residue that nothing would be saved by taking merely that part and paying damage to the residue and the respective parties are willing to dispose of their entire parcels as a part of the proposed compromise settlement."

The attached statement referred to in the communication of the city attorney sets out quite fully the acreage claimed by each of said occupying claimants in the one and one-half acre tract of land here in question, and the figures relating to the proposed settlement of their claims. This statement which is submitted as a part of the communication of the city attorney to you is as follows:

"Statement of proposed compromise settlement for the purpose of acquiring immediate possession of and clear title to that part of the State Lot required for street relocation in connection with Grade Crossing Elimination.

The occupancy of that part of the State Lot which the city requires for street relocation in connection with grade crossing elimination is divided among the following persons, who claim as tenants by various assignments and sub-leases under the D. Z. Cooper Lease. We give you the number of square feet occupied by each, and the price paid by the city of Dayton to the State of Ohio for the land involved in said occupancy:

NORTH SIDE OF FIFTH STREET

Occupant	*Square Feet*	*Cost Square Foot*	*Total*
Esther Rappaport	9,224	$0.75	$6,925.00
Durst Milling Company (Recently acquired by the railroads on the basis hereinafter set forth)	7,964	.75	5,976.00

SOUTH SIDE OF FIFTH STREET

A. A. Smith Company	4,184	.91	3,805.00
Adam Schantz Estate Alley	892	.91	810.00
Adam Schantz Estate	5,497	.91	5,000.00
			$22,516.00

This payment was for land only as the State laid no claim to the buildings.

We may further state that these occupants are willing to convey to the city of Dayton all their right, title and interest, if any, in the D. Z. Cooper Lease, free from any liens or incumbrances placed thereon by themselves or their predecessors in title, and in figuring these proposed settlements, which include land and the value of all buildings erected on the land, they have deducted therefrom a certain sum of money that represents the difference between the settlement figures and what the present market value of the land with buildings included would be if they owned a good title in fee simple to the land:

Occupants	*Fee Value Land and Buildings*	*Deducted from Fee Value*	*Settlement Figure*
Esther Rappaport	$43,455.00	$13,455.00	$30,000.00
Durst Milling Company	78,648.00	20,900.00	57,748.00
A. A. Smith Company	40,500.00	5,000.00	35,500.00
Adam Schantz Est. Alley	4,995.00	1,631.00	2,364.00
Adam Schantz Estate	61,969.00	15,000.00	46,969.00
Totals	$229,567.00	$55,986.00	$172,581.00

We first show you the result if this proposed settlement is approved, giving you a conservative value of the surplus land not needed in the Track Elevation Project, and which will be available for sale by the city of Dayton as a result of this proposed settlement:

Name	*Amount*
Esther Rappaport	$22,750.00
Durst Milling Company	28,175.00
A. A. Smith Company	7,600.00
Adam Schantz Est. Alley	-------
Adam Schantz Estate	27,368.00
Total	$85,893.00

One suggested method of settlement was to have amount of verdicts in a condemnation case agreed to based upon appraisements. Under this arrangement the city would acquire only the land necessary for street purposes, and there would be no surplus. The cost of the actual land and buildings required and damage to residue if consent verdicts be taken in the proposed comdemnation suit will be as follows:

Name	*Amount*
Esther Rappaport	$23,388.00
Durst Milling Company	43,701.00
A. A. Smith Company	40,500.00
Adam Schantz Est. Alley	3,995.00
Adam Schantz Estate	54,674.00
Total	$166.258.00

You will notice by the above statement that the occupants are willing to make a concession in value of $55,986.00. For land only involved in this settlement the city of Dayton paid the State of Ohio the sum of $22,516.

It is understood that if this settlement is authorized the city of Dayton will make no claim for the refund of the $41,472.00 paid by the city to the State for the 1½ acres of ground, or for any part of said sum. This entire matter has been carefully considered by the city commission, and this entire setup of figures presented to them and the members of the commission desire that this compromise be made if possible."

The controversies referred to above, the proposed compromise and settlement of which give rise to the question here presented, have been placed in issue in an action in ejectment filed by the city of Dayton against said occupying claimants in the Common Pleas Court of Montgomery County, now pending, in which action I appear in my official capacity as Attorney General as one of the counsel for the city of Dayton under authority of Section 14177-1, General Code, as amended by the act passed April 6, 1929, 113 O. L., 513. This section provides in part as follows:

"The lands sold pursuant to this act shall be sold subject to all existing leases or subleases for any portion thereof, but free from any and all claim or claims of right by the former owners of the lease for the one and one-half (1½) acre lot or tract of land leased in connection with the use of surplus water power by the State of Ohio to D. Z. Cooper by lease dated November 1st, 1835, and free from any and all claim or claims of right by the former owners of sub-leases for any portion thereof, which said one and one-half (1½) acre lot or tract of land is deemed and considered to be a part of the canal lands of the State of Ohio and free from and unencumbered by any claim or claims existing by reason of or derived from said lease to D. Z. Cooper; provided that in any case in which the title of the State of Ohio or its right to sell and convey any portion of canal lands sold to the city of Dayton hereunder, shall be brought into question, the Attorney General is hereby authorized to institute and prosecute necessary and proper legal actions to quiet and perfect title and to secure and maintain possession of such lands either in the name and on behalf of the State of Ohio, or, in co-operation with the city attorney of the city of Dayton, in the name and on behalf of the city of Dayton, and in all actions instituted by the Attorney General the provisions of Section 345 of the General Code shall apply, and the Attorney General is further authorized to participate in the defense of any actions brought against the city of Dayton involving the title or possession of any part of said lands. Upon the concurrence of the Attorney General and the city attorney of the city of Dayton, and with the approval and consent of the Governor and the Superintendent of Public Works, any such litigation may be compromised, settled and adjusted. * * * "

This section further provides that upon the loss to the city of Dayton of the title or right of possession to any part of the canal lands sold by the State of Ohio to the city of Dayton under the provisions of said section and the other sections of the General Code enacted by the act of April 4, 1927, (112 O. L., 120), either as the result of the culmination of any litigation or the compromise thereof made as therein provided, the State shall refund to the city of Dayton that part of the purchase price of such canal lands represented by the original appraised value of that part thereof that has been so lost by the city of Dayton. Inasmuch, however, as the proposed compromise and settlement here in question is not to be made under the provisions of Section 14177-1, General Code, above quoted, and in said proposed compromise and settlement the city of Dayton expressly disclaims any intention to make any claim for refunder against the State of Ohio, it follows that the provisions of section 14177-1, General Code, have no application to the question here presented, and that the power and authority of the city of Dayton to effect a compromise with said occupying claimants with respect to their claims against the property here in question must be found in the powers of said city as a municipal corporation. In legal contemplation a compromise and settlement is an agreement or arrangement whereby a dispute or controversy is settled and adjusted by the mutual concessions of the parties and in this connection it is quite clear that the principles governing this subject have the same application, whether such dispute or controversy is in or out of court. See 5 Ruling Case Law, p. 876. In the authority just cited it is further said: "The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy. It has been said that the only elements necessary to a valid agreement of compromise are the reality of the claim made and the bana fides of the compromise; and a dispute must have existed between the parties as to their respective rights." 5 Ruling Case Law, p. 877.

It may be further said that where a claim is being asserted, or upon which an action is being prosecuted or defended in good faith, and of which the issue is regarded by both parties as doubtful, such claim may be the subject of a valid compromise and settlement. 7 O. Jur., p. 996; *Grasselli* vs. *Lowden,* 11 O. S., 349.

As above indicated, the claims of the occupying tenants on the tract of land here in question which give rise to the controversies now in issue in the action above referred to, are based upon a certain lease executed by the State of Ohio to one D. Z. Cooper under date of November 1, 1835, by the terms of which the State leased and demised said tract of land to said D. Z. Cooper and to his heirs and assigns for a term of ninety-nine years, renewable forever. Esther Rappaport, referred to in the statement which accompanied the communication of the city attorney, is now the owner and holder of the underlying lease which was executed and delivered to said D. Z. Cooper. The other persons and corporations named in said statement as occupying claimants are subtenants, so to speak, who obtained their rights in this land by deeds executed to them respectively by said D. Z. Cooper or by his successors in title under said lease. It appears that the lease of this tract of land to said D. Z. Cooper was so executed in connection with and as a part of a lease by which the State leased and granted to D. Z. Cooper and to his heirs and assigns, for a term of ninety-nine years, renewable forever, the right to take water from the Miami and Erie Canal at this point for hydraulic purposes. In an opinion of this office rendered by my immediate predecessor under date of July 27, 1927, and directed to the then Director of Highways and Public Works (Opinions of Attorney General 1927, v. 2, p. 1382) it was held that the lease of the tract of land here in question was but an incident to the lease of water rights in said canal to said D. Z. Cooper, and was for the purpose only of effectuating the use by said lessee of the water granted to him

by said lease. Entertaining this view, the then Attorney General held that the lease of this land to D. Z. Cooper and to his heirs and assigns did not survive the abandonment of the canal for hydraulic purposes, and that said tract of land should be appraised as property held by the State of Ohio by fee simple title, free and clear of the encumbrance of said lease and of the claims of those holding under it. As above indicated, this opinion of my predecessor was thereafter approved by me in a communication to the city attorney of Dayton. As against this view it is contended that the tract of land here in question is not a part of canal lands originally appropriated or otherwise obtained for canal purposes, but is land which was procured by the State by purchase under the authority of the act of February 18, 1830, for the purpose of being leased by perpetual leasehold under the authority of said act; that the existence of said lease and the claims of those holding under it have been recognized by the Legislature in the enactment of Section 14177-1, General Code, by the act passed April 4, 1927, and as amended by the act passed April 6, 1929, above referred to; and that the State, by officers administering affairs relating to the public works of the state, has for many years accepted the rental provided for in said lease after the water of said canal ceased to be used for hydraulic purposes. Although, as above stated, my own views on the merits of the questions presented on the issues in the ejectment case now pending in the Common Pleas Court of Montgomery County are that the defendants in said action have now no rights under said D. Z. Cooper lease in view of the abandonment of said canal for canal and hydraulic purposes, it is, nevertheless, easily preceived that there is a bona fide controversy and issue of law and fact involved in said case as between the city of Dayton and each of said parties defendant in said action.

I do not deem it necessary to make any extended analysis of the figures submitted showing the terms of the proposed compromise and settlement of the issues between parties in the pending case. It is sufficient to note that as against the contingency of an ultimate decision by the court adverse to the city of Dayton the proposed settlement on the figures submitted shows a saving to the city of more than eighty thousand dollars ($80,000.00). These would be the figures as to the saving effected by said settlement as against the contingency of such adverse judgment on the supposition that all of the money necessary to extinguish the adverse rights and claims of said occupying claimants is to be paid out of the treasury of the city of Dayton. As a matter of fact it appears, however, that the railroad companies involved in the grade crossing elimination project referred to in the communication of the city attorney, are to pay sixty-five per cent (65%) of the cost and expense of procuring such part of said one and one-half acre tract of land as may be needed for the purpose of said improvement. When in addition to the facts above stated with respect to the terms of said proposed compromise and settlement, it is considered that said compromise and settlement will obviate the long delay incident to the litigation of the issues involved through the courts, it is seen that irrespective of what my personal or official views may be with respect to the issues in the pending case, the proposed compromise and settlement bear the impress of an adjustment in good faith of the controversies now existing between the parties in the litigation now pending. It follows from the conclusions above indicated with respect to the substantial nature of the controversies existing between the parties in this litigation, and with respect to the real and substantial nature of the compromise and settlement proposed, that the only question remaining for consideration in this opinion is as to the power and authority of the city of Dayton as a municipal corporation to make such compromise and settlement. Whatever power and authority said city possesses in this respect attaches as an incidental power to the express power granted to

it to sue and be sued. By Section 3615, General Code, it is provided, among other things, that: "Each municipal corporation shall be a body politic and corporate, which shall have perpetual succession, may use a common seal, (and) sue and be sued". The same express power is given to the city of Dayton by Section 1 of the charter of said city. Supporting the power and authority of a municipal corporation to compromise and settle controversies as an incident to its power to sue and be sued it is noted that this proposition and the reasons for the same are stated in 19 Ruling Case Law, p. 775, as follows:

> "The power of a municipal corporation to settle or compromise claims is well established. The general power to compromise doubtful and disputed claims is necessarily incident to the power to sue and the liability to be sued. If a claim against a municipal corporation cannot be adjusted by way of compromise, neither could a claim in its favor. If this doctrine were applied generally to all claims, the result would be that in all disputed cases a municipal corporation must perforce engage in a litigation, the expense of which would be certain, but the result doubtful. A municipal corporation would be under the necessity of insisting at all hazards upon a judicial determination of all its controverted rights, and would be bound to pursue or resist all doubtful claims until final adjudication by the court of last resort. With respect to claims against a municipal corporation the right to compromise claims is not limited to such claims as the court of last resort decides to have been well founded, but if at the time of the settlement there was a reasonable doubt or dispute as to the liability of the municipality, so that the settlement was not a mere gratuity, it will not be set aside because the court is of opinion that if the case had been fought out to the end the municipality would have been entitled to a verdict as a matter of law. * * * "

In 44 Corpus Juris, p. 1459, it is said: "A municipal corporation may compromise pending actions brought by or against it. While the power to compromise is sometimes expressly conferred by statute, it is generally considered that the power arises out of the power to sue and to be sued". The rule here under consideration is stated in 7 O. Jur., at p. 1003, as follows: "Municipal corporations are included within the rule that the power to compromise and settle is inherent in all corporations as a corollary of the power to sue and to be sued. This power, on the part of municipal corporations, however, is limited, as a general rule, to rights of a proprietary nature, and does not ordinarily extend to matters pertaining to the governmental functions of the municipality". Supporting the propositions above noted are the cases of *Cincinnati Union Depot and Terminal Company* vs. *Cincinnati,* 105 O. S., 311, 316, and *Cleveland and Pittsburgh Railroad Company* vs. *Cleveland,* 15 O. C. C. (N. S.), 193. Looking to other jurisdictions where this question has been considered it is noted that in the case of *Agnew* vs. *Brall,* 124 Ill., 313, it was held that: "A municipal corporation has the power, however, to settle doubtful and disputed claims against it or in its favor. This power results from the capacity and power of suing and being sued, and to prosecute and defend suits." In the case of *Farnham* vs. *City of Lincoln, 75 Neb.,* 502, it was held that the power conferred by statute upon cities to sue and be sued carries with it the power to compromise and settle such suits. In the opinion of the court in this case it was said: "The power to compromise grows out of, and is incident to, the power to sue and be sued. The power to sue and be sued is conferred upon the city in express terms by its charter. This power would indeed be a snare, or its utility much impaired, if, having entered

upon litigation, the city could not make an accord as to controversant matters, but must pursue the controversy to its ultimate result in the court." Among the many other authorities supporting this proposition the following cases are noted: *Oakman* vs. *City of Eveleth,* 165 Minn., 100; *Town of Petersburgh* vs. *Mappin,* 14 Ill., 193; *Prout* vs. *Pittsfield Fire District,* 154 Mass., 450; *O'Connell* vs. *Pacific Gas and Electric Company,* 19 Fed. (2d), 460. See *Springfield* vs. *Walker,* 42 O. S., 543.

Upon the considerations above noted and discussed, and without entertaining or expressing any views as to the expediency of the proposed settlement by the city of Dayton of the controversies existing between it and said occupying claimants on the tract of land here in question, I am clearly of the opinion that said city, acting through the city commission, its legislative authority, has the legal power and authority to compromise and settle such controversies, and to expend in good faith out of the public funds of said city such sums of money as may be necessary to effect such compromise and settlement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1725.

COUNTY COMMISSIONERS—MAY ALLOW COUNTY AGRICULTURAL SOCIETY TO USE COUNTY HOME FARM PROPERTY FOR FAIRS.

SYLLABUS:

Section 2433-1, *General Code, empowers the board of county commissioners to allow the county agricultural society to use a portion of the county home farm not used for county home farm or for other public purposes, upon which to hold county fairs under the control and management of the county agricultural society.*

COLUMBUS, OHIO, April 3, 1930.

HON. DUSTIN W. GUSTIN, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date, which reads as follows:

> "Scioto County has owned a farm in fee simple with no restrictions as to the use it is to be put to, and with no reversion clause of any kind, since some time around 1870. The county infirmary is located on this farm.
>
> It will be greatly appreciated if your office will give a ruling on this question:
>
> Can the board of county commissioners legally grant the use of a certain portion of the county home farm to hold county fairs under the management of the county agricultural society."

It is my understanding from a recent conference with you that the part of the farm which you contemplate allowing the agricultural society to use, upon which to hold county fairs, is not used for any purpose in connection with the