

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1524 was questioned by
1987 Op. Att'y Gen. No. 87-069.

OPINION NO. 1524

Syllabus:

1. Pursuant to the provisions of Section 307.02, Revised Code, a board of county commissioners may purchase real estate by installment payments for the purposes enumerated.

2. An agreement to purchase real estate which provides for payment of the purchase price in installments extending

beyond the termination of the fiscal year in which made is subject to Section 5705.44, Revised Code.

3. The amount of the obligation under a contract by a board of county commissioners to purchase real estate remaining unfulfilled at the end of a fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

To: Lynn B. Griffith, Jr., Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, November 6, 1964

Your request for my opinion reads in pertinent part as follows:

"The Trumbull County Board of Commissioners is desirous of purchasing a lot located adjacent to the present County Jail and directly across the street from the present County Court House. The lot is to be purchased for the purpose of building a county jail and Office Building. The County Commissioners are not in a position to purchase the lot for cash. It is their desire to purchase the property under the authority provided in Section 307.02 Ohio Revised Code, wherein they are authorized to purchase for cash or by installment payments, real estate to be used for the purpose of constructing or rebuilding county offices, jail, county home, etc.

"In order that the sellers of the property would be willing to go through with the purchase on an installment basis, they wish to be assured that the Board of County Commissioners has the authority to purchase real estate on an installment payment basis. Since the property which is being purchased here is to be used for a project which would be employing federal funds, it is important that the premises be free and clear of all encumbrances. The sellers want to be assured in the event that they turn over a deed to the Board of County Commissioners, that they are secured for the payment of the future installments, even though the property is not encumbered by a mortgage. In order that they follow through on the sale of the premises, they must be assured that the installment payments will enjoy the priority of a fixed charge in subsequent years.

"Section 5705.44, O.R.C. indicates that the fiscal officer shall make provision in his budget for the installment payments as a fixed charge, but it is not clear that this authority also relates to the purchase of real estate; although, Section 307.22 /sic/ O.R.C. does authorize the Board of County Commissioners to purchase property on installment payments.

"Specifically our question is this: Does the Board of County Commissioners of Trumbull County have the authority to purchase real estate on installment payments? If the Board of County Commissioners has the authority to purchase this property on installment payments, can the sellers be assured that under the provisions of Section 5705.44 that the subsequent installment payments shall be established by the fiscal officer as a fixed charge against the annual appropriations of the County's budget?"

Section 307.02, Revised Code, provides in parts herein pertinent:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, least with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, and other necessary buildings, and sites therefor: * * *"

Your attention is directed to Opinion No. 2491, Opinions of the Attorney General for 1938, page 1078, wherein the then Attorney General was asked a question very similar to that which you set forth. At that time the Attorney General stated that pursuant to the provisions of Section 2433, General Code, (Section 307.02, supra,) county commissioners are expressly authorized to purchase by installment payments a building necessary for any of the purposes set forth in said Section.

The Attorney General was once again asked a question very similar to that which you set forth in Opinion No. 5184, Opinions of the Attorney General for 1942, page 383. It was there held that the county commissioners are authorized under Section 2433 (Section 307.22, supra,) to purchase a building to be used for county offices pursuant to a contract which provides that a warranty deed therefor shall be immediately delivered to the county, and that part of the purchase price shall be paid at the time of the conveyance and the balance thereof be paid in annual installments.

Accordingly, it is clear that pursuant to the provisions of Section 307.02, supra, county commissioners are authorized to purchase buildings and sites therefor when such are to be used for the purposes set forth in said section.

Your second question appears to be whether or not the installment contract here involved is a contract to which the provisions of Sections 5705.41 and 5705.44, Revised Code, apply.

Section 5705.41, Revised Code, formerly Sections 5625-

33 and 5625-34, General Code, provides in pertinent part as follows:

"No subdivision or taxing unit shall:

"* * * * *"

"(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in the ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon."

And Section 5705.44, Revised Code, formerly Section 5625.36, General Code, provides in pertinent part as follows:

"When contracts or leases run beyond the termination of the fiscal year in which they are made, the fiscal officer of the taxing authority shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge."

In both of the Opinions of the Attorney General cited above, it was concluded that the contract to purchase real estate through installment payments was within that classification of contracts referred to in Section 5625-36, General Code, (Section 5705.44, Revised Code). I agree with this conclusion.

Accordingly, in the case of contracts running beyond the termination of the fiscal year in which they were made, the fiscal officer is authorized to make his certificate for only the amount needed for the fiscal year in which the contract was made. The amount of the obligation under such contract remaining unfulfilled at the end of any subsequent fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

In specific answer to your question it is my opinion that:

1. Pursuant to the provisions of Section 307.02, Re-

vised Code, a board of county commissioners may purchase real estate by installment payments for the purposes enumerated.

2. An agreement to purchase real estate which provides for payment of the purchase price in installments extending beyond the termination of the fiscal year in which made is subject to Section 5705.44, Revised Code.

3. The amount of the obligation under a contract by a board of county commissioners to purchase real estate remaining unfulfilled at the end of a fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.