

physician, the commissioners have no jurisdiction to allow and pay the claim even though they might desire to do so and the claim should therefore be disallowed.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1101.

AIRPORT—COUNTY COMMISSIONERS MAY NOT ISSUE BONDS FOR
PURCHASE OF LAND TO BE USED AS AIRPORT.

SYLLABUS:

A board of county commissioners, not being authorized by statute so to do, may not lawfully purchase land to be used as an airport and may not issue bonds for such purpose.

COLUMBUS, OHIO, October 3, 1927.

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

GENTLEMEN:—Receipt is acknowledged of your communication of recent date in which you request my opinion upon the following question:

“May a board of county commissioners purchase land for the use of an airport and may bonds be issued for such purpose?”

It is well settled that a board of county commissioners, being purely a creature of statute, has only such powers as are expressly conferred upon it by statute, and such implied powers as are necessary to carry into effect the powers expressly granted. See *Grinwell vs. County Commissioners*, 6 O. C. C. (N. S.) 182. We must, therefore, look to the statutes to determine whether power has been conferred upon county commissioners to purchase land to be used for an airport, and whether bonds may be issued to pay for such land.

An examination of the statutes pertaining to the purchase of land by county commissioners, as such statutes read prior to legislation upon this subject by the last legislature, discloses that the county commissioners were limited in their power to purchase land to the specific purposes there enumerated. In Section 2446, General Code, provision is made for the appropriation of land, or an easement in land, for a court house, jail, public offices, bridges and approaches thereto, or public market places or houses. Under the provisions of Section 2434-3, General Code, the commissioners may purchase land for library purposes. Also under other sections of the Code, which need not be mentioned here, the county commissioners may acquire land for road purposes, ditches, hospitals, county infirmaries, and otherwise.

Suffice it to say a board of county commissioners is not empowered to acquire land for any purpose other than those specifically and expressly stated. And in none of the statutes pertaining to the purchase of real estate by a board of county commissioners do we find any authority to purchase land to be used as an airport or for any other purpose connected with aviation.

The 87th General Assembly enacted House Bill No. 1 (112 v. 364) entitled “The Uniform Bond Act.” Section 2293-2 of said act provides:

"The taxing authority of any *subdivision* shall have power to issue bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct. * * *

It will be seen from a reading of the foregoing statute that the issuance of bonds for the acquiring or constructing of a permanent improvement is made dependent upon the subdivision's being authorized by law to acquire or construct such improvement.

In the same act (112 v. 381) Sections 2433 and 3127, General Code, were amended as follows:

Section 2433. "The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, detention home, public market houses, county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress."

Section 3127. "The county commissioners shall have the power to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital or hospital buildings. But no money shall be expended for the original purchase, appropriation or construction thereof, until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them in the manner provided by law. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county."

It will be observed that the aforesaid sections of the statutes as amended make specific provision for the purposes for which county commissioners may purchase or appropriate land in addition to the other powers conferred by law.

It will also be of interest to note that in the same act Section 3939 of the General Code, relating to the powers of municipal corporations, was amended, and as amended made specific provision for the purchase or condemnation of land necessary for landing fields for aircraft and transportation terminals. The pertinent part of said section as amended reads:

"To purchase or condemn land necessary for landing fields either within or without the limits of a municipality, for aircraft and transportation terminals and uses associated therewith or incident thereto, and the right of way for connections with highways, electric, steam and interurban railroads, and to improve and equip the same with structures necessary or appropriate for such purposes."

Since in the amendment of Section 3939, *supra*, municipalities were expressly empowered to purchase or condemn land for a purpose such as you mention, either within or *without a municipality*, the act in which the sections mentioned were amended being silent as to the power of county commissioners to purchase land for such purpose, it seems clear that such authority was not intended by the legislature to be conferred upon counties.

Answering your question specifically, there being no statutory authority either express or implied which vests in a board of county commissioners the power to purchase land for the use of an airport, I am of the opinion that said board of county commissioners may not lawfully purchase land for such purpose, or issue bonds to make payment therefore.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1102.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND ROBERT S. HARSH AND ASSOCIATES, INC., COLUMBUS, OHIO, FOR REMODELING OF SCHOOL BUILDINGS AT THE OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME, XENIA, OHIO, AT AN EXPENDITURE OF \$96.00.

COLUMBUS, OHIO, October 4, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, and Robert S. Harsh and Associates, Inc., Columbus, Ohio. This contract covers a part of the architectural services in connection with remodeling of school buildings at the Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio, and calls for an expenditure of ninety-six dollars (\$96.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the monies appropriated by the 87th General Assembly for the purpose covered by this contract.

You have further submitted a certificate of authorization from the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home to enter into the contract.

Finding said contract in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.