

visions of Sections 4295 and 2288-1, General Code, are general provisions of statutes. As held by the court in the first paragraph of the syllabus of *State ex rel. Elliott Co. vs. Conner*, 123 O. S., 310:

“Special statutory provisions for particular cases operate as exceptions to the general provisions which might otherwise include the particular cases and such cases are governed by special provisions.”

The special statutes provide that depositaries of sinking fund trustees may be secured only by a surety bond. However, in the absence of such rule of interpretation the language of Section 4295, General Code, is scarcely broad enough to authorize the acceptance of securities as security for the return of depositary deposits except in those cases where “other securities as are prescribed by law” may be accepted. In other words, Section 4295, General Code, only purports to authorize the acceptance of the securities mentioned therein as security for the return of depositary funds when the depositor is otherwise authorized to accept some securities for such purpose.

Specifically answering your inquiry, it is my opinion that Section 2288-1, General Code, does not authorize municipal sinking fund trustees to accept first mortgages as security for the return of funds deposited in a depositary created for their funds. (Opinions of the Attorney General for 1929, Vol. I, p. 740 approved and followed.)

Respectfully,
JOHN W. BRICKER,
Attorney General.

1678.

COUNTY CHILDREN'S HOME — COUNTY COMMISSIONERS UN-AUTHORIZED TO PURCHASE LAND ADJACENT THERETO WHEN SAID HOME HELD UNDER INVALID LEASE.

SYLLABUS:

County commissioners are unauthorized to purchase real estate by virtue of section 2433, General Code, where such land is adjacent to a county children's home which is held by the county commissioners under an invalid lease.

COLUMBUS, OHIO, October 6, 1933.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

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

“I am herewith requesting an opinion under the following set of facts:

In 1917, A. B. sold to the A. B. Welfare Assn. a piece of real estate together with the buildings absolutely. In 1924, the A. B. Welfare Assn. leased this real estate to the County Commissioners of this County for a period of 10 years to be used as a Children's Home. The

lease has the provision for the renewal for another 10 years and at the end of that 10 years renewable forever for each succeeding 10 years. I am inclosing a copy of the lease for your reference.

Request has been made to the County Commissioners and they are considering buying adjoining property. Under General Code Section 2433, the County Commissioners have the power to construct certain buildings and also to buy real estate adjoining an existing site of a Children's Home.

The sole question in this case is whether the occupancy under the lease as inclosed gives them power to purchase adjoining property. The exact question being whether the present leased Children's Home amounts to an existing site referring to a Children's Home in the above Section of the General Code.

The proposed purchase of this real estate is being withheld pending the outcome of this requested opinion."

The lease in question is for a period of ten years with a rental of six hundred forty-nine dollars and forty-two cents (\$649.42). The lessee has an option to renew the lease for a further period of ten years at a rental of one dollar (\$1.00) and the right to renew the lease forever at the expiration of each ten years. The lease has the following conditions:

"Said property is leased for the use and purpose of providing a home for dependent, neglected and crippled children of Ross County, Ohio, and for such other children as might come under the jurisdiction of the Juvenile Court of Ross County, Ohio.

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And said lessor for itself, its successors and assigns retains the right and privilege to erect and use the necessary ground on said premises for the purpose of establishing other charitable buildings for similar purposes for which this lease is executed."

At the outset it is material to inquire into the authority of the county commissioners to enter into the original lease in 1924. It is fundamental that public officers and boards have such powers as are given to them by statute and such implied powers as are necessary to carry out the expressed powers. *Elder vs. Smith*, 103 O. S. 369, at page 370. If there is any authority for the county commissioners to have entered into the lease in 1924, it would be by virtue of section 2433, General Code, referred to in your letter. This section read in 1924, when the lease was entered into by the county commissioners, as follows:

"When, in their opinion, it is necessary, the commissioners may purchase a site for a court house, or jail, or land for an infirmary or a detention home, public market place, or market house, or additional land for an infirmary or county children's home at such price and upon such terms of payment, as are agreed upon between them and the owner or owners of the property. *The title to such real estate shall be conveyed in fee simple to the county.*" (Italics, the writer's.)

The power to purchase and appropriate has been held not to include the right to lease. See Opinions of the Attorney General for 1928, Vol. IV, pages 2898 and 2978. The legislature has apparently realized the necessity for statutory

authority to enter into leases. See section 3713-2, General Code, relative to the power of boards of education to enter into leases. County commissioners have been given such statutory authority to enter into leases for certain purposes. See sections 3138-3 and 3148-1, General Code. It is apparent that the county commissioners were acting outside of the scope of their authority in executing such lease. Such lease is therefore illegal and void. The following is stated in 11 O. Jur. 508:

“The authority of the county commissioners to bind the public by contract is by no means unlimited. On the contrary, it is measured by statutory enactment, and their contracts are void unless they come within and conform to the statute.”

The leading case in Ohio in support of this statement is the case of *Jones, Auditor, vs. Commissioners*, 57 O. S. 189.

At the present time, it is proposed to purchase land adjacent to that which they now hold under the 1924 lease. If there is any authority to purchase this land, it is by virtue of section 2433, General Code, which now reads as follows:

“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, juvenile court building, 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.”

Hence, the question presents itself, may the county commissioners purchase land adjoining a county children's home if such county children's home is held under an unauthorized lease. Even if the lease in 1924 were authorized, there is considerable doubt whether section 2433 would permit the county commissioners to purchase adjoining land. Throughout this statute, there seems to be an idea of permanency rather than a temporary holding of land. In my Opinion No. 178, rendered March 1, 1933, I held as disclosed by the syllabus:

“While Section 2433, General Code, authorizes the board of county commissioners to purchase lands adjoining a children's home for the purpose of such institution, such section does not authorize the board to enter into a contract to purchase lands under a land contract and to agree to pay therefor over a period of nine years, and thereupon receive a deed to the property, the installments of the purchase price to be forfeited in the event of a default in the terms of payment as stipulated in the contract.”

The conclusion seems inevitable that the proposed purchase by the county commissioners is unauthorized.

Hence, it is my opinion, in specific answer to your question, that county commissioners are unauthorized to purchase real estate by virtue of section 2433,

General Code, where such land is adjacent to a county children's home which is held by the county commissioners under an invalid lease.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1679.

APPROVAL, BONDS OF PIKE TOWNSHIP RURAL SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$4,806.96.

COLUMBUS, OHIO, October 6, 1933.

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

1680.

APPROVAL, BONDS OF WILLARD EXEMPTED VILLAGE SCHOOL DISTRICT,
HURON COUNTY, OHIO—\$7,203.41.

COLUMBUS, OHIO, October 6, 1933.

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

1681.

APPROVAL, BONDS OF MARTINS FERRY CITY SCHOOL DISTRICT,
BELMONT COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, October 6, 1933.

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

1682.

APPROVAL, BONDS OF SANDY TOWNSHIP RURAL SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$1,840.00.

COLUMBUS, OHIO, October 6, 1933.

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