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TOWNSHIP TRUSTEES—MAY EXPEND PUBLIC FUNDS FOR FIRE HOUSE—SECTION 505.37, R. C.—LAND HELD ON LONG-TERM LEASE—EXTENDING OR RENEWABLE FOR EXPECTED LIFE OF BUILDING.

SYLLABUS:

A board of township trustees, desiring to construct a fire house under authority of Section 505.37, Revised Code, may expend public funds on such construction when the land on which the building is to be erected is held under a long-term lease, extending or renewable for the expected life of the building.

Columbus, Ohio, July 24, 1956

Hon. William E. Didelius, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“The Board of Trustees of Perkins Township in Erie County desires to construct a fire station on a site which presently is the property of the Board of County Commissioners of Erie County

and constitutes part of the grounds of the Erie County Home. The Board of County Commissioners is willing to make such site available to the Board of Township Trustees for such purpose.

“In view of the provisions of Sections 307.09 and 307.10 of the Revised Code, I have concluded that the Board of County Commissioners would be without authority to sell the site in question to the Board of Township Trustees on mutually agreeable terms; however, it would appear that under the provisions of Section 307.09 of the Revised Code, the Board of County Commissioners could lease the site to the Board of Township Trustees for such length of time and upon such terms as the Board of County Commissioners might deem for the best interest of the public.

“The Board of County Commissioners is willing to lease the site in question to the Board of Township Trustees for the term of ninety-nine years, renewable forever, at a nominal rental; however, consideration of this possibility has given rise to the question whether the Board of Township Trustees would have the authority to expend township funds for the erection of a township fire station on a site held by the board under such a lease and not owned by the board in fee simple.”

I note that you have assumed that the commissioners, who could not *sell* the land in question except in accordance with Sections 307.09 and 307.10, Revised Code, could nonetheless lease it for ninety-nine years, renewable forever.

The authority of the county commissioners to lease land owned by the county is conferred by the terms of Section 307.09, Revised Code, which reads:

“If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use, or may lease it, but no such lease shall be for a longer term than one year; provided the board may grant leases, rights, and easements to municipal corporations or other governmental subdivision for public purposes or to corporations not for profit for hospital or charitable purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right, or easement is not deemed by the board to be inconsistent with the need of such land for public use by the county. Any such lease, right, or easement granted to a municipal corporation or other governmental subdivision, or to corporations not for profit for hospital or charitable purposes, may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board

deems for the best interests of the public. In case of the sale of such real estate not used for county purposes, and in case of such a grant of lease, right, or easement to a municipal corporation or other governmental subdivision, or to corporations not for profit for hospital or charitable purposes, all or such part of the proceeds thereof as the board designates may be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor." (Emphasis added.)

Probably you have based your assumption on the board language granting the commissioners the power to lease to governmental subdivisions. You will note, however, that this grant is limited by the needs and interests of the county. In view of the fact that county needs are variable, particularly over long periods of time, I think it doubtful that this statute gives the power to the commissioners to grant a lease for ninety-nine years, renewable forever. I would advise your commissioners and trustees to make the lease for a shorter period of time, extending or renewable for the expected life of the building.

Section 505.37, Revised Code, grants boards of township trustees certain powers for the purposes of providing fire protection. Among these powers is that to erect buildings in which to store fire-fighting equipment. The statutory language is:

"The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes as seems advisable to the board. *Such board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings,* and it may establish and maintain lines of fire-alarm communications within the limits of the township. * * *"
(Emphasis added.)

A township is not a corporation, vested with the powers of a corporation, and is strictly limited in its powers to those expressly granted by statute. *Hopple v. Brown Township*, 13 Ohio St., 311. The statutory language here grants the trustees the power to build a fire house; it does not limit that power by requiring that the building be erected on land held in fee simple. The trustees apparently are left in that respect

to the exercise of their sound discretion; and there would appear to be no statutory reason, therefore, which would prevent township trustees from adhering to the practices so common in private business of erecting improvements on land held only under long-term lease.

In an informal opinion addressed by this office on November 25, 1953 to Hon Clyde E. Lewis, Prosecuting Attorney of Delaware County (Informal Opinion No. 34, Informal Opinions of the Attorney General for 1953, page 1064), it was held that, when a township and a village jointly build a fire house in accordance with the second paragraph of Section 505.37, Revised Code, it is not necessary that the land be owned jointly. In other words, the township could expend public funds to erect a fire house on land owned solely by the village, and in which the township would have no interest other than its agreement with the village. You will note that the authority to build a fire house jointly, as conferred in the second paragraph of the section, is derived from the first paragraph, quoted above. The second paragraph reads:

“* * * The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.44, inclusive, of the Revised Code, and may prorate the expense of such joint action on such terms as are mutually agreed upon. * * *.”

If, then, the trustees can build a fire house jointly with a village on land the township does not own, they can do so acting alone; for their authority to build jointly derives only from their authority to build alone.

In the case of *Trustees v. Miner*, 26 Ohio St., 452, it was held that a township might improve for use as a town hall the second floor of a building it did not own, standing on land it did not own. Of course, the statutory language on which this decision was based was entirely different from that of Section 505.37, Revised Code; but that language granted, no more than this, any express statutory authority to improve land not owned.

I am of the opinion, and you are advised, that a board of township trustees, desiring to construct a fire house under authority of Section

505.37, Revised Code, may expend public funds on such construction when the land on which the building is to be erected is held under a long-term lease, extending or renewable for the expected life of the building.

Respectfully,

C. WILLIAM O'NEILL

Attorney General