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TOWN HALL—BOARD OF TOWNSHIP TRUSTEES—HAS AUTHORITY TO LEASE SO MUCH OF TOWN HALL AS IS NOT NEEDED FOR TOWNSHIP PURPOSES—BY YEAR OR FOR SHORTER PERIODS—LEASE MAY NOT BE MADE FOR PERIOD LONGER THAN ONE YEAR—SECTION 511.03 RC.

SYLLABUS:

Under the provisions of Section 511.03 of the Revised Code, the board of township trustees is given authority to lease so much of the town hall as is not needed for township purposes, by the year or for shorter periods, but such trustees have no authority to make such lease for a longer period than one year.

Columbus, Ohio, August 31, 1955

Hon. Clyde E. Lewis, Prosecuting Attorney  
Delaware County, Delaware, Ohio

Dear Sir:

I have before me your inquiry requesting my opinion as to the authority of a board of township trustees to lease a portion of their town hall to a farm organization, in consideration of the agreement of such organization to enlarge the building and provide kitchen, toilet and other facilities which are to be used in the discretion of the township trustees, by any group. Your letter does not indicate the term for which it is desired to lease this property but I assume that the organization would require a certain degree of extended use.

I note the provisions of Section 503.23, Revised Code, authorizing boards of township trustees to provide a hall or building for the purpose of holding elections. The same section authorizes the trustees upon the approval of a majority of the electors voting at a general election, to purchase a site and to erect thereon a town hall, and to levy a tax, such cost not to exceed \$2,000.00.

Section 511.01, Revised Code, provides that if a town hall is to be built at a cost exceeding that authorized by Section 503.23 supra, the township trustees shall submit the question to the electors, and subsequent sections of the law provide that if approved by the electors they may levy a tax therefor not exceeding four mills on the dollar in any year, and not extending more than seven years.

Section 511.03 of the Revised Code, provides:

“\* \* \* The board shall have control of any town hall belonging to the township, and it may lease so much of the hall as is not needed for township purposes, *by the year or for shorter periods*, to private persons, or for lectures or exhibitions, for which all rent shall be paid in advance or fully secured. \* \* \*”

(Emphasis added)

The above is the extent of the authority of the township trustees in renting the town hall and, keeping in mind the very familiar rule that a board of township trustees has only such powers as the legislature has seen

fit to grant it, I must hold that that section is a limitation on their powers. In other words, they may not lease any portion of the town hall for more than a year.

I recognize that by long continued practice, both townships and municipalities have rented or at least have permitted the use of space in their town hall for a large variety of purposes, and continuing for many years. These purposes are in addition to free uses by the public for public meetings, dances and entertainments. These long continued special uses include such purposes as theatres, movie houses, skating rinks, etc.

For example, in the case of *Partlow & Gates v. Monroe Township*, 44 Ohio App., 447, it appeared that the trustees of a township had leased part of its town hall to a theatrical organization which had installed an expensive pipe organ. The action was for damages against the township, in the sum of \$3,100, claimed to have been caused to the organ by a leaking roof. The statement of the case does not show for how long the hall had been rented, or definitely whether there was a lease, but it seems fair to assume, from the facts stated, that the arrangement had gone on for a considerable period. The court denied the right to recover damages, holding :

“Township trustees leasing township building to theatre partnership acted in ‘governmental capacity’ so as to preclude partnership’s recovery for damages to pipe organ from leak in roof. (Sections 3244 and 3395, General Code.)”

In Opinion No. 3802, Opinions of the Attorney General for 1941, page 393, it was held that township trustees are without authority to lease a portion of a township building for a term of ninety-nine years. The attorney general cited the provisions of the statute, Section 3397, General Code, 511.03, R. C., limiting the authority of the township trustees in leasing the town hall to one year or less. The opinion contained an intimation that the lease might have been upheld if there had been reserved a right to terminate it in case the property was needed for public use.

While there would seem to be no prohibition against a lease for a year, with an agreement that it might continue from year to year unless terminated by the trustees, it is my opinion that the board of township trustees has no authority to make a definite lease of the town hall or any portion thereof for a longer period than one year.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General