

Note from the Attorney General's Office:

1938 Op. Att'y Gen. No. 38-2491 was questioned by
1987 Op. Att'y Gen. No. 87-069.

After examination, it is my opinion that said proposed contract is in proper legal form and constitutes a binding agreement between the County Commissioners of Cuyahoga County and the State of Ohio, acting by its State Highway Director. I have accordingly endorsed my approval thereon and am returning the same, together with pertinent papers submitted in this connection to you.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2491.

COUNTY COMMISSIONERS—EXPRESSLY AUTHORIZED TO PURCHASE BY INSTALLMENT PAYMENTS A BUILDING NECESSARY FOR ANY PURPOSES STATED IN SECTION 2433 G. C.—NO AUTHORITY TO ISSUE NON-INTEREST BEARING NOTES AND EXECUTE AND DELIVER A MORTGAGE AS SECURITY.

SYLLABUS:

1. *Under the provisions of Section 2433, General Code, the county commissioners are expressly authorized to purchase by installment payments a building deemed necessary for any of the purposes mentioned in said section.*

2. *There is no authority whereby county commissioners may issue non-interest bearing notes and execute and deliver a mortgage to secure the same.*

COLUMBUS, OHIO, May 20, 1938.

HON. RALPH FINLEY, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date, requesting my opinion, which reads as follows:

"I am writing you for your opinion as to the construction to be placed upon Section 2433 of the General Code relative to the purchase of county buildings. A specific problem to which this statute is to be applied is as follows:

The commissioners have under consideration the question of purchasing a building for the sum of \$15,000.00, by the terms and conditions of which purchase they would

pay a stipulated monthly amount over a period of years at the end of which time the building would become the property of the county. The payment for the same would be made from the general fund.

The question is: In your opinion does Section 2433 as it now exists vest them with the power to legally do so. Previous rulings prior to the last amendment have been to the contrary. Second: Would it be legal for the said board of commissioners to purchase the same outright and issue their notes for the balance of the purchase price incurring an obligation against the county for said amount, said notes to be non-interest bearing, to take title to said premises immediately, giving their mortgage upon the same to secure the notes so issued."

Section 2433, General Code, to which your letter makes reference, reads as follows:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, *for cash or by installment payments*, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county home, 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." (Italics the writer's.)

The above quoted section, effective September 4, 1935, in very clear language, is dispositive of your first question in that your attention is directed to that part of the section which specifically authorizes the county commissioners to purchase by installment payments such a building as is contemplated provided the same is deemed necessary for any of the purposes mentioned in said section.

At this time, I wish to direct your attention to Section 5625-36, General Code, which authorizes the fiscal officer to make his certificate in the case of contracts running beyond the termination of the fiscal year for only the amount needed for the fiscal year and that

thereafter the amount that would become payable during the next fiscal year should be included in the annual appropriation measure for such next year as a fixed charge. You will note, therefore, that this section is an exception to the provisions of Section 5625-33, General Code.

Coming now to the second part of your question involving the right of the county commissioners to issue non-interest bearing notes for the balance of the purchase price and to secure the same by a mortgage, I wish to direct your attention to the provisions of the so-called Uniform Bond Act. Sections 2293-1, et seq., General Code. It will be noted that the county commissioners may issue notes in anticipation of bonds under the provisions of Section 2293-26, General Code. These notes and bonds would be subject to the net indebtedness limitations as provided for by Section 2293-16, General Code. However, nowhere in the so-called Uniform Bond Act is there any law authorizing the county commissioners to sign and execute a mortgage to secure the payment of notes or bonds. Article XII, Section 11 of the Ohio Constitution provides briefly that no bonded indebtedness shall be incurred or renewed unless in the legislation there is provided a levy of taxes sufficient to pay the interest and to establish a sinking fund for the final redemption of said bonded indebtedness.

In specific answer to your question, I am therefore of the opinion that:

1. Under the provisions of Section 2433, General Code, the county commissioners are expressly authorized to purchase by installment payments a building deemed necessary for any of the purposes mentioned in said section.
2. There is no authority whereby county commissioners may issue non-interest bearing notes and execute and deliver a mortgage to secure the same.

Respectfully,

HERBERT S. DUFFY,
Attorney General.