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TOWNSHIP TRUSTEES — WITHOUT AUTHORITY TO LEASE  
PORTION TOWNSHIP BUILDING, TERM NINETY-NINE YEARS.

SYLLABUS:

*Township trustees are without authority to lease a portion of a township building for a term of ninety-nine years.*

Columbus, Ohio, May 23, 1941.

Hon. Elmer E. Welty, Prosecuting Attorney,  
Bellefontaine, Ohio.

Dear Sir:

In an inquiry received from your office my opinion is requested on the question of whether township trustees may lease a portion of a township building for a term of ninety-nine years. Inclosed with the letter is a copy of the particular lease and upon examination of it, it appears that the term of the lease begins January 3, 1923 and ends on January 3, 2022, and conveys a certain portion of a township building to the lessee who, in consideration of the grant, agrees to furnish heat and light for the premises concerned. The only provision in the lease providing for its termination before the expiration of the term is based upon the lessee's failure so to heat and light the premises.

It is necessary to approach the question here presented having in mind the familiar rule that public officers or boards have only such powers as are expressly granted by law, and, in addition, such implied powers as may be necessary to carry into operation the expressly granted powers. 32 O. Jur. 934.

From an examination of the statutes concerning the authority of township trustees it appears that the only section specifically granting to township trustees the power to lease township property is Section 3397, General Code, which grants to trustees limited rights to lease a town hall. So much of Section 3397, General Code, as is necessary to be considered here is as follows:

“ \* \* \* They (township trustees) shall have control of any township hall belonging to the township, and from time to time, may lease so much thereof as may not be needed for township purposes, by the year or for shorter periods, to private persons, or for lectures or exhibitions, in all cases having the rent paid in advance or fully secured. The rents received may be used for the repair or improvement of the hall so far as needed, and the balance for general township purposes.” (Parenthetical matter mine.)

Since you do not describe the building upon which the lease in question operates, it is impossible for me to say definitely that the above statute has application, but if the building concerned might properly be called a town hall it is obvious that the lease, waiving all questions of adequacy of consideration, not only is not authorized by law, but is in direct contravention of law for the reason that Section 3397, supra, limits the terms of leases made thereunder to leases by the year or for shorter periods.

Proceeding to answer your question upon the theory that the building in question is not a “town hall,” I find that while township trustees have been given no general authority to lease township property, it is provided by Section 3281, General Code, that:

“ \* \* \* When the township has property which the trustees by resolution find it does not need, the trustees may sell and convey same. \* \* \* ”

It has been held by the courts that such a grant of power to convey

property includes the lesser power to lease such property and that rule has been applied in the case of township trustees by my predecessors in office. See *The Minimax Gas Company vs. State. ex rel.*, 33 O. App. 501; Opinion No. 4312, Opinions of the Attorney General for the year 1935, Vol. I, page 650; Opinion No. 1250, Opinions of the Attorney General for the year 1924, page 110.

However, the power to lease, which is derived through the grant of power to sell and convey, is not without limitation. In the *Minimax Gas Company* case, *supra*, in which the court commented upon a comparable section authorizing county commissioners to convey property, it was said that (3rd headnote):

“County commissioners cannot lease real estate owned by county for definite term and thereby embarrass themselves or their successors in using the property for public purposes.”

The same principle was referred to in Opinion No. 4312, Opinions of the Attorney General for 1935, Vol. I, page 650, when it was determined that township trustees might grant an easement over township lands only if they reserved the right to revoke the same if the land became needed for township purposes.

The case and opinion above referred to merely recognize the rule that public officers may not enter into proprietary contracts, the terms of which are for an unreasonable length of time and the effect of which would deprive themselves and their predecessors of the right to act in the manner granted by law. See 70 A.L.R. 794.

Again it is obvious that the term of the lease which contains no provision for revocation in case the township might have need for the space and which term is ninety-nine years in this case is unquestionably unreasonable and a lease made under such conditions may not be sanctioned.

It might be mentioned that the manner of acting adopted by the trustees in this case amounts in fact to an evasion of that part of Section 3281, General Code, which requires advertisement in the case of sale of township property since a ninety-nine year lease in most instances has

the effect of a sale. This arises from the fact that the term of the lease, ninety-nine years, undoubtedly will cover the useful life of the building and hence, for practical purposes, attempts to place the use of the portion of the building concerned beyond the control of the township trustees for as long as it may exist.

Based upon all of the above, it is my conclusion and opinion that township trustees are without authority to lease a portion of a township building for a term of ninety-nine years.

Respectfully,

THOMAS J. HERBERT,

Attorney General.