

## OPINION NO. 70-010

**Syllabus:**

1. When private cottages located on state lands, which are determined to be personalty, are sold there is no county auditor's real property conveyance fee due under Section 319.54, Revised Code.

2. No county auditor's real property conveyance fee is due for the assignment of a lease, so long as the lease is not a lease for a term of years, renewable forever, according to Section 319.54, Revised Code.

---

**To: Rudolph E. Battista, Carroll County Pros. Atty., Carrollton, Ohio**  
**By: Paul W. Brown, Attorney General, February 4, 1970**

I have your request for my opinion on the following fact situation: The Muskingum Watershed Conservancy District leases lots to private individuals for one year renewable annually for a period of one year, but are not leased for a term of years renewable forever. Subsequent to the original lease many lessees assigned their leases to other persons and gave a bill of sale to the purchasers for the cottages which had been erected on the leased lots. Your specific question is whether or not assignments of leases by lessees of lots or land and a sale by a bill of sale of a cottage or residence situated thereon are subject to the county auditor's real property conveyance fee set forth by Section 319.54, Revised Code.

The first consideration is the status of the cottages located upon the leased land. My recent Opinion No. 69-126, Opinions of the Attorney General for 1969, sets forth a review of the cases pertinent to the determination of whether or not cottages located on leased land are personalty or realty. According to information received from you the cottage owners have the right of removal; thus the cottages are personalty as between the lessor and lessee; see Holland Furnace Co. v. The Trumbull Savings & Loan Co., 135 Ohio St. 48 (1939); Case Manufacturing Co. v. Garven, 45 Ohio St. 289 (1887). Therefore, the sale of the cottage is a sale of personalty and is not a real property conveyance as set forth by Section 319.202, Revised Code.

The second part of your question involves the question of whether or not Section 319.54, Revised Code, would apply to the assignment of the leases. Section 319.54, Revised Code, states in pertinent part:

"(F) The county auditor shall charge and receive fees as follows:

"(3) \* \* \*  $\frac{N}{10}$  fee shall be charged when the transfer is made:

\* \* \* \* \*

"(1) By lease, whether or not it extends to mineral or mineral rights, unless the lease is for a term of years renewable forever;

\* \* \* \* \*

Therefore, it is my opinion and you are hereby advised that:

1. When private cottages located on state lands, which are determined to be personalty, are sold there is no county auditor's real property conveyance fee due under Section 319.54, Revised Code.

2. No county auditor's real property conveyance fee is due for the assignment of a lease, so long as the lease is not a lease for a term of years, renewable forever, according to Section 319.54, Revised Code.