

public moneys for private use when applied to officers and employes who have entered or continued in the service after the system went into effect.

"A pension in such a case is not a gratuity but a part of the stipulated compensation. A judiciously administered pension fund is doubtless a potent agency in securing and retaining the service of the most faithful and efficient class of men connected with those arms of the municipal service in which every property owner and resident of the city is most vitally interested. Reasons in support of this proposition need not be stated in detail. They are such as readily suggest themselves to every reflecting mind."

With reference to the same subject it is stated in *Corpus Juris*, Volume 43, page 813, as follows:

"A provision for a pension to police officers and their beneficiaries, at least under a statute applicable to members of the police force when it becomes effective, is not invalid, and when services are rendered under such a pension statute, the pension becomes a part of the contemplated compensation for those services, and in a sense becomes part of the contract of employment itself."

On the theory that pensions paid to municipal employes in pursuance of a pension system inaugurated for the purpose of providing pensions for such employes is a part of their compensation for services rendered it seems beyond question that the pensions may lawfully be paid from the same fund that the employe's regular compensation is paid.

I am therefore of the opinion in specific answer to your question, that funds received by a municipality from automobile license and gasoline taxes may lawfully be appropriated and expended for the payment of pensions to those municipal employes whose regular compensation, before being placed on the pension list, was legally paid from those funds.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3410.

COUNTY COMMISSIONERS—POWER TO LEASE REALTY TURNED OVER BY DISBANDED COUNTY AGRICULTURAL SOCIETY, DISCUSSED.

SYLLABUS:

1. *Where county commissioners have the title to lands acquired under the provisions of section 9898, of the General Code, they may legally lease the same from year to year, for a period of years, with the right of the lessee to sublet the premises subject, however, to the reservation that upon reasonable notice the county may terminate the lease if and when the public interests require it.*

2. *Such a lease need not be upon the premises as a whole, but may be made upon different parts thereof.*

COLUMBUS, OHIO, JULY 7, 1931.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Will you kindly give your written opinion based on the following facts:

The Erie County Agricultural Society has surrendered its charter and turned the real estate and the buildings thereon over to the Commissioners of Erie County.

1. Can the Commissioners of Erie County lease said real estate and buildings thereon from year to year, for a period of ten years, with the right to the lessee of subleasing all or any part of the premises?

2. Can the commissioners lease part of the premises and part of the buildings from year to year?

The first proposal of lease comes from a local Luncheon Club, having no financial responsibility, but who would be willing to furnish a public liability bond protecting the County from any action by persons who may be injured on the premises.

It is the writer's opinion that the county commissioners cannot go into the real estate business and lease the lands, except temporarily, until such time as the Fair Grounds and the buildings thereon can be sold at a reasonable price. And that a lease of the Fair Grounds or buildings for any other purpose, either directly or by subterfuge would be illegal. And that if a performance or public liability bond were given, it might be questioned by the sureties when it comes to payment, if there is no clear legal right on the part of the county commissioners to lease, sublease, and operate the Fair Grounds, after the disbanding of the Agricultural Society.”

Section 9898, of the General Code, provides in substance, that when an agricultural society ceases to exist and the county has made payments for the use of such society, as mentioned therein, “all such real estate and improvements shall vest in fee simple in the county by which the payments were made.”

Section 9900-1, General Code, authorizes the county commissioners to sell any part of such lands, or exchange for other lands, etc. No express provisions in the statutes have been found with respect to what disposition is to be made of such lands except as above noted. It is generally recognized that county commissioners have power to sell any real estate belonging to the county which is not needed for public use. See Sections 2447 and 2447-1, General Code. It is further well settled that the board of county commissioners or other public officers having possession of lands for the public may not take such action as will defeat the public use for which such lands were dedicated. The power to lease is not expressly granted by statute but it has generally been held that such power exists under proper circumstances, and when such action does not jeopardize the public interest.

In an opinion of the Attorney General, found in Opinions of the Attorney General for the year 1924, page 110, it was held as disclosed by the syllabus:

"1. It is in the discretion of the county commissioners as to what use shall be made of an abandoned children's home, so long as it is a proper county use.

2. The county commissioners may lease any unused lands or buildings of the county. Such a lease should be made in accordance with section 2447-1, which relates to a sale.

3. If in the opinion of the county commissioners a county home is no longer needed, the same may be disposed of by sale or lease in the manner provided in section 2447-1."

In the body of the opinion it was indicated that while there were no express provisions to lease land this provision was included within the power to sell. The following is quoted from said opinion :

"It will be evident that the leasing of the land is granting less power than the sale of such land. It would be inconsistent with the holding of land for public benefit if it were permitted to lie idle when proper business management would require the same to produce an income for the public use."

In the case of *Minimax Gas Company vs. State ex rel.*, 33 O. A. 501, it was held as disclosed by the headnotes:

"* * * *

2. County commissioners may temporarily lease real estate owned by county, subject to repossession when public needs require, without complying with Section 2447 et seq., General Code, requiring competitive bids after due advertisement in case of sale of real estate not needed for public use.

3. 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.

4. Where lease of real estate by county commissioners provided that it might be terminated at any time by notice, and that lessees should then have 90 days to remove from the premises, and it had been so terminated, it was not a defense to action for recovery of possession that it was terminated because of erroneous belief that lease was illegal or that county authorities had permitted lessee to make improvements without advising it that lease would be canceled.

5. Though lessee of real estate owned by county sued for recovery of possession after termination of lease had equitable defense, it did not have clean hands, and could not assert such equitable defense where, before lease was made, it had privately made loan to one of the county commissioners and thereafter employed him on a monthly salary.

* * * *

In the opinion of the Attorney General for the year 1924, above referred to, it was indicated that a lease should be made in pursuance of competitive bidding; however, the court decision last above mentioned, overrules the Attorney General in that respect.

From the foregoing, it would appear to be clear that county commissioners may lease property owned by the county which is not needed for public use. However, it would appear that such lease should contain a provision requiring

the surrender of the property upon reasonable notice when the public interests would demand that the county take possession of the same. It would further appear that in making such leases other than as above stated, the commissioners may exercise much the same powers as an individual would in granting a lease. In other words, there would be nothing to prevent the lessee from subletting the premises so long as the use of the same was not inconsistent with the original lease. For a rather complete discussion of the power of county commissioners to sell and lease real estate, see 11 Ohio Jurisprudence, page 486.

In view of the foregoing, and in specific answer to the inquiry propounded, it is my opinion:

First, where county commissioners have the title to lands acquired under the provisions of Section 9898, of the General Code they may legally lease the same from year to year, for a period of years, with the right of the lessee to sublet the premises subject, however, to the reservation that upon reasonable notice the county may terminate the lease if and when the public interests require it.

Second, such a lease need not be upon the premises as a whole, but may be made upon different parts thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3411.

APPROVAL, BONDS OF CITY OF ASHTABULA, ASHTABULA COUNTY,
OHIO—\$35,000.00.

COLUMBUS, OHIO, JULY 7, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3412.

APPROVAL, LEASE FOR RIGHT TO USE FOR MILL, WAREHOUSE,
AND GENERAL BUSINESS PURPOSES, CANAL LAND AT LAKE
LORAMIE—THE ODENWELLER MILLING COMPANY.

COLUMBUS, OHIO, July 8, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have recently submitted for my examination and approval a certain canal land lease in triplicate executed by the state of Ohio through you as superintendent of public works. By this lease there is granted and demised to The Odenweller Milling Company of Ottoville, Ohio, the right to use and occupy for mill, warehouse and general business purposes a parcel of Miami and Erie Canal lands which is more particularly described in said lease as follows:

“That portion of a state lot on the east side of the Miami and Erie canal at Lock No. 28, north of the Loramie Summit, that was conveyed