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BOARD OF EDUCATION—OWNER OF LANDS IMPROVED WITH FARM BUILDINGS—SECTION 5705.10 R. C.—"PERMANENT IMPROVEMENT"—NO BONDS OR OTHER EVIDENCE OF INDEBTEDNESS FOR ACQUISITION—PROCEEDS PAID INTO SPECIAL FUND FOR PERMANENT IMPROVEMENTS.

SYLLABUS:

Where a board of education is the owner of land which is improved with substantial farm buildings for housing cattle, hogs and farm machinery and storage of crops, together with a tenant house, the sale of such land would be the sale of a "permanent improvement" within the provision of Section 5705.10 Revised Code, and where no bonds or other evidences of indebtedness have been issued for the acquisition of such permanent improvement, the proceeds of such sale must be paid into a special fund for the acquisition of permanent improvements.

Columbus, Ohio, December 3, 1956

Hon. William Ammer, Prosecuting Attorney
Pickaway County, Circleville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"The Perry Township Local School District received by quit claim deed in 1946 from the United States of America, Federal Farm Security Administration, a 62.949 acres of land in Perry Township Local School District in furtherance of rural rehabilitation and the consideration for said quit claim deed being that the Perry Township Local School District maintain and operate said farm. The school has operated said farm for several years in connection with their vocational agriculture program. In July, 1950, an agreement was made and the same is on file in the Recorder's Office between the United States of America and the

Perry Township Local School District as to said farm by which the United States of America quit claimed all of their rights to said farm including the right to sell said farm to the Perry Township Local School District for the sum of $2,600.00 with the provision that if the said farm was sold at some future date by the school district, said school district was to pay the United States of America an additional $2,600.00.

"The school district now finds that it no longer has use in its vocational agriculture program for said farm and desires to sell the farm at public auction as provided for as to real property of a political subdivision in the Revised Code. If this is done, of course, the first $2,600.00 would have to be paid to the United States of America but it is believed that the farm would probably bring somewhere in the neighborhood of $20,000. at the time of sale.

"The school district is in need of additional funds in their General Fund to finance current operating expenses and they desire to sell the farm and place the amount realized into the General Fund for operating expenses. The original $2,600.00 paid to the United States Government was from the General Fund of the school district. While the farm was being operated by the school, all income from this farm was placed in a Farm Fund and was used to pay for equipment on the farm and maintenance of the farm. At no time has any amount been derived from the sale of bonds or notes to finance any part of the purchase or operation of the farm.

"I would, therefore, appreciate your opinion at an early date as to whether or not the sale of the farm and the proceeds of such sale would be considered to be the proceeds from the sale of permanent improvement under Section 5705.10 of the Revised Code of Ohio or whether such proceeds would be considered not to be from permanent improvements and, therefore, could be placed in the General Fund and used for current operating expenses."

In further correspondence you have stated the improvements on the farm consisted of "the usual farm buildings for housing cattle, hogs and farm machinery and storage of crops together with a tenant house."

Section 5705.10 Revised Code, provides generally for the disposition of revenue derived from tax levies, proceeds from the sale of bond issues, and proceeds from the sale of permanent improvements. In so far as pertinent, this section reads as follows:

"If a permanent improvement of the subdivision is sold, the amount received for the same shall be paid into the sinking fund,

> the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements; * * * Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there is no such fund, into the general fund. * * *."

Section 5705.01 Revised Code, which is part of the same chapter, defines "permanent improvement," as used in Sections 5105.01 to 5705.47, inclusive, as follows:

> "(E) 'Permanent improvement' or 'improvement' means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more."

You have suggested in a further communication that because the property here in question was purchased by expenditures from the board's general fund, and because no special tax levies are involved, the definition of "permanent improvement" as set out in Section 5705.01, Revised Code, and the restriction in Section 5705.10, Revised Code, regarding the disposition of the proceeds of the sale of a permanent improvement would not apply. On this point it is sufficient to observe that neither of these two sections makes any such distinction or exception, and that the restriction, mentioned above, in Section 5705.10, Revised Code, is set out in such broad language as to embrace all permanent improvements, however originally financed.

The sole question, therefore, presented by your inquiry is whether the farm received from the United States Government, mentioned in your letter, is a "permanent improvement" within the meaning of the statute above quoted. If it is, plainly the provisions of Section 5705.10 supra, control the disposition of funds arising from the sale of such property by the board of education. If it is not a permanent improvement, then it would appear that the board would be without restriction in the disposition of the funds arising from its sale, and could very properly place it in the general fund and use it for such purposes as the board might designate, including current operating expenses.

Referring again to the definition in Section 5705.01, Revised Code, it will be seen that the term "permanent improvement" includes "any property * * * including land and interests therein." In the ordinary

situation, where a term is defined by statute there is no occasion to make inquiry as to the ordinary or usual meaning of such term, or the meaning which has been accorded it by judicial pronouncement. 37 Ohio Jurisprudence, 536, Section 283. It is believed, however, that even if we ignore this statutory definition of the term, we still are forced to conclude, in light of clear judicial authority, that the property you describe should be classed as a permanent improvement.

In examining the authorities on this point we may, for the purpose of argument only, allow the concession that raw land could not be regarded as a permanent improvement but that an "improvement" means *something substantial added.* It is customary, of course, to speak of a lot or tract as "unimproved" when nothing has been built upon it; and to speak of it as an "improved property," when some substantial building has been erected thereon. We may similarly concede that merely clearing or cleaning or building a roadway or cultivating the land would not constitute it an "improvement" or a "permanent improvement" within the meaning of the statutes noted.

As stated in Lee v. Board of Education, 234 Ill. App., 141:

> "The phrase 'permanent improvement' means something done to or put on land which occupant cannot remove or carry away with him, either because it has become physically impossible, or because, in contemplation of law, it has been annexed to soil, and is to be considered part of freehold."

It has been held that crops planted on land and fertilizers applied thereto, do not constitute permanent improvements. Wright v. Johnson, 108 Vt., 855.

In the case of Pritchard v. Williams, 181 N. C., 46, the court gave a rather comprehensive definition of "permanent improvement," as follows:

> "'Permanent improvements' to land include all improvements of a permanent nature which substantially enhance the value of the property and, property being a farm, includes putting up a dwelling house or tenant houses, barns, and stables and other outbuildings, and any substantial improvements which might be made to those buildings, the necessary ditching and necessary or proper fencing, the digging of a well or planting of orchards and cutting of timber in the course of clearing for cultivation, the grubbing of stumps, bushes, and reed patches necessary to clear and break the land for planting and cultivation, provided that they enhance the value of the property, but do not

include repairs to buildings which should be made by the owner in the ordinary use of the property."

From these decisions it would appear, therefore, in the absence of a statutory definition, that while the mere cultivation and planting of land would not generally be regarded as a permanent improvement, and that the term necessarily implies the erection of buildings thereon of some more or less permanent structure, yet when these have been supplied, the other ordinary cultural processes that enter into the building up of land for agricultural or other purposes will all be included within the definition of "permanent improvement."

Applying these definitions to the case which you present, I note from your letter that the farm in question had on it "the usual farm buildings for housing cattle, hogs and farm machinery, and the storage of crops, together with a tenant house." There is nothing in your letter to indicate that these buildings are dilapidated or worn out, and so I assume that they have an expectancy of at least five years. I cannot escape the conclusion that these buildings constitute permanent improvements within the usual and ordinary meaning of that term and that they would fall within the definition set out in Section 5705.01, supra, even if we concede that raw land does not. I call particular attention to the wording of that definition, to wit, "any * * * improvement with an estimated life or usefulness of five years or more, *including* land and interests therein." Conceding that the inclusion of those words would not make land standing alone a permanent improvement within the meaning of the statute, it is clear that where the land has added to it buildings or other structures of a substantial character, then the land itself becomes a part of the permanent improvement.

Inasmuch as the money paid for the farm in question, in so far as it was paid by the school district was paid out of its general fund without incurring any indebtedness therefor, it would appear that the proceeds of the sale should be paid into a sinking fund or bond retirement fund.

Accordingly, it is my opinion that where a board of education is the owner of land which is improved with substantial farm buildings for housing cattle, hogs and farm machinery and storage of crops, together with a tenant house, the sale of such land would be the sale of a "permanent improvement" within the provision of Section 5705.10 Revised Code, and where no bonds or other evidences of indebtedness have been issued for the acquisition of such permanent improvement, the proceeds

of such sale must be paid into a special fund for the acquisition of permanent improvements.

Respectfully,
C. WILLIAM O'NEILL
Attorney General