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1. VETERANS, WORLD WAR II—IMMEDIATE TEMPORARY EMERGENCY HOUSING—COUNTY COMMISSIONERS—AUTHORIZED TO PURCHASE LAND OR BUILDINGS WITHOUT ADVERTISING OR OTHERWISE CALLING FOR BIDS—HOUSE BILL 508, 96 GENERAL ASSEMBLY.
2. TO ALTER, ERECT OR REPAIR STRUCTURES, COUNTY COMMISSIONERS GOVERNED BY SECTION 2343 ET SEQ., G. C.
3. SALE OF PROPERTY SO ACQUIRED—PROCEDURE—IN ACCORDANCE WITH SECTIONS 2447, 2447-1 G. C.
4. PROPERTY ACQUIRED BY COUNTY COMMISSIONERS—LEASEHOLD OR OUTRIGHT PURCHASE—COUNTY COMMISSIONERS OFFICIAL BODY OF COUNTY.

SYLLABUS:

1. Under the provisions of House Bill No. 508 passed by the 96th General Assembly providing for immediate temporary emergency housing for veterans of World War II and their families, county commissioners are authorized to acquire by purchase, lease or otherwise, improved or unimproved land and to erect thereon structures for the purpose of making such temporary emergency housing available and may purchase such land or buildings without advertising or otherwise calling for bids.
2. County commissioners in erecting, altering or repairing structures for the purpose aforesaid are governed by the provisions of Section 2343, et seq., relating to advertising for bids and letting contracts thereon for public buildings.
3. In the sale of property so acquired county commissioners must proceed in accordance with the provisions of Sections 2447 and 2447-1 of the General Code.
4. When property is acquired by the county commissioners of any county for the purposes of said act whether by way of leasehold or outright purchase, the lease or conveyance of the same is to be made to said county commissioners, as the official body of the county.

Columbus, Ohio, November 26, 1946

Honorable C. W. Chorpeneing, Prosecuting Attorney
Ashland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I am interested in procuring as soon as possible an opinion from you as to whether or not any provisions of the statute governing contracts with reference to public buildings and particularly as to advertising for bidders, are controlling on an action of the County Commissioners in entering into purchases or leases of real estate and the construction thereon of houses so as to provide emergency housing facilities for members of the armed forces under House Bill No. 508, and whether or not when it becomes necessary to sell the houses thus acquired under Section 9, they shall be sold only to the highest bidder.

Also your opinion as to the meaning of the following language contained in Section 5:

'The title to said property shall be in the County
Commissioners of the County'

particularly in view of the fact that the real estate may be leased."

1. *Purchase of lands and buildings.* You raise the question whether in the purchase or lease of real estate for temporary housing purposes

under the provisions of House Bill No. 508, passed by the 96th general assembly, it is necessary for the county commissioners to advertise for bids. This question may be disposed of rather summarily. The law relative to making of contracts by public bodies generally, including counties, undertakes to require competitive bidding in so far as practicable. See 33 O. Jur. p. 665. It is very clear that competitive bids would be wholly impracticable when a county or other public body seeks to purchase or lease real estate for a specific public purpose. Normally a particular property or site would be desired. Manifestly nobody but the owner of the property could submit a bid. The statutes governing the conduct of county commissioners in acquiring real estate for public purposes contain no requirement looking to competitive bids in the purchase of buildings or sites for public buildings. Section 2433, General Code, provides in part 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*; * * *”
(Emphasis supplied.)

Here it will be seen there is no suggestion of competition either as to price or as to a choice between available sites or buildings. The selection of sites or choice of buildings for a particular purpose and negotiations looking to their acquisition are manifestly matters that must be left to the sound discretion of the commissioners.

2. *Construction of buildings.* Section 5 of the act in question provides in part as follows:

“The county commissioners of each county in order to provide housing facilities are hereby authorized to acquire by purchase, lease, gift or otherwise improved or unimproved land, structures, materials, equipment, facilities and services and to erect structures for the purpose of making such temporary emergency housing available. The title to said property shall be in the county commissioners of the county. * * *”

The act contains no provision as to the procedure which the commissioners are to follow in erecting structures for the purposes contem-

plated. Accordingly, we must look to the general law for the required steps.

Sections 2343 to 2361, inclusive, of the General Code outline the steps required of county commissioners when it is proposed to erect a public building or an addition to or alteration thereof. Briefly stated, the commissioners are required to cause plans and specifications to be drawn and to advertise for bids for furnishing the materials and performing the work, and to let the contract to the lowest and best bidder. Section 2353, General Code, provides that when the estimated cost of the improvement does not exceed \$1,000 the four weeks' publication in two newspapers required for larger contracts may be reduced to a notice posted for fifteen days, and Section 2354, General Code, provides that when the estimated cost does not exceed \$200.00 the work may be let at private contract without publication or notice.

Since the act under consideration contains no exemption from or modification of these requirements of the general law, it appears to me that the General Assembly must have intended that contracts for emergency housing under the act should be let in the same manner required for other public buildings erected by the county.

3. *Sale of Properties.* Section 9 of the act under consideration provides:

“The county commissioners of any county which has acquired property in accordance with provisions of this act may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county.”

It will be noted that the commissioners are authorized, but not required to sell such property. If they do deem it to the interest of the county to sell, they are governed by Section 2447 et seq., General Code. Section 2447 provides in part:

“If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use, * * *.”

Section 2447-1, General Code, prescribes the procedure that must be followed in the disposal of real estate of the county. The pertinent portion of that section reads as follows:

“No sale of such real estate shall be made unless authorized by a resolution adopted by a majority of such commissioners. When such sale is so authorized a deed therefor shall be made by such board of county commissioners and only to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. Such board of county commissioners may reject any or all bids and readvertise until all such real estate is sold. * * *”

4. *Title to property acquired.* Your question implies that there is some inconsistency or at least doubt injected into the law by the use of the word “title,” in connection with the authorization to acquire property by way of leasehold. I have already quoted the first portion of Section 5 of the act which authorizes the commissioners “to acquire by *purchase, lease, gift* or otherwise improved or unimproved land.” That quotation ends with these words:

“The title to said property shall be in the county commissioners of the county.”

The word “title” is generally used to indicate a complete ownership; the ownership of the fee. However, when the manifest sense of a legal provision containing the word contemplates something less than complete ownership, the word takes on a different meaning. In the case of *Lumber Company v. Board of Supervisors*, 89 Miss. 448, 42 So. 290, it was held that when the word “title” is used in connection with a leasehold it signifies only such rights as go with a leasehold estate. Likewise in the case of *Snodgrass v. Copple*, 203 Mo. 480, 101 S. W. 1091, it was said that the word “title” does not necessarily mean a fee interest but may refer to all lesser estates in lands. Used in the act in question the word appears to me to offer no possibility for doubt as to its meaning. Plainly, the general assembly could not be accused of attempting to provide that the commissioners could procure a lease of property and at the same time must obtain an absolute conveyance of it. The only apparent intent was to provide that whatever interest in the property is acquired, whether by lease or outright purchase, it is to be taken in the name of the county commissioners of the county. As said by the Supreme Court in *Carder v. Commissioners*, 16 O. S. 353, 369:

“The board of county commissioners is the body—the quasi corporation—in whom is vested by law the title of all the property of the county. In one sense they are the *agents* of the county, and in another sense they are the *county itself*.”

Specifically answering your several questions, it is my opinion :

1. Under the provisions of House Bill No. 508 passed by the 96th General Assembly providing for immediate temporary emergency housing for veterans of World War II and their families, county commissioners are authorized to acquire by purchase, lease or otherwise, improved or unimproved land and to erect thereon structures for the purpose of making such temporary emergency housing available and may purchase such land or buildings without advertising or otherwise calling for bids.

2. County commissioners in erecting, altering or repairing structures for the purpose aforesaid are governed by the provisions of Section 2343, et seq., relating to advertising for bids and letting contracts thereon for public buildings.

3. In the sale of property so acquired county commissioners must proceed in accordance with the provisions of Sections 2447 and 2447-1 of the General Code.

4. When property is acquired by the county commissioners of any county for the purposes of said act whether by way of leasehold or outright purchase, the lease or conveyance of the same is to be made to said county commissioners, as the official body of the county.

Respectfully,

HUGH S. JENKINS
Attorney General