

662.

APPROVAL—BONDS OF LEE RURAL SCHOOL DISTRICT,
MONROE COUNTY, OHIO, \$2,000.00.

COLUMBUS, OHIO, May 27, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Lee Rural School Dist., Monroe County,
Ohio, \$2,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of re-funding bonds dated March 1, 1937, bearing interest at the rate of 4½% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

663.

COUNTY COMMISSIONERS — AUTHORITY — GREAT LAKES
EXPOSITION.

SYLLABUS :

County commissioners have only such authority as is expressly or impliedly conferred upon them by statute and in the absence of statutory authority they are not empowered to expend the funds of the county for participation in and in conjunction with the Great Lakes Exposition.

COLUMBUS, OHIO, May 27, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This is to acknowledge your recent request for my opinion which reads as follows :

“We are enclosing herewith a letter from our state examiner located at Cleveland relative to the payment by the county

commissioners for the construction of a building upon the grounds of the Great Lakes Exposition at Cleveland.

You are respectfully requested to furnish this department your written opinion as to the legality of this expenditure."

The letter from the examiner reads as follows:

"In our examination of the bills paid by the county auditor upon allowance of the county commissioners we find that during August, 1936, a payment of \$5,250.00 was made to a contractor for the construction of a log cabin on the grounds of the Great Lakes Exposition.

During the same month there were further payments of \$590.00 and \$164.25 for plants, shrubs, landscaping, etc., around the building.

We are informed that this building was used for the purpose of housing various exhibits assembled by the different county departments.

We are unable to find wherein the county commissioners are authorized to expend public funds for this purpose."

It is my understanding that the Great Lakes Exposition was an international demonstration held in Cleveland, Ohio, from June 27 to October 4, 1936. The State of Ohio was authorized by Amended Senate Bill No. 439, passed June 17, 1936, 116 O. L., Pt. 2, 234, to participate in this demonstration.

The county commissioners of any county have only such power as conferred upon them expressly or impliedly by statute. This thought is to be found in Vol. 11, Ohio Jurisprudence, page 306, and in discussion of same it was stated:

"* * * At the same time, that authority is strictly limited to that expressly or impliedly conferred upon them by statute, and they can act for and bind the county only within the limits of such authority * * *.

The power is further elaborated upon in 11 O. Jur. 552:

"* * * A county is created by legislative enactment, and has only such powers and authority as may be conferred by legislature. The legislature, having power to create, likewise has power to dissolve, and the officers of the county, in the administration of their political duties, are guided only by legislative provisions. This is particularly true as to the collection, custody, and disbursement of public funds."

A brief resume of the rights of county commissioners to participate in various memorial demonstrations and exhibits is to be found in the following sections:

Under Section 3059, et seq., General Code, a county may by following certain procedure erect, equip and furnish a memorial building to commemorate the services of soldiers, sailors, marines and pioneers of the county.

Under Section 2927, et seq., the county commissioners may appropriate from the county fund any sum not to exceed \$2500.00 towards defraying the expense of a county centennial celebration, but the appropriation of any sum exceeding \$2500.00 and not to exceed \$15,500.00, shall be upon ratification thereof of a majority of votes cast at the November election.

Under Section 9880, et seq., the county through the county commissioners may participate in the upkeep of county fairs and county fairgrounds.

I do not feel that the Great Lakes Exposition referred to in your letter and held in Cleveland is one that would fall within the above mentioned classifications of powers of the county for the reason that the Great Lakes Exposition, although perhaps beneficial to some of the residents of Cuyahoga County, was nevertheless not a Cuyahoga County centennial, fair or memorial.

The courts of this state have frequently held that public moneys can be disbursed only by clear authority of law and that when there is doubt a strict construction must be followed in favor of the taxpayer. This principle is set forth in the case of *State, ex rel. vs. Maharry*, 97 O. S. 272. The first branch of the syllabus reads as follows:

“All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law.”

While I am not unmindful of the sincere public spirit and good faith that motivated the action of the county commissioners in this particular instance, I am nevertheless, in the absence of express statutory power, forced to reach the conclusion in answer to your specific question that the county commissioners acted outside of their power and that their action was one unjustified by statutory provisions.

Respectfully,

HERBERT S. DUFFY,

Attorney General.