

purpose of rebuilding or repairing a school house or constructing a new school house, where the school house formerly used was destroyed by fire or other casualty, or if the use of the same for its intended purpose was prohibited by an order of the Industrial Commission, but before a board of education can avail itself of the provisions of section 7630-1 it must appear that it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630.

2. Under the provisions of section 5649-4 G. C., a board of education issuing bonds under the provisions of section 7630-1 G. C. may levy a tax sufficient to provide therefor, irrespective of any limitations.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2903.

REAL ESTATE—CONVEYANCE OF FEE SIMPLE TITLES TO PERMANENT LEASEHOLDS OF SCHOOL AND MINISTERIAL LANDS OF STATE—HOW MADE—SEE SECTION 3203-22 G. C., ET SEQ.

Conveyance of fee simple titles to permanent leaseholds of school and ministerial lands of the state, which have not been revalued pursuant to the provisions of the original act under which such leases were executed, may be made by the state to the lessees or their assigns, and deed executed in compliance with the provisions of sections 3203-28, 3203-22, 3203-23, 3203-25 and 3203-26 of the General Code.

COLUMBUS, OHIO, February 25, 1922.

HON. JOSEPH T. TRACEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

“A’ has a perpetual leasehold on section 16 school (or 29 ministerial) land, for which he has made application to obtain a fee simple title.

Said land has not been revalued as required by the original lease or the law pursuant to which it was executed, nor, was it revalued within one year from the taking effect of Secs. 24, 25 and 26, O. L. 107 (page 374).

The state is desirous of selling said land to ‘A.’

Question: What will be a legal procedure?”

Pertinent to your question, section 3203-24 G. C. provides:

“Except upon surrender of lease and sale as provided in section 43-1, in no case shall such application for surrender be considered, or any conveyance of the fee simple title be executed, where the revaluation of such lands has not been made in full compliance with the act pursuant to which such original lease was executed, or where the other terms, conditions and reservations of the lease under which such applicant claims title, have been fully complied with, special laws heretofore enacted notwithstanding. Provided, however, if revaluation has not been made as required by the original lease or the law pursuant to which it was executed, and instead thereof revaluation has been made pursuant to sections 24, 25 and 26 within one year

from the time of taking effect of this act, and the rents due upon such revaluation have been fully paid, such former failure to make or cause to be made such revaluations shall not be a bar to such surrender and sale."

It would seem that the facts stated in your inquiry, would fall within the limitations provided by this section; since revaluation of the leasehold in question had not been made in compliance with the act pursuant to which the original lease was executed, neither has any revaluation been made of the same, within one year from the time of the taking effect of section 3203-24 G. C. and pursuant to the provisions of sections 24, 25 and 26, therein mentioned.

It may be noted that the original law which provided for the granting of permanent leases of the school and ministerial lands of the state, is found in an act of the General Assembly of January 27, 1817, 15 O. L., page 202. Section 3 of this act provided in substance, that the trustees of any original surveyed township should be authorized to grant permanent leases of such lands, for ninety-nine years renewable forever, conditioned that the lessee pay an annual rental of six per cent (6%) of the appraised value of such lands, and at the end of every thirty-three years from the execution thereof, a revaluation of said premises should be made by three disinterested freeholders of the county in which such lands were situated, not inhabitants of such original surveyed township, said freeholders to be appointed by the commissioners of said county upon the application of said trustees, or the lessees or their assigns.

It is observed from a consideration of the facts stated, that the premises covered by the leasehold in question, have never been revalued in compliance with the terms of the original act cited, nor within one year from the taking effect of sections 24, 25 and 26, O. L., 107, 374.

Difficulty is seemingly encountered in attempting to answer your question by reason of the language used in section 3203-24 G. C.; since this section clearly provides, that in no case shall the application for surrender of such lease be considered, or conveyance of the fee simple title be executed, except upon surrender of lease and sale as provided in section 43-1, *when the revaluation of such lands, has not been made in full compliance with the act pursuant to which the original lease was executed.* It is thought to be evident that the case considered, does not come within the provisions of the exception mentioned, since section 43-1, or 3203-21 of the General Code, requires that application for the surrender of such lease be made within three years next following June 29, 1917. It would also seem impossible that any revaluation may at the present time be had in compliance with the terms of the act pursuant to which said lease was executed, for the reason that the same expired in the year 1921, and the revaluation required upon its expiration, and at the end of the last thirty-three year period, was not at that time made for the thirty-three year period then to ensue; thus it may be forcibly contended, that revaluation under such circumstances, in full compliance with the terms of the original act, may not be made until the end of the present thirty-three year period, provided of course said lease continues in existence under present conditions. In other words it may be concluded that if full force and effect be given to section 3203-24 G. C., a valid conveyance of the fee simple title to the lands in question may not be effected until approximately the year 1954. It is not thought reasonable to presume, however, that the legislature intended to so embarrass the state in the disposal of the school lands in question, or to unreasonably limit its power to convey title to the same, in those instances where the trust had been faithfully executed, and the general provisions of the law in reference thereto substantially complied with. On the contrary it is believed that the general policy of the law favors the sale of said school or minis-

terial lands, in those cases where the lessee has fulfilled his contract and conveyance of title in the instance is advantageous to the state.

In addition to such a construction of the general policy of the law relative to the question considered, it is believed that the provisions of section 3203-28 G. C. provides authority for the conveyance of the fee simple title in such cases as your inquiry indicates.

Section 3203-28 G. C. provides in substance, that whenever by general law the privilege has been granted to lessees whose leases require revaluations to be made, to surrender their leases and obtain fee simple title to such lands for the sum of the valuation made for purposes of determining the sum of the rent reserved, and vested property rights have been acquired therein, and it has become impossible through no fault of the lessee, his heirs or assigns to comply with the technical requirements of such general law, the lessee, his heirs or assigns, may make application to the trustees as provided by section 3203-22 G. C. for surrender of leases and the securing of fee simple titles. Proceeding under the authority granted by this section, the lessee may file his application with the trustees as provided by section 3203-22 G. C., setting forth a description of the lands for which he desires the fee simple title, the quantity thereof, date of lease, or assignment of same under which he claims title, the price per acre, and the total price which he desires to pay for such title, which in no event shall be less than the appraised value of such land. Thereupon the trustees are required to advertise by posting in at least five conspicuous places within the township, the fact that such application has been filed with them. At the time and place so fixed by the advertisement the trustees shall hear all objections to consenting to the surrender of lease and after full hearing determine whether the surrender of said lease and the conveyance of the fee simple title to such lands shall be for the best interests of the beneficiary of the trust in such cases. It is noted that provision is made by the section for the procedure in event the trustees decline to accept the proposal; excepting however, it is required that they shall forthwith transmit such application and a certificate of their action thereon together with all written objections and a statement of all oral objections to the state supervisor.

Under the provisions of section 3203-23 G. C., if the state supervisor approves the finding of the trustees, he shall notify said trustees thereof, and they shall forthwith notify the lessee of the approval of their action so given.

Under the provisions of section 3203-25 G. C., and within twenty days after such notice to the lessee of the approval of the action of the trustees, the conveyance of the lands in question may be effected, and the deed executed by the procedure detailed in sections 3203-25 and 3203-26 of the General Code.

Respectfully,

JOHN G. PRICE,
Attorney-General.