

2924.

APPROVAL, BONDS OF LORAIN COUNTY—\$74,000.00.

COLUMBUS, OHIO, November 23, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2925.

MUNICIPALITY—MAY NOT CONVEY MUNICIPAL LANDS TO STATE EXCEPT PURSUANT TO ADVERTISEMENT AND PUBLIC BID—DIRECTOR OF AGRICULTURE MUST HAVE ABSTRACT OF TITLE BEFORE CONVEYANCE CAN BE ACCEPTED.

SYLLABUS:

1. *A municipality may not convey to the state, for the use of the Department of Agriculture as a fish hatchery, lands owned by said municipality, except in pursuance to advertisements and sale to the highest bidder under the provisions of Section 3699, General Code.*

2. *The Director of Agriculture, under the provisions of Section 1117-2, General Code, may acquire lands by purchase or lease for the purpose of establishing a fish hatchery. In such instances abstracts of title should be obtained, before the acceptance of the conveyance, showing good title in the name of the parties making the conveyance.*

COLUMBUS, OHIO, November 23, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

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

“For your examination and opinion upon its sufficiency to pass title to the grantee therein named, I am sending you an instrument executed by the City of Findlay, Ohio. A copy of the Ordinance authorizing the transaction is thereto attached.

A deed executed by Ralph W. Moore acting in a trust capacity is likewise submitted for an opinion by your Department. It has been agreed that the purchase price of this property shall be its appraised value. Attached to such deed will be found the report of the appraisal committee.”

Ordinance No. 570, passed by the council of the City of Findlay, a copy of which you enclosed, in substance authorizes and directs the Director of Public Safety and the Mayor of the City of Findlay, Ohio, to execute a deed conveying to the State of Ohio for the purpose of constructing and maintaining a fish hatchery thereon, certain lands therein described, which need not be specifically described for the purposes of this opinion. There is also enclosed the deed executed by the Mayor and Director of Public Service-Safety of said city in pursuance to said resolution.

It is further noted that you desire to purchase certain lands held by Ralph W. Moore, acting as trustee, at the appraisal placed thereon by members of the Chamber of Commerce of the City of Findlay, Ohio, and you submit the deed of Mr. Moore, with your communication.

It is believed the first question necessary to consider herein is whether or not the municipality has the power to convey to the State of Ohio the lands under consideration in the manner undertaken.

There is no doubt but that Section 1435-2, General Code, fully authorizes the Director of Agriculture to acquire lands in the name of the state for the purposes of a fish hatchery by purchase or lease, and in so far as the purchase of such land involves a conveyance from private individuals, there would seem to be no difficulty presented. However, it is a well established proposition of law that municipal authorities have only such powers as are expressly granted by law and such implied powers as are necessary to carry into effect the express powers so granted.

Section 3698, General Code, expressly empowers municipalities to sell or lease real estate belonging to the corporation when the same is not needed for any municipal purpose. The concluding sentence of said section provides:

“Such power shall be exercised in the manner provided in this chapter.”

The courts have held in substance that the method provided by statute for selling property belonging to a municipal corporation must be strictly complied with. *Kerlin Brothers vs. Toledo*, 20 O. C. C. 603.

Section 3699, General Code, provides:

“No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and re-advertise until all such real estate is sold or leased.”

In connection with the above section it has been noted that Section 3631, General Code, authorizes municipalities, among other things, to sell real estate. However, it is believed that this section must be construed in connection with Section 3699, supra, and the conclusion cannot be escaped that there is no legal authority for a municipality to sell real estate, excepting in pursuance to an ordinance approved by two-thirds of all members elected to council and the approval of the board or supervisor having supervision or management of such real estate, and in pursuance to advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation, and then such sale must be made to the highest bidder.

In view of the foregoing it will conclusively appear that there was no proper authorization for the Mayor and the Director of Public Service-Safety to execute the deed which you have submitted and it could convey no proper title to the State of Ohio for the purposes mentioned.

In so far as the title to the private lands are concerned, it will be assumed that your Department does not desire to acquire such lands, unless the property from the city may also be acquired. However, as heretofore indicated, the powers exist for your Department to purchase for the State of Ohio lands for fish hatcheries. In the instant case there is no abstract submitted showing that either the municipality or Mr. Moore has a good title to the properties desired to be conveyed. Undoubtedly, if the municipality proceeds according to law and advertises the property, the Director of Agriculture could bid for the State upon such sale the same as any other party interested.

Based upon the foregoing you are advised that:

1. A municipality may, not convey to the State of Ohio for the use of the Department of Agriculture for use as a fish hatchery, lands owned by said municipality, except in pursuance to advertisement and sale to the highest bidder under the provisions of Section 3699, General Code.

2. The Director of Agriculture, under the provisions of Section 1117-2, General Code, may acquire lands by purchase or lease for the purpose of establishing a fish hatchery. In such instances abstracts of title should be obtained, showing good title in the name of the parties making the conveyance, before the acceptance of the conveyance.

I am returning herewith the resolution which you submitted, the deed executed by the officials of the City of Findlay and the deed executed by Mr. Moore.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2926.

DEPUTY STATE SUPERVISORS OF ELECTIONS—ASSISTANT CLERKS—
EMPLOYMENT AND COMPENSATION OF SAME—LIMITATIONS ON
EMPLOYMENT DISCUSSED.

SYLLABUS:

1. *Section 4877, General Code, authorizes the appointment of assistant clerks by boards of deputy state supervisors and inspectors of election and by deputy state supervisors of election when necessary, subject to the limitations contained in said section.*

2. *The compensation of such assistant clerks, in counties containing cities in which registration is required, shall be paid by the county and such cities. In other counties such compensation shall be paid by the counties alone.*

COLUMBUS, OHIO, November 24, 1928.

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

GENTLEMEN:—I am in receipt of your recent letter which reads as follows: