

6531

COUNTY COMMISSIONERS, BOARD OF—NO AUTHORITY TO ENTER INTO CONTRACT TO PURCHASE PLOT OF GROUND FOR BURIAL OF HONORABLY DISCHARGED VETERANS PURSUANT TO SECTION 2949-2 GENERAL CODE WHERE CONTRACT PROVIDES PART OF PURCHASE PRICE SHALL BE PAID IN CASH, REMAINDER OVER PERIOD OF YEARS.

SYLLABUS:

A board of county commissioners has no authority to enter into a contract for the purchase of a plot of ground for the burial of honorably discharged veterans pursuant to Section 2949-2, General Code, which contract provides that part of the purchase price shall be paid in cash and the remainder in installments payable over a period of years.

Columbus, Ohio, December 3, 1943.

Hon. Hugo Alexander, Prosecuting Attorney,  
Steubenville, Ohio.

Dear Sir:

Your request for my opinion reads:

“The Board of County Commissioners of Jefferson County, Ohio, has under consideration the purchase, pursuant to the provisions of Section 2949-2 of the General Code of Ohio, of a plot of ground in the Union Cemetery of Steubenville, Ohio, for the burial of honorably discharged soldiers, sailors, marines and nurses who have been in the service of the United States in time of war.

The purchase price is \$10,000.00 and the Commissioners are not now in position to pay said entire sum in cash. If it can be legally done The Union Cemetery Association, from which such purchase is proposed to be made, is willing to accept payment of said purchase price in the following manner: \$500.00 upon the signing of a contract for the purchase and sale of said plot of ground; \$1,500.00 during the year 1944; \$2,000.00 during the year 1945; \$2,000.00 during the year 1946; \$2,000.00 during the year 1947, and \$2,000.00 during the year 1948.

Before any definite action is taken by the Commissioners your legal opinion is desired and respectfully requested upon the following legal questions:

(1) Are the County Commissioners authorized to enter into a contract for the purchase of said plot of ground upon terms that part of the purchase price shall be paid in cash and the remainder in installments payable in future years in the manner above indicated?

(2) If the Commissioners are authorized to enter into a contract for the payment of said purchase price in installments as above indicated, could such contract be legally entered into upon the filing of a certificate by the County Auditor that the amount of the cash payment of \$500.00 is in the Treasury, unappropriated for any other purpose, or is in process of collection, without further certifying that funds for the payment of the deferred installments are in the Treasury, unappropriated for any other purpose, or in process of collection?

(3) Would such a contract be a 'continuing contract' within the meaning of that term as used in the parenthetical clause in Section (d) of General Code Section 5625-33, or a contract coming within the intendment of the provisions of Section 5625-36 as to 'contracts xxx running beyond the termination of the fiscal year in which they are made'?

(4) Would conveyance to the County of the title to said plot of ground be required to be made upon payment of the \$500.00 cash payment, or could it legally be provided that such conveyance should be made upon payment of the last installment of the purchase price?"

I assume that no definite form of contract has as yet been drafted, but from the facts contained in your letter it appears certain that the proposed contract would of necessity obligate the Commissioners of Jefferson County to pay the future installments. This, of course, would create an indebtedness against the county. In my Opinion No. 1267, found in Vol. III of the Opinions of the Attorney General for 1939, at page 1867, I said:

"The power to incur indebtedness by the State or a political subdivision thereof, is legislative except in so far as it may be limited by constitutional provisions. It is the universal rule that public corporations have no power whatever to incur indebtedness except such as is delegated to them by the legislature of the State, either expressly or by clear implication. Such delegated corporate powers are strictly construed by the courts. Numerous decisions of courts in this jurisdiction as well as others illustrate the rule that political subdivisions even though they possess certain home rule powers, are rigidly restricted as to their faculty to raise and expend money, to the purposes and in the manner specified and through the officers and channels authorized by the law."

In support of this statement, I cited the following authorities which, I believe, you will find confirm the view I there expressed:

Treadwell v. Commissioners, 11 O. S., 183  
Commissioners v. State, 78 O. S., 287  
Allord v. Board of Education, 101 O. S., 469  
State, ex rel., v. Andrews, 105 O. S., 489  
Abbott on Public Securities, pp. 101 and 107  
McQuillin on Municipal Corporations, 2d Ed., Sec. 2322  
Attorney General v. Lowell, 246 Mass., 312  
Haskin v. Orlando, 51 Fed. 2d, 901  
Citizens Bank v. Burtensville, 98 Ind. App. 92  
Pace v. Paducah, 241 Ky., 568, 44 S. W. 2d, 574

I know of no provision of law which authorizes a board of county commissioners to purchase on the installment plan plot of ground for the burial of honorably discharged veterans and I must therefore conclude that such power does not exist. Section 2433, General Code, authorizes the commissioners to make certain purchases on the installment plan, but the proposed purchase is not among those enumerated.

You do not state whether it is proposed to give a mortgage to the cemetery association as security for the unpaid purchase price, but such procedure also is prohibited. In my Opinion No. 3179, found in Vol. II of the Opinions of the Attorney General for 1940, at page 1127, I said:

“It is obvious that a county has no general authority to mortgage its real estate. This being true, a county may not purchase real estate and take subject to or assume a mortgage thereon.”

For these reasons, you are advised, in specific answer to your first question, that a board of county commissioners has no authority to enter into a contract for the purchase of a plot of ground for the burial of honorably discharged veterans pursuant to Section 2949-2, General Code, which contract provides that part of the purchase price shall be paid in cash and the remainder in installments payable over a period of years. This answer makes it unnecessary to give any consideration to the other three questions contained in your request.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.