

50' West, 200 feet to a point; thence South 3 deg. 39' East, 296' (feet) to a point in the north line of the park driveway, thence South 61 deg. 39' along the said north line of the park driveway, 200 feet to a point; thence North 2 deg. 44' East, 236 feet to the place of beginning.

Upon examination of this lease I find that the same has been properly executed by the Conservation Commissioner and by St. Marys Post, American Legion, a corporation, by the hands of its president and secretary, acting pursuant to a resolution of the members of said organization adopted under date of December 6, 1934.

From an examination of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity with Section 471, General Code, and other statutory enactments relating to leases of this kind. I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3739.

COUNTY COMMISSIONERS—DUTY TO PROVIDE CONSULTATION  
ROOM IN COURT HOUSE FOR COURT OF APPEALS.

*SYLLABUS:*

*It is the duty of the County Commissioners to provide for the use of the Court of Appeals a consultation room in the Court House.*

COLUMBUS, OHIO, January 4, 1935.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“Your formal opinion is requested concerning the following matter.

Section 1530 of the General Code of Ohio reads in part as follows:

‘The County Commissioners must provide a room for the holding of the Court of Appeals and a consultation room for the Judges, cause such rooms to be properly furnished, heated, ventilated, lighted, kept clean and in good order and provide such other conveniences as the Court deems necessary.’

Our situation in Ashland is that the Court of Appeals uses the Common Pleas Court Room for their hearings which works out satisfactorily. As to a consultation room, however, the arrangement has not been satisfactory. The office of the Common Pleas Judge adjoins the Court Room but is completely filled with his own library, books and papers. No room is provided in the Court House for the

exclusive use of the Court of Appeals as a consultation room where their books, records and papers may be kept and consultations held. The use of the Common Pleas Judge's room is at the pleasure of the Common Pleas Judge and while there is a good spirit of co-operation in the use of this room for consultation it is quite inconvenient.

The necessity has arisen that the Court of Appeals have a separate room provided for their exclusive use where they may have their own library, hold consultations, etc. They deem it necessary that the convenience of exclusive use be provided because opinions in the process of being written are often kept there and books laid out which should not be disturbed except by them.

In your opinion must the County Commissioners provide such a room in the Court House for the Court of Appeals?"

A County is a subdivision of the state organized by itself for judicial and political purposes. *Hamilton County vs. Mighels* 7 O. S. 109. It is a constituent part of the plan of permanent organization of the state government—a wholly subordinate political division or instrumentality, created and existing almost exclusively with a view to the policy of the state at large, and serving as a mere agency of the state for certain specified purposes. *State, ex rel. Godfrey vs. O'Brien* 95 O. S. 166; *Portage County vs. Gates* 83 O. S. 19; *Cincinnati W. & Z. R. Co. vs. Clinton County*, 1 O. S. 77.

The County Commissioners are the principal executive officers of the County, having the management and control of its property and financial interests, its police regulations, and its corporate business. The Board is vested with exclusive and original jurisdiction over all matters pertaining to County affairs, except in respect to matters cognizance of which is exclusively given to some other officer or person. *Ireton vs. State* 12 O. C. C. (N. S.) 202, 31 O. C. C. 412 affirmed without opinion in 81 O. S. 562.

The Ohio Constitution in creating and defining the powers and duties of Courts of Appeals contains the following provision in Article IV, Section 6:

"The Court of Appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, *and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers.*" (Italics mine.)

In your letter, quoted supra, you have stated the pertinent provisions of Section 1530, General Code, which expressly require the County Commissioners to provide a room for the holding of the Court of Appeals, and a consultation room for the judges. There is no doubt, in view of the provisions of Article IV, Section 6 of the Ohio Constitution and Section 1530, General Code, that the county commissioners must provide a Courtroom, consultation room and make such other provisions as are necessary for the exercise of its functions by the Court of Appeals.

Your question is whether such facilities, particularly a consultation room, must be provided in the Court House for the Court of Appeals. Section 2418, General Code, is important in answering that question. It reads:

"Until proper buildings are erected for the permanent seat of justice in a county, the commissioners shall provide a suitable place for holding the courts thereof."

The allocation of rooms in a Court House to various divisions of the government was discussed at length in *State, ex. rel vs. Babst*, 97 O. S. 64. The Court there stated that although the County Commissioners are authorized to provide a Court House, when in their opinion it is needed, nevertheless in the erection of such permanent seat of justice the County Commissioners are not vested with authority or discretion to determine the character of the building that shall be erected, other than to fix the amount that shall be expended therefor. On the contrary, that authority is vested in a building commission, of which the members of the Board of County Commissioners are ex officio members. The four other members are appointed by the Court of Common Pleas. The plans, specifications, and drawings must be approved by this building commission and not by the County Commissioners. In the Babst case, supra, the Court said:

"After the building is erected the county commissioners have no discretion or authority to deprive the courts the use of any part of the building provided by its building commission for the administration of justice. \* \* \* The primary purpose of the court house is to provide a permanent seat of justice. \* \* \* It is unimportant whether such seat of justice occupies the entire court house or a part thereof specified and assigned and designated by the building commission for the use of the courts in the administration of justice. The part so assigned is as much within the control and jurisdiction of the court as if the whole building were devoted to judicial purposes. \* \* \* The judicial power is a separate and independent department of government and when a building is erected and the whole or a part thereof is provided or assigned by the building commission to the use of this independent department of government such building or such part as may be so assigned naturally and necessarily comes within the control of that department, otherwise a conflict of authority might seriously impede the administration of justice."

In the case of *Dittrick, et al, vs. Barr, et al*, decided March 17, 1924, by the Court of Appeals of Cuyahoga County, reported in Vol. 22, Ohio Law Reporter, page 289, the Court cited the Babst case, supra, and stated:

"It is the unanimous opinion of this court that in this case the Supreme Court of Ohio unequivocally holds that, in a contest between the board of county commissioners and the common pleas judges, as in the case at bar, the common pleas judges have the exclusive dominion for their own purposes, over the rooms of the court house, and this holding in no manner interferes with the supremacy of the power and authority of the board of county commissioners over the court house, where said power and authority does not extend to a prohibition against the court for the use of necessary rooms, in order to perform its functions. For this right of the courts is superior to every

other right, and the structure known as the court house is primarily the seat of justice in the county, wherein the courts hold the scepter of authority."

Although, in the two cases last cited the discussion related to the use of rooms in the Court House by the Court of Common Pleas, the statutory provisions with respect to the housing of a Court of Appeals are substantially the same and, in my opinion, the same reasoning is applicable in both instances.

In *Commissioners of Trumbull Co. vs. Hutchins* 11 Ohio 369, Read, J., said:

"In fitting up their court rooms and offices it is the duty of the commissioners to fit them up as court rooms and clerks' offices, and this requires that they should be supplied with, and contain those things which are necessary to enable the officers for whose public use they are fitted up to perform their official duties."

The sovereignty of the state in respect to its courts extends over all the state and the power to create a court carries with it the power to define its jurisdiction and to provide for its maintenance. In *State, ex rel, Ramey vs. Davis, et al, County Commissioners*, 119 O. S. 596, it was well stated by Robinson, J., at page 601:

"It has been the practice of the state from the date of the organization of the state, to require counties to provide court houses, with court rooms and other suitable facilities for the housing of the respective courts of the respective county political subdivisions, and such has been the practice, in so far as we know, in all other jurisdictions. Whether it amounts to an imposition of a burden upon a political subdivision of the state which ought to be borne by the state alone is a question of policy rather than of power, and violates no provision of the state constitution."

In view of the constitutional provisions, statutes and authorities cited herein, I am of the opinion, in specific answer to your inquiry that it is the duty of the County Commissioners to provide for the use of the Court of Appeals a consultation room in the Court House.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*