

1924.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO—  
\$16,000.00.

COLUMBUS, OHIO, November 28, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1925.

POOR RELIEF—COUNTY COMMISSIONERS UNAUTHORIZED TO ACCEPT MORTGAGE FROM PERSONS CERTIFIED AS COUNTY CHARGES AS SECURITY FOR POOR RELIEF FURNISHED TO THEM.

*SYLLABUS:*

*The county commissioners have no power, by virtue of Section 18 and Sections 2548 et seq. of the General Code, to accept a mortgage from persons certified as county charges as security for poor relief to be furnished to them.*

COLUMBUS, OHIO, November 29, 1933.

HON. COLONEL G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“A family, consisting of a man and his sister, are residents of the City of Newark and are in indigent circumstances. These persons have been certified to the County Commissioners as county charges and inasmuch as they are of advanced years, the probable duration of life for each is approximately one year. These persons are the owners, in fee simple, of a certain unencumbered piece of real estate in the City of Newark, the value of which is probably not more than \$300.00. In return for relief furnished them by the County, they have offered to give a mortgage covering this property to the County Commissioners, in the amount of any and all relief furnished them by said Commissioners. These persons do not wish to deed this property to the Commissioners because there is a probability that some relatives may come to their aid in the near future and furnish them with the necessary support. However, the Commissioners do not feel that relief should be granted to them under the circumstances unless some security for the repayment of the sums necessary is furnished.

As we interpret these facts, the one specific question is: Have the County Commissioners power, by virtue of Section 2548 et seq. and Section 18 of the General Code, to accept such mortgage?”

Section 18, General Code, reads as follows:

“The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board

or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

The authority provided by this section for a county to accept a "gift, devise or bequest, moneys, lands or other properties, for their benefit" and the provision that "such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation" does not authorize a county to accept a mortgage of real property as security for poor relief to be furnished by the county.

You state that this family, consisting of a man and his sister, is indigent and in need of relief of a permanent nature. As a consequence you state that they have been certified as "county charges". Section 2548, General Code, provides:

"When a person becomes a county charge or an inmate of a city infirmary and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located, and the proceedings therefor, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the county commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary."

I am unable to find any authority in Section 2548, quoted supra, or in this section in conjunction with Section 18, quoted supra, which would authorize the county commissioners to accept a mortgage from persons certified to the county commissioners as county charges as security for their maintenance, nor am I able to find any other sections of the General Code which would give the county commissioners authority to accept such mortgage under the circumstances you describe.

There is a well established rule of law that a board of county commissioners is an agency or instrumentality of the government, and as such, has those powers, and those only, that are placed upon it by statute. *Peter vs. Parkinson, Treas.*, 83 O. S. 36, 49; *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S. 189; *Elder vs. Smith, Auditor*, 103 O. S. 369, 370. Consequently it is apparently beyond the powers of the board of county commissioners to accept such a mortgage. Moreover, under the facts you have stated in your inquiry, the county commissioners would be "loaning" poor relief funds. There is no authority in the statutes for the loan of such funds, and it is clearly beyond the powers of the county commissioners

to loan money unless there is statutory authorization. This proposition is so well settled in the law that there is no necessity for any citation of authority.

Specifically answering your inquiry, it is my opinion that the county commissioners have no power, by virtue of Section 18 and Sections 2548 et seq. of the General Code, to accept a mortgage from persons certified as county charges as security for poor relief to be furnished to them.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1926.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE AND MEMBER COUNTY BOARD OF EDUCATION — OFFICES INCOMPATIBLE, MEMBER COUNTY BOARD OF EDUCATION AND PROBATION OFFICER.

*SYLLABUS:*

1. *The offices of township trustee and member of the county board of education are compatible. Opinions of the Attorney General for 1931, Vol. I, page 145, approved and followed.*
2. *The offices of a member of the county board of education and probation officer appointed by virtue of section 1662, General Code, are incompatible.*

COLUMBUS, OHIO, November 29, 1933.

HON. FANNIE M. MYERS, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR MADAM:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“May we have an opinion from your office concerning the following matters:

At the last general election in our county the same person was elected to the office of township trustee and a member of the county board of education: Another person holding the appointive office of Probation Officer of the county was elected to the county board of education.

Our query is:

- (1) May the same person hold the office of township trustee and a member of the county board of education, and
- (2) May the Probation Officer of the county also hold the office of a member of the county board of education?”

In answer to your first question, I call your attention to an opinion to be found in Opinions of the Attorney General for 1931, Vol. I, page 145. The syllabus of that opinion reads as follows:

“An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time.”

I concur in the conclusion reached in that opinion and in the reasoning upon which it is based.