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MUNICIPAL CORPORATION ; PURCHASE OF LAND OUTSIDE CORPORATE LIMITS—ANNUAL PAYMENTS IN LIEU OF TAXES—§719.02 R.C.

SYLLABUS:

Where a municipal corporation initiates appropriate proceedings to obtain land outside its corporate limits and prior to the termination of such litigation the land is acquired by purchase, the municipal corporation is required, by Section 719.02, Revised Code, to make the annual payments therein provided in lieu of taxes to the county treasurer of the county in which such property is located.

Columbus, Ohio, October 28, 1958

Hon. Wilford R. Miller, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is respectfully requested on the following problem:

“A municipal corporation recently began appropriation proceedings to obtain land in this county for the purpose of drilling wells and establishing a water works project. Necessary suits were commenced for the appropriation of the land under authority of Section 719.01 of the Revised Code, and thereafter settlements were made privately with the individual land owners and the necessity for consummation of the appropriation proceedings thereupon ceased.

“Section 719.02 of the Revised Code provides, in part, as follows:

‘In the appropriation of property for any of the purposes named in section 719.01 of the Revised Code, the municipal corporation may, when reasonably necessary, acquire property outside the limits of the municipal corporation.

‘If real property so acquired is removed from the tax duplicate, the municipal corporation shall pay annually to the county treasurer of the county in which such property is located, commencing with the tax year after the removal of such property from the tax duplicate, an amount of money in lieu of taxes equal to the smaller of the following:’

“The question now facing the taxing authorities of this county is whether the municipality may be required to make payments in lieu of taxes on the property so acquired, and your opinion is therefore requested for the guidance of the County Auditor and Treasurer.”

Section 719.02, Revised Code, was amended by the 102nd General Assembly and became effective on September 16, 1957, 127 Ohio Laws, 796. The amendment added the second paragraph to the statute as quoted in your request and other language which is not here in issue.

The question to be determined is whether or not municipalities must make the payments required by the statute in those cases in which land is acquired by purchase rather than by appropriation. A municipal corporation may acquire property by purchase, gift, devise, appropriation, or lease. Sections 715.01 and 715.21, Revised Code. I can conceive of no logical reason why the legislature would make the payments required by Section 719.02, *supra*, dependent upon the method of acquisition of property rather than its situs. The statute, as amended, does not lend itself to such interpretation. The initial words of the amendment, “If real property *so acquired*” refer to the concluding clause of the preceding sentence and therefore has reference to property “acquir[ed] outside the limits of the municipal corporation.” In my opinion Section 719.02, *supra*, is applicable whenever a municipal corporation acquires property outside of its limits regardless of the method utilized in such acquisition.

Therefore, in specific answer to your inquiry, you are advised that it is my opinion that where a municipal corporation initiates appropriate proceedings to obtain land outside its corporate limits and prior to the termination of such litigation the land is acquired by purchase, the municipal corporation is required, by Section 719.02, Revised Code, to make the annual payments therein provided in lieu of taxes to the county treasurer of the county in which such property is located.

Respectfully,
WILLIAM SAXBE
Attorney General