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AS SOIL CONSERVATION SERVICE OF FEDERAL GOVERNMENT IS NOT A "GOVERNMENTAL SUBDIVISION", COUNTY PROPERTY MAY NOT BE LEASED TO SUCH AGENCY FOR PERIOD IN EXCESS OF ONE YEAR—§307.09, R.C.

SYLLABUS:

Since the Soil Conservation Service of the Federal Government is not a "governmental subdivision" within the purview of Section 307.09, Revised Code, county property may not be leased to such agency for a period in excess of one year.

Columbus, Ohio, October, 30, 1961

Hon. George C. Steinmann, Prosecuting Attorney  
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"This office has been requested to give an opinion as to the legal right of the Erie County Commissioners to furnish office space in the proposed County Office Building at the site of the old Erie County Children's Home for the Soil Conservation Service of the United States Department of Agriculture, a federal agency subsidized by funds from the State of Ohio and from Erie County.

"Section 307.03 of the Ohio Revised Code permits a board of county commissioners, by resolution, to permit the use of public buildings under its control for any public purpose upon such terms as said board may prescribe.

"However, Section 307.09 of the Code limits this disposition and provides that a board of county commissioners may lease real estate belonging to the county and not needed for public use to municipal corporations or other governmental subdivisions for public purposes or to corporations not for profit, for hospital or charitable purposes, where such lease is not deemed by the board to be inconsistent with the need of such land for public use by the county. The Section further provides that any such lease may be for such length of time, upon such terms, for such purposes and may provide for such renewals thereof as the board deems for the best interests of the public.

“This right is limited by the rules set down in Opinion No. 6105 of the Ohio Attorney General issued June 4, 1943, declaring that the United States Agricultural Adjustment Administration and the United States Farm Security Administration were not governmental subdivisions of the State of Ohio and Opinion No. 591 of the Attorney General issued June 3, 1957, holding that the United States Department of the Army was not a governmental subdivision within the State of Ohio.

“In view of these decisions we would appreciate an opinion from your office as to whether the Soil Conservation Service of the United States Department of Agriculture is such an agency as not to constitute a governmental subdivision within the State of Ohio and therefore ineligible to receive office space from the Erie County Commissioners.”

A board of county commissioners has only those powers expressly granted by statute or necessarily implied from those granted. 14 Ohio Jurisprudence 2d, Section 82, page 259.

Section 307.03, Revised Code, is a general statute dealing with the use of county property, and reads:

“The board of county commissioners may, by resolution, permit the use of public grounds or buildings under its control for a public library or any other public purpose, upon such terms as it prescribes.”

Section 307.09, Revised Code, which deals with the sale or lease of county property, reads in part:

“\* \* \* \* \* \* \* \* \*”

“If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use, or may lease it, but no such lease shall be for a larger term than one year, unless such lease is part of a lease-purchase agreement, in which case the lease may be for a period not exceeding twenty-five years; except that in the case of real estate used or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof, belonging to the county, the term of such lease shall not exceed twenty years and may renew such leases for similar terms of years; provided the board may grant leases, rights, and easements to municipal corporations or other governmental subdivisions for public purposes or to privately owned electric light and power companies or natural gas companies or telephone or telegraph companies for purposes of rendering their several public utilities services, or to corporations not for profit for hospital or charitable purposes, in-

cluding among other such purposes memorial structures and underground structures, poles, piers, towers, wires, pipe lines, underground cables, and manholes, on or in lands owned by the county where such lease, right, or easement is not deemed by the board to be inconsistent with the need of such land for public use by the county. Any such lease, right, or easement granted to a municipal corporation or other governmental subdivision, or to privately owned electric light and power companies or natural gas companies or telephone or telegraph companies for purposes of rendering their several public utilities services, or to corporations not for profit for hospital or charitable purposes, may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the public. \* \* \*"

While Section 307.03, *supra*, the general statute, might be interpreted to allow a lease such as here in question, since Section 307.09, *supra*, deals specifically with leases, I am of the opinion that said Section 307.09 is controlling in the instant matter.

Under Section 307.09, *supra*, there is no doubt that the county may lease property to the Soil Conservation Service for one year. The question then is whether such a lease may be made for a period in excess of one year. This in turn depends upon whether the Soil Conservation Service may be considered to be a governmental subdivision within the purview of the section.

As you have indicated, in Opinion No. 591, Opinions of the Attorney General for 1957, page 173, one of my predecessors ruled that the Department of Army, an agency of the Federal Government, was not a governmental subdivision within Section 307.09, *supra*, and that the county commissioners could not lease county land to such agency for a period in excess of one year. In support of this position my predecessor stated at pages 174 and 175 of that opinion:

"It is evident, therefore, that as to leasing county owned lands the county commisioners are limited to a lease for one year, except in the case of a lease to 'municipal corporations or other governmental subdivision' or to 'corporations not for profit for hospital or charitable purposes.' To these exempted bodies the county may lease without advertisement for such period and for such consideration as to the commissioners deem to be in the interests of the county.

"We have then to decide whether the Department of the Army, U.S.A., is a governmental subdivision within the meaning of the sections of the law which I have quoted.

“There is certainly no ambiguity in these statutes which could even raise a question whether the United States Government or one of its agencies is to be regarded as a governmental subdivision of the state, such as municipal corporations, counties, townships, school districts, etc. for which the legislature has provided. \* \* \*”

The Federal Code Annotated, Title 16, Section 590e, provides:

“The Secretary of Agriculture shall establish an agency to be known as the ‘Soil Conservation Service,’ to exercise the powers conferred on him by this Act (Sections 590a-590e, 590f, 590g, 590h, 590i, 590j, 590q of this title) and may utilize the organization heretofore established for the purpose of administering those provisions of Sections 202 and 203 of the National Industrial Recovery Act which relate to the prevention of soil erosion, together with such personnel thereof as the Secretary of Agriculture may determine, and all unexpended balances of funds heretofore (before Apr. 27, 1935) allocated to said organization shall be available until June 30, 1937, and the Secretary of Agriculture shall assume all obligations incurred by said organization prior to transfer to the Department of Agriculture. Funds provided in H. J. Res. 117, ‘An Act making appropriation for relief purposes’ (for soil erosion) shall be available for expenditure under the provisions of this Act (Sections 590a-590e, 590f, 590g, 590h, 590i, 590j-590q of this title): and in order that there may be proper coordination of erosion-control activities the Secretary of Agriculture may transfer to the agency created under this Act (Sections 590a-590e, 590f, 590g, 590h, 590i, 590j-590q of this title) such functions, funds, personnel, and property of other agencies in the Department of Agriculture as he may from time to time determine.”

Section 590e and other related sections of Title 16, *supra*, indicate that although the state and county may contribute funds to the programs administered and carried out by the Soil Conservation Service, the agency is under the direct control of the United States Department of Agriculture and must be considered a unit of the Federal Government. In accord with the reasoning of Opinion No. 591, *supra*, it follows that the Soil Conservation Service cannot be considered a governmental subdivision under Section 307.09, *supra*; and that, therefore, a lease to such agency is limited to a period of one year.

In conclusion, it is my opinion and you are accordingly advised that since the Soil Conservation Service of the Federal Government is not a “governmental subdivision” within the purview of Section 307.09, Re-

vised Code, county property may not be leased to such agency for a period in excess of one year.

Respectfully,  
MARK McELROY  
Attorney General

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OPINION INVOLVING THE TRANSPORTATION OF MATERIALS USED BY A CONTRACTOR PERFORMING PUBLIC ROAD WORK. §§4923.01, R.C. 4923.02, 4923.17, R.C.

SYLLABUS:

1. Under the exemption provisions of division (A) (7) of Section 4923.02, Revised Code, persons operating motor vehicles for contractors on public road work are not "private motor carriers" or "contract motor carriers by motor vehicle" under Sections 4923.01 through 4923.17, Revised Code; and such is true even though said motor vehicles are not operated exclusively on the area where the road work is being performed, so long as the operation is for the purpose of the road work.

2. Where an operator of a motor vehicle transports road materials to a stockpile, said materials to be used by a contractor on public road work, and such transporting is done for the contractor, the exemption provision of division (A) (7) of Section 4923.02, Revised Code, applies to the operation of the motor vehicle.

3. If the exemption provision of division (A) (7) of Section 4923.02, Revised Code, is to apply, the person transporting the materials must be doing so under agreement with the contractor performing the public road work; and where the transporter is operating under agreement with some party other than the contractor, the operation of the motor vehicle is not "for the contractor" within the exemption provision.

4. For the exemption to apply, there is no necessity that the contractor pay the transporter for the delivery or removal of any road materials or other matter associated with the road work; and the exemption will apply even if the transporter does his work for no pay, or even pays the contractor to remove materials or matter, so long as said transporter is working under an agreement with the contractor.

5. As used in division (A) (7) of Section 4923.02, Revised Code, the word "contractor" does not include a governmental agency which performs public road work with its own forces.