

**Note from the Attorney General's Office:**

1939 Op. Att'y Gen. No. 39-398 was reconciled with  
1957 Op. Att'y Gen. No. 1957-1150 in 1982 Op. Att'y  
Gen. No. 82-086.

398.

COUNTY COMMISSIONERS—ACCEPTANCE GIFT—MUSEUM SITE—CONDITIONS—LIMITATION FIVE YEARS, ERECTION AND MAINTENANCE OF MUSEUM—ALLEN COUNTY HISTORICAL AND ARCHAEOLOGICAL SOCIETY.

*SYLLABUS:*

*County commissioners may accept a gift of a museum site conditioned upon the razing of the present building and the erection of a museum thereon within a five-year period, and the subsequent maintenance of the museum, if the gift is accepted at a regular or special session of the commissioners after a finding in good faith that the conditions imposed are reasonable.*

COLUMBUS, OHIO, April 5, 1939.

HON. PAUL T. LANDIS, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR: This will acknowledge receipt of a recent communication from your office, which reads in part as follows:

“The collection of The Allen County Historical & Archaeological Society is now housed in the Memorial Hall in Lima which is a county owned building. It occupies the entire second floor of said building and the county is now furnishing janitor service, heat, light and telephone. The William J. Wemmer heirs are tendering a deed to the county commissioners for a property located on West Market Street in Lima on which there is at the present time a dwelling. This property is about 128 feet wide by 200 feet deep. The conditions of the grant are that the Grantees shall raze the building on the property within five

years from date and construct thereon a modern fireproof building suitable for Museum purposes. The only penalty that will attach in the event this is not done is that the property will revert to the Grantors at the end of the five year period. In addition, the conveyance will stipulate that the County Commissioners will maintain the Museum property, that is to say, provide the expense necessary to operate the same.

The plan is that the new building will be constructed, not at the expense of the County, but by contributions from private individuals of which \$20,000 has already been pledged.

We would like to have your formal opinion as to whether it lies within the powers of the county commissioners of Allen County, Ohio, to accept this gift of real estate under the terms and conditions above set forth."

The answer to your question is contained in section 18, General Code, which reads as follows:

"The state, a *county*, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, a 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." (Italics the writer's.)

Note that the section includes a county as eligible donee of a gift of land and further that by the terms and conditions attached to the gift it may be subject to any reasonable reservation. It is a well-established principle of law that the acceptance of a deed and the taking possession of the property binds the grantee to the conditions contained in the deed as effectively as the grantee could bind himself if he were to sign an express agreement to perform the conditions of the deed. *Hickey v. Railway Co.*, 51 O. S. 40. The acceptance of the deed should be by assent of the county commissioners at a regular or special session and an entry thereof should be made in the minutes of their proceedings as stipulated in section 2445, General Code. As pointed out above, the reservations or conditions accompanying the conveyance must be reasonable and a finding to that effect should be made by the commissioners if

they accept the gift. If the property is so accepted by the commissioners, it is my belief that they have power to thus contract to maintain the museum when completed, for having power to accept, it follows that they have such implied powers as are necessary to carry into effect the express power granted by section 18, *supra*.

The general rule is well stated in the second branch of the syllabus of an opinion reported in the Opinions of the Attorney General for 1931, Volume 1, page 286, which reads as follows:

“County commissioners may accept gifts of land for county purposes with reasonable conditions and reservations attached thereto; however, the commissioners may not accept gifts, the conditions of which impose burdens upon the county in excess of the benefits received. Whether or not the conditions are unreasonable, must be determined in the first instance by the county commissioners, and their finding will not be disturbed in the absence of circumstances which clearly constitute an abuse of discretion.”

It is therefore my conclusion that the county commissioners may accept a gift of a museum site, the conveyance thereof being conditioned upon the razing of the present building on such site and museum being erected thereon within a five-year period, and the subsequent maintenance of the museum thereafter by the county, if the commissioners at a regular or special session in good faith find these conditions or reservations to be reasonable.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*