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1. LEASE FOR BUILDING NEEDED FOR AND SUITABLE FOR COUNTY OFFICES—REASONABLE RENTAL—OPTION TO PURCHASE PROPERTY AT EXPIRATION OF LEASE—STIPULATED SUM OF MONEY—COUNTY COMMISSIONERS—AUTHORITY.
2. SECTION 307.02 RC—DOES NOT REQUIRE PROPERTY LEASED OR PURCHASED FOR USE AS COUNTY BUILDING OR SITE FOR BUILDING TO BE ADJACENT TO EXISTING COUNTY FACILITY.

SYLLABUS :

1. Under the provisions of Section 307.02, Revised Code, county commissioners have the authority to enter into a lease for a building needed and suitable for county offices at a reasonable rental with option to purchase at a reasonable price the property at the expiration of the term of the lease for a stipulated sum of money.

2. Section 307.02 of the Revised Code does not require property leased or purchased for use as a county building or as a site for such a building to be adjacent to an existing county facility.

Columbus, Ohio, May 24, 1955

Hon. Robert L. Perdue, Prosecuting Attorney
Ross County, Chillicothe, Ohio

Dear Sir :

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

“The Ross County Board of County Commissioners deem it necessary to provide additional office and storage space for various county offices. They have made tentative arrangements to lease, with an option to purchase, under authority of Section 307.02 of the Revised Code, a suitable building in Chillicothe some two blocks from the courthouse. This property is not adjacent to any existing county facility. A copy of the proposed lease, with an option to purchase, is attached hereto for your information.

“You will note that the proposed annual rental payments under the lease are the same as the sum which is to be paid on the exercise of the option to purchase. The Commissioners desire an answer to the following two specific questions :

'1. Would a lease with a provision which provides for equal annual payments of rent for a period of four years with an option to purchase the property after expiration of the fourth year by payment of a sum equal to the rental for one year be contrary to Section 307.02 of the Revised Code?

'2. Does Section 307.02 of the Revised Code require property leased and/or purchased to be adjacent to an existing county facility?' "

Section 307.02, Revised Code, to which you refer, reads as follows:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, and other necessary buildings, and sites therefor; such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress, and egress; such copies of any public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county."

It will be noted that this section gives the county commissioners broad powers to purchase or construct a variety of public buildings considered appropriate for county use, and to acquire sites therefor. It authorizes the acquisition of such property either by purchase or lease. It authorizes the purchase either for cash or by installment payments. It authorizes its acquisition by lease either with or without option to purchase.

Taking up your first question, I note your statement as to the terms of the proposed lease, and I have also examined with care the form of lease contract attached to your letter. It is, to say the least, an unusual lease in that it calls for rental of \$9,600.00 per year for four years and then grants an option to purchase and receive the conveyance of title at the end of that period upon the payment of a sum equal to one year's rental, to wit, the sum of \$9,600.00. This naturally gives rise to the query whether what purports to be a lease is in effect an installment purchase which, in case of default on the part of the lessee, in payment of the rental, or in the event of its failure to exercise the option to purchase, would result in a forfeiture of a large part of the very substantial payments which have already been made. Any expression of opinion as to the reasonableness of the rental payments agreed upon in a particular case is, of course, well beyond the scope of my office.

On the other hand, it is clear that under the statute the county may lease the property at a reasonable rental, for a term of years, with or without an option to purchase being contained in the lease. In Opinion No. 1062, Opinions of the Attorney General for 1939, page 1497, it was held:

“A board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code, enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the court house, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county.”

It is worthy of note that the lease involved in that opinion was for ten years, and called for \$13,500.00 annual rental, and contained an option for purchase at \$135,000.00.

As I have already indicated, I have no intention of undertaking to pass upon the reasonableness of the rental stipulated in the contract which you have submitted. I will only express my conclusion, as a matter of law, that under the provisions of Section 307.02, Revised Code, county commissioners have the authority to enter into a lease for a building needed and suitable for county offices, at a reasonable rental, with option to purchase at a reasonable price the property at the expiration of the term of the lease, for a stipulated sum of money.

Your second question is whether Section 307.02, Revised Code, requires property leased or purchased by the county to be adjacent to an existing county facility. Upon a careful reading of the section mentioned. I am unable to find any such provision or implication. The first sentence of the section gives the board authority to construct or purchase for cash or by installment payments, or to lease with or without option to purchase necessary county buildings and sites therefor. In this sentence there is no mention whatsoever of the location of such property with reference to any other existing county facility, and certainly there is no reason why all buildings purchased, erected or leased by a county for county purposes must be adjacent to other buildings. Some of the buildings mentioned will quite probably be located in remote parts of the county. There is in the next sentence of the statute, provision authorizing the county commissioners to purchase or lease such real estate adjoining existing real estate necessary to afford light, air, protection, etc. This provision as

to the purchase of land adjoining an existing site appears to me to be not by way of limitation, but by way of addition to the general authority. In other words, the county may not only purchase or lease buildings and sites therefor but they may, for the purpose of making a building more useful, purchase additional land adjoining its site. I do not consider it necessary to extend the argument as to this question but it is my conclusion that Section 307.02 of the Revised Code does not require property leased or purchased for use as a county building or as a site for such a building to be adjacent to an existing county facility.

Respectfully,

C. WILLIAM O'NEILL

Attorney General