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COUNTY COMMISSIONERS MAY PURCHASE A BUILDING DEEMED NECESSARY TO PROVIDE PUBLIC SHELTER FOR POOR RELIEF—WHERE A COUNTY HAS AVAILABLE FUNDS FROM A GENERAL TAX LEVY SAID FUNDS MAY BE USED TO PURCHASE A BUILDING TO PROVIDE PUBLIC SHELTER FOR POOR RELIEF—A LEVY OVER 10 MILLS FOR THE ABOVE PURCHASE MUST HAVE THE PURPOSE OF THE LEVY STATED IN THE LEVY; HOWEVER, ANY POOR RELIEF FUNDS MAY BE USED TO MAINTAIN THE BUILDING—§§307.02, 5113.01, 5705.01, R.C. OPINION 1909 OAG 1938, OPINION 1573, OAG 1952, OPINION 1697 OAG 1960.

SYLLABUS:

1. Under Section 307.02, Revised Code, a board of county commissioners may purchase a building deemed necessary to provide the public shelter given poor relief recipients under authority of Section 5113.01, Revised Code.

2. Where the county has available funds deriving from the general tax levy within the ten-mill limitation the county may under Section 307.02, Revised Code, use such funds for the purchase of a building to be used to provide the public shelter given poor relief recipients under authority of Section 5113.01, Revised Code.

3. Poor relief funds raised pursuant to a levy in excess of the ten-mill limitation under Section 5705.19, Revised Code, may be used to purchase a building to be used to provide public shelter to poor relief recipients only if the purpose of such purchase was specified in the resolution of necessity required by that section; however, any poor relief funds available may be used for the maintenance of such a building.

Columbus, Ohio, April 27, 1962

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Criminal Courts Building, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads in part:

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“Your opinion is respectfully requested as to whether the Board of County Commissioners has any legal authority to purchase a building to shelter persons who are eligible for poor relief and for whom the county is obligated to furnish shelter under Chapter 5113 of the Revised Code.

“If your answer is in the affirmative may the Board of County Commissioners purchase such a building and maintain it from poor relief funds?”

Section 307.02, Revised Code, authorize a board of county commissioners to purchase or construct *necessary* buildings; it reads in part:

“The board of county commissioners of any county, in addition to its other powers, may *purchase*, for cash or by installment payments, enter into lease-purchase agreements, 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*, public stadiums, public auditoriums, exhibition hall, zoological park, and related parking facilities, and sites therefor,* * *

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(Emphasis added)

In Opinion No. 1909, Opinions of the Attorney General for 1938, page 299, the then attorney general stated at page 301 as follows:

“I direct your attention to the language ‘and other necessary buildings’ and I am of the opinion that such language confers upon the county commissioners the right to construct and purchase whatever necessary buildings are needed to carry out and fulfill the duties imposed upon the county over which the county commissioners exercise a discretion and power.* * *”

Poor relief is defined in Section 5113.01, Revised Code, reading in part:

“‘Poor relief’ means food, clothing, *public or private shelter*, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency.

“* * * Poor relief may be given to persons living in their own homes or other suitable quarters, but not to persons living in a county home, city infirmary, jail, or tuberculosis sanatorium or to children who are not living with their parents, guardians, or other persons standing in place of parents.” (Emphasis added)

It should be noted that the phrase “public or private” was added by an amendment in 1959 (128 Ohio Laws, 1106), the sole purpose of the amendment being to specifically include public shelter under poor relief.

According to Section 5113.02, Revised Code, the county is the local relief area outside of the corporate limits of cities and I am unaware of any other public agency that could have power to provide public shelter for poor relief in *such area*. Thus, it follows that responsibility for providing public shelter is in the board of county commissioners, and under Section 307.02, *supra*, the board may purchase a building necessary for this purpose.

Your second question is whether the board of county commissioners may purchase such a building and maintain it from poor relief funds. In this regard, paragraph 2 of Opinion No. 1573, Opinions of the Attorney General for 1952, page 487, reads:

“County commissioners may construct a court house pursuant to Section 2433, General Code, out of *any available funds*, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$25,000.00, the provisions of Section 2333 must be followed.” (Emphasis added)

Section 2433., General Code, is now Section 307.02, Revised Code, *supra*. Though that opinion considered only the construction of a building, the section of law upon which it was based dealt with the purchase of buildings as well, and made no distinction between construction and purchase. Consequently, it is my opinion that the board of county commissioners may purchase a necessary building out of any available funds, provided, however, that the funds are derived from the general tax levy within the ten mill limitation.

Funds that derive from a special levy beyond the ten mill limitation present a different question. Under Section 5705.19, Revised Code, whenever a board of county commissioners deems it necessary to raise more money for the needs of the county than can be raised within the ten mill limitation, and before the levy may be placed on the ballot, the board must vote a resolution declaring the necessity for the levy and specifying the specific purpose for which the proceeds of the levy must be used. As to the use of funds raised through such a special levy, I direct your attention to Opinion No. 1697, Opinions of the Attorney General for 1960, page 617, paragraph 2 of the syllabus reading:

“In order to use the proceeds of a levy in excess of the ten-mill limitation under the provisions of Section 5705.19, Revised Code, for the purpose of constructing a permanent improvement,

such purpose must be specified in the resolution of necessity required by such section.”

It is my opinion that there exists no distinction relevant to your question between the *construction* of a building and its *purchase*; each word merely symbolizes a different means for acquiring the same thing.

A permanent improvement is defined in Section 5705.01 (E), Revised Code, as follows:

“‘Permanent improvement’ or ‘improvement’ means any property, asset, or improvement with an estimated life of usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.”

Accordingly, it is my opinion that where poor relief funds derive from a special levy in excess of the ten mill limitation, the funds may not be used to purchase a building in which poor relief recipients are to be housed unless that purpose was specified in the resolution of necessity required by Section 5705.19, *supra*.

It should further be noted that this limitation does not apply to funds that are to be used purely for the maintenance of the building. Maintenance of the public building in which poor relief recipients are housed is a necessary poor relief expenditure; accordingly, all poor relief funds may be used for the maintenance of such a building.

Finally, I direct your attention to Section 5113.09, Revised Code, reading in part:

“The department of public welfare shall:

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“(D) Determine the kinds and amounts of obligations for poor relief and the administration thereof on which state reimbursement will be based;

“* * *

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The above provision clearly gives the department of welfare authority to determine the kind and amount of poor relief upon which state reimbursement will be based. Public shelter is a *kind* of poor relief, and therefore, the department is authorized to refuse to base state reimbursement upon expenses incurred in providing public shelter to poor relief recipients.

Accordingly, it is my opinion and you are advised :

1. Under Section 307.02, Revised Code, a board of county commissioners may purchase a building necessary to provide the public shelter given poor relief recipients under authority of Section 5113.01, Revised Code.

2. Where the county has available funds deriving from the general tax levy within the ten-mill limitation the county may under Section 307.02, Revised Code, use such funds for the purchase of a building to be used to provide the public shelter given poor relief recipients under authority of Section 5113.01, Revised Code.

3. Poor relief funds raised pursuant to a levy in excess of the ten-mill limitation under Section 5705.19, Revised Code, may be used to purchase a building to be used to provide public shelter to poor relief recipients only if the purpose of such purchase was specified in the resolution of necessity required by that section; however, any poor relief funds available may be used for the maintenance of such a building.

Respectfully,

MARK McELROY

Attorney General