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COUNTY COMMISSIONERS—INSTALLATION OF PARKING METERS ON COUNTY PROPERTY—NO AUTHORITY TO IMPOSE RATES OR PENALTIES.

SYLLABUS:

(1) a board of county commissioners may install parking meters on court house property but (2) such a board is without authority to impose meter rates or to impose fines or penalties, or have vehicles towed away for parking meter violations.

Columbus, Ohio, June 5, 1959

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

I have your request for my opinion reading in part as follows:

“Our county commissioners have requested that I obtain your formal opinion with respect to the following facts:

“Our courthouse is situated on *county owned* property in the heart of town. Enclosed is a sketch of the area. Along Center and Main Streets there are sidewalks, they being the main streets of the town. Court Street is 16½ feet wide, with no sidewalks. The alley on the east is 20.7 feet wide, with no sidewalks. Parking has always been a problem for those desiring to transact business in the courthouse.

“A year or so ago, the county commissioners widened the area on the north and east side of the courthouse and blacktopped it to provide additional parking. This area is all on the county property. I have designated the widened area by a red line. The

areas, as widened, permits automobiles to park entirely on county property.

“The problem arises as a result of various merchants and workmen who come to town early in the morning, park their vehicles in said spaces and occupy them all day. We are concerned as to the extent of our authority in regulating and policing the parking area.

“Your opinion is sought as to the following :

“1. Can the county commissioners install parking meters along these two strips of land?

“2. If your answer to Question 1 is ‘Yes’, can they pass a resolution imposing a penalty or fine for overtime parking?

“3. If your answer to Question 1 is ‘Yes’, can they by resolution provide for the towing away of vehicles that are parked overtime?

“4. If your answer to Question 2 or 3 is ‘Yes’, who would be the proper police officer to enforce the resolution?”

With respect to your first question as to the authority of the county commissioners to install parking meters on the north and east strips adjoining the court house, it is believed that from the sketch accompanying your request the strips involved would necessarily be a part of the court house grounds, and under the authority of Section 307.03, Revised Code, the county commissioners could install parking meters on the property. Said Section 307.03, Revised Code, reads as follows :

“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.”

Former Section 2433-1, General Code, read almost identical with present Section 307.03, Revised Code.

In the case of *State ex rel. Roettinger v. City of Cincinnati*, 31 N.P (N.S.), 230, at page 237, the court stated as follows :

“We have quoted the Statute 2433-1, which seems to have been ignored by the plaintiff. This statute seems to give the county commissioners free rein in making such contracts, * * *”

But, placing the meters would be an idle gesture, as the authority for imposing meter rates and enforcing meter requirements do not seem to exist.

As to your second question, the county commissioners and the sheriff of the county have no legislative power and therefore cannot pass any resolution, regulation, or ordinance to enforce parking meter charges or violations. The same answer would have to be made as to question 3 in your request as to the authority of the commissioners to provide legislation for towing away of vehicles parked overtime.

Section 2909.21 of the Revised Code makes it a criminal offense for a person without lawful authority to enter upon land or premises of another, or being upon the land notified to depart therefrom by the owner or occupant, or the agent or servant of either, neglects or refuses to depart therefrom.

It is believed that appropriate signs prohibiting or limiting parking without meters would be a sufficient compliance with the provisions of this section, and those persons not complying would be in violation of this statute, and could be arrested by the proper officers if the entrance on the strips in question were observed by him, or the persons requested by him to depart refused to comply. Strict enforcement for a reasonable period of time should bring desired results.

As to the proper officer to enforce these requirements I wish to call your attention to Section 311.07, Revised Code, which outlines the general powers and duties of the sheriff of a county. As previously stated, it is my opinion that the strips of property involved would have to be considered as part of the court house. The sheriff is the proper law officer of the county, and the last sentence of Section 311.07, Revised Code, states:

“* * * Under the direction and control of the board of county commissioners, such sheriff shall have charge of the court house.”

Therefore, the sheriff would be the proper officer to enforce the use of the parking strips as determined by the county commissioners.

As suggested in your letter, I am of the opinion that it would be permissible for the county commissioners to lease the strips of property in question to the City of Marion, and the municipality could install meters, and police the same as is done on a city parking lot.

Inquiry of the office of the Secretary of State divulged the information that no county in the State of Ohio is operating under a home rule charter at the present time.

I know of no authority, nor can any be found, authorizing a sheriff or county officer to tow away, or have towed away, any vehicles illegally using parking spaces on county property, or engaging a garageman to do so. Nor have county commissioners the authority to enact a resolution, regulation or ordinance authorizing the same.

If the parking complained of in your request is steadily or constantly repeated by the same persons after notice, I am of the opinion that these trespasses could be the subject matter of an injunction. In this respect, I desire to call your attention to the case of *Lembeck v. Nye*, 47 Ohio St., 336. Paragraph three (3) of the syllabus reads as follows:

“(3) Where numerous acts are being committed, and their continuance threatened under a claim of right, by one person on the land of another, which acts constitute trespass, and the injury resulting from each act is, or would be, trifling in amount as compared with the expense of prosecuting actions at law to recover damages therefor, the owner may resort, in the first instance, to a court of equity for appropriate relief.”

Therefore, it is my opinion and you are advised that (1) a board of county commissioners may install parking meters on court house property but (2) such a board is without authority to impose meter rates or to impose fines or penalties, or have vehicles towed away for parking meter violations.

Respectfully,

MARK MCELROY

Attorney General