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1. COUNTY COMMISSIONERS—AUTHORITY FOR SALE OF ANY PROPERTY ACQUIRED UNDER AUTHORITY OF VETERANS EMERGENCY HOUSING ACT, 1946, MAY BE EXERCISED ONLY FOR PURPOSE OF LIQUIDATION AFTER HOUSING SHORTAGE HAS BEEN RELIEVED AND PURPOSES OF ACT ACCOMPLISHED—OPINION 1197, OAG 1946, PAGE 660, APPROVED AND FOLLOWED—SECTIONS 3735.61 RC, 1078-70 GC.
2. COUNTY COMMISSIONERS—AUTHORITY TO SELL PROPERTY IS DISCRETIONARY—IF AUTHORIZED BY LAW, COUNTY COMMISSIONERS MAY PURCHASE PROPERTY FOR USE IN OTHER COUNTY ACTIVITIES, BY EXPENDITURE OF FUNDS FROM GENERAL REVENUE FUND—LIQUIDATION OF PROPERTY—MAY BE COMPLETED BY ASSIGNMENT OF PROPERTY TO PROPER USE BY COUNTY COMMISSIONERS.
3. HOUSE TRAILERS—IN LIQUIDATION OF PROJECT MAY BE WITHHELD FROM SALE—ASSIGNED DIRECTLY FOR USE BY COUNTY ENGINEER OR COUNTY CIVIL DEFENSE ORGANIZATION—DISCRETION OF COUNTY COMMISSIONERS—SECTIONS 3735.61 RC, 1078-70 GC.

SYLLABUS:

1. The authority given to county commissioners by Section 3735.61, Revised Code, Section 1078-70, General Code, for the sale of any property acquired under authority of the Veterans Emergency Housing Act of 1946, 121 Ohio Laws, 806, may be exercised only for the purpose of liquidation after the shortage of housing for veterans has been relieved and the purposes of the act accomplished. Opinion No. 1197, Opinions of the Attorney General for 1946, 660, approved and followed.
2. The authority given to sell such property is discretionary in the county commissioners, and where any of such property is such that its purchase by the county commissioners, for use in other county activities, by the expenditure of funds from the general revenue fund of the county would be authorized by law, then the liquidation of such property may be completed by the assignment by the county commissioners of such property directly to such use.
3. House trailers acquired pursuant to the provisions of the Emergency Veterans Housing Act of 1946, 121 Ohio Laws, 806, may, in the liquidation of such project under the provisions of Section 3735.61, Revised Code, Section 1078-70, General Code, in the discretion of the county commissioners, be withheld from sale and assigned directly for use by the county engineer or by a county civil defense organization.

Columbus, Ohio, October 28, 1953

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of County Commissioners of Knox County, Ohio, are advertising for public sale under Ohio General Code Section 1078-70 house trailers acquired pursuant to Ohio General Code Section 1078-62.

"The County Engineer of Knox County would like to use one of the trailers to house tools used in county road work. Can the County Commissioners purchase a trailer for the use of the engineer? Can the County Commissioners withhold from the sale one trailer to be used by the Engineer without continuing to make the reports provided for under Ohio General Code Section 1078-67?

"The local Civil Defense organization would like to have a trailer for use at their aerial observation post. Can the local Civil Defense use its funds to purchase one of these trailers? Can the County Commissioners make a gift of a trailer to a local Civil Defense post?"

The so-called emergency Housing for Veterans Act was enacted in 1946, 121 O. L. 806, and was formerly codified as Section 1078-62, et seq., General Code. By this act certain moneys were appropriated by the Legislature for distribution to the several counties upon application of the county commissioners to the treasurer of state; and all moneys thus allocated to the county were required to be placed in a special fund in the treasury of the county to be known as the county veterans housing fund. Under the provisions of Section 1078-63, General Code, the commissioners were authorized to "expend all or any part of their county veterans housing fund for the purpose of providing immediate temporary emergency housing facilities for residents of their counties who were members of the armed forces of the United States who have served in World War II and have been discharged other than dishonorably, and for their families." The powers and duties of the county commissioners in the operation of an emergency veterans housing project are set out in

Section 3735.58, Revised Code, Section 1078-66, General Code, which reads as follows:

“The board of county commissioners, in order to provide housing facilities, may acquire by purchase, lease, gift, or otherwise, improved or unimproved land, structures, materials, equipment, facilities, and services and may erect structures for the purpose of making such temporary emergency housing available. The title to said property shall be in the board. The board shall provide for the maintenance and management of the property acquired under this section, shall make and publish rules governing the letting of the premises to veterans, subject to sections 3735.58 to 3735.61 inclusive, of the Revised Code, and shall fix and collect rents from tenants which rents shall be fair and equitable considering the services provided, the type of housing, and its condition and location. All rents collected shall be deposited in the county veterans housing fund and not to exceed ninety per cent of such rents collected may be used for the maintenance and operation of the property.

“The board may evict tenants as provided by law.”

The commissioners are also required to make certain reports to the treasurer of state, Section 3735.59, Revised Statutes, Section 1078-67, General Code, providing in this respect as follows:

“The board of county commissioners shall report to the treasurer of state, semiannually, on the provisions which have been made for veterans housing within the county. Such reports shall be made not more than forty-five days after the last day of each half of the calendar year and shall include receipts, disbursements, and balances of the funds, the number of units of housing provided, the number of veterans housed, and a schedule of rentals.”

In Section 1078-68, General Code, it was provided that Sections 1078-63, 1078-64 and 1078-65, General Code, should expire on December 31, 1949.

By the terms of Section 3735.60, Revised Code, Section 1078-69, General Code, Sections 3735.58 and 3735.59, Revised Code, Sections 1078-66 and 1078-67, General Code, “shall expire on December 31, 1955.” By reason of these provisions limiting the life of the law, only Sections 1078-66, 1078-67, 1078-69 and 1078-70, General Code, were retained in the recodification of 1953, and these sections were reenacted as Sections 3735.58, 3735.59, 3735.60 and 3735.61, Revised Code, respectively.

In Section 3735.61, Revised Code, Section 1078-70, General Code, we find the following provision:

“The board of county commissioners of any county which has acquired property in accordance with volume 121, Ohio Laws, page 806, sections 1 to 10, inclusive, may sell any or all of said property and deposit the proceeds of such sale in the general revenue fund of the county.”

In Opinion No. 1197, Opinions of the Attorney General for 1946, p. 660, one of my predecessors in office ruled that the authority of the county commissioners to sell any and all the property acquired under this program could be exercised only for the purpose of liquidation of the project after the shortage of housing for veterans had been relieved. In view of this holding, with which you are no doubt familiar, it is assumed that in the instant case the veterans housing shortage has been relieved in Knox county, and that the commissioners have resolved upon the liquidation of the project as authorized in Section 3735.61, Revised Code, *supra*.

I deem it to be a matter of considerable significance that this so-called liquidation section provides that the proceeds of the sale of the property by the county commissioners are to be paid into the general revenue fund of the county. With this provision in mind we may examine the question of the use of certain of this property, presently to be liquidated as a housing project, by the county engineer.

It will be observed that under the provisions of Section 5549.01, Revised Code, Section 7200, General Code, the county commissioners are authorized to purchase machinery, tools and other equipment for the construction, improvement, maintenance or repair of highways, bridges and culverts under their jurisdiction and that they are also authorized in their discretion to purchase or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county engineer and his assistants when on official business. By this same section the commissioners are required to provide a suitable place or places for storing or housing machinery, tools, equipment, etc. Under the provisions of Section 5543.02, Revised Code, Section 7187, General Code, the county engineer is required to report to the county commissioners annually, on or before the first day of April, “the condition of the county roads, bridges, and culverts, and estimate the probable amount of funds required to maintain and repair or to construct any new roads, bridges, or culverts required within the county.”

In Section 5555.91, Revised Code, Section 6956-1, General Code, we find the following provision:

“After the annual estimate for the county has been filed with the board of county commissioners by the county engineer, and the board has made such changes and modifications in the estimate as it deems proper, the board shall then make its levy, for the purposes set forth in the estimate, upon all taxable property of the county, not exceeding in the aggregate two mills upon each dollar of the taxable property of said county. Such levy shall be in addition to all other levies authorized for said purposes, but subject to the limitation upon the combined maximum rate for all taxes. *This section does not prevent the board from using any surplus in the general funds of the county for the purposes set forth in said estimate.*” (Emphasis added.)

A reference to the history of these three statutes discloses that all were originally enacted as a part of Amended Senate Bill 125, 80th General Assembly, 106 Ohio Laws, 574. Section 5543.02, supra, was enacted as Section 144 of this act and required the county highway superintendent to make an annual report to the county commissioners, containing an estimate of the probable amount of “road funds” required for the current year. This section was subsequently amended to place this duty on the county engineer.

Section 5549.01, supra, was originally enacted as Section 157 of the act; and Section 5555.91, Revised Code, was originally enacted as Section 238, being placed in Chapter 10 of the act under the heading “General Provisions.” From this it may be concluded that these sections are inter-related and may be regarded in *pari materia*.

In view of the express provision in Section 5555.91, supra, for the transfer of surplus funds from the county general fund for use “for the purposes set forth in said estimate,” I conclude that whatever limitations may be placed on the expenditure of the proceeds of special excises on motor vehicle fuel, auto registration, etc., it is still within the power of the county commissioners to use the proceeds of general property tax levies for highway construction, maintenance, etc.

At this point it is proper to observe the following provision set out in subparagraph (F) of Section 5705.14, Revised Code, Section 5625-13, General Code:

“(F) Money appropriated for the general fund may be

transferred from such fund to a fund authorized by Section 5705.12 or 5705.13 of the Revised Code, or to the proper fund of a district authority.”

In view of this provision, it will be seen that whenever the county commissioners, in the liquidation of a veterans housing project, have received the proceeds thereof in cash and have deposited such proceeds in the general revenue fund of the county as provided by law, they may immediately thereafter, under authority of the statutory provision just noted, transfer such funds as surplus to the county road fund or to such other authorized fund as they may choose, and that they may thereafter, as authorized by the provisions of Section 5549.01, *supra*, expend such funds to purchase either (a) machinery, tools and other equipment for the construction, maintenance, etc., of highways, etc., or (b) automobiles, motorcycles or other conveyances for the use of the county engineer.

In this situation it becomes apparent that the county is the equitable as well as the legal owner of the property of a veterans housing project which is in the course of liquidation. From this it would appear to follow that the cash proceeds realized in such liquidation, as a part of the general fund of the county, may be utilized for any proper purpose of the county. The question thus arises whether it is necessary to proceed with such liquidation to the point where the value of all such property is realized in the form of money, or whether the property in liquidation can itself be utilized for any proper purpose of the county. A holding that the conversion of this property into cash is a necessary step in liquidation would be one based on an ultra-technical interpretation of the statute, since it would deny to the county commissioners the authority to do directly that which they are very clearly authorized to do indirectly. This becomes apparent when it is observed that upon the realization of the cash proceeds of the sale of a trailer, for instance, the commissioners would be authorized to utilize such money for the purchase of another trailer and, perhaps, the identical vehicle which was sold. Such a requirement of the statute would be clearly absurd, and would entail also the probability that the county would be required to expend more to re-acquire the vehicle sold than was realized from its sale in the liquidation process. In this connection it must be remembered that the court will not assume, or presume, that the Legislature intended doing a vain, useless or purposeless thing. 37 Ohio Jurisprudence, 634, section 348. It is to be borne in mind, also, that an interpretation of the law producing unrea-

sonable or absurd consequences is to be avoided. 37 Ohio Jurisprudence, 643, section 352. In the instant case it seems to me that an ultra-technical interpretation of the statute here in question, i.e., one which would require a complete liquidation of the property in question to the point where cash proceeds are received and deposited in the county general fund, and the expenditure of such funds thereafter in the acquisition of property which is identical with or similar to that which was sold in the course of the liquidation, would be productive of unreasonable and absurd consequences. For this reason I conclude that where the county commissioners are engaged in the liquidation of a veterans housing project, as authorized in Section 3735.61, Revised Code, Section 1078-70, General Code, the sale of the whole amount of such property is discretionary with the commissioners, and if a need for such property exists for a use for which the county commissioners would be authorized to purchase such property from the general revenue funds of the county, the commissioners may, in the completion of such liquidation, devote such property directly to such use without the sale and repurchase thereof.

All that has been said above is applicable with equal force to the use of such property by a county civil defense organization. By reference to the provisions of Section 2915.09, Revised Code, Section 5298, General Code, it will be observed that "Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense." The several statutes relating to civil defense activities are in broad general terms and are such as to lead to the conclusion that a wide discretion has been given to the local organizations for civil defense and to the subdivisions charged with their maintenance in the matter of deciding what machinery, equipment, supplies, etc., are to be regarded as necessary or useful in civil defense activities. Accordingly, if the county commissioners should be convinced, as a matter of fact, that the use of one of the trailers here in question would be necessary or useful in the operation of the local civil defense activities, it would seem plainly within their authority to utilize the funds in the general fund of the county to provide for the purchase of such trailer. Such being the case, it becomes necessary to conclude in this instance also that what the commissioners may do indirectly they may as readily do directly, and to conclude that it is not necessary for the commissioners to proceed to such a liquidation of the housing authority property to the point where it is wholly converted into cash, but rather that such liquidation may be com-

pleted, as to particular items of property, by making it directly available to the county civil defense organization.

Accordingly, and in specific answer to your inquiry, it is my opinion that :

1. The authority given to county commissioners by Section 3735.61, Revised Code, Section 1078-70, General Code, for the sale of any property acquired under authority of the veterans emergency housing act of 1946, 121 Ohio Laws, 806, may be exercised only for the purpose of liquidation after the shortage of housing for veterans has been relieved and the purposes of the act accomplished. Opinion No. 1197, Opinions of the Attorney General for 1946, 660, approved and followed.

2. The authority given to sell such property is discretionary in the county commissioners, and where any of such property is such that its purchase by the county commissioners, for use in other county activities, by the expenditure of funds from the general revenue fund of the county would be authorized by law, then the liquidation of such property may be completed by the assignment by the county commissioners of such property directly to such use.

3. House trailers acquired pursuant to the provisions of the emergency veterans housing act of 1946, 121 Ohio Laws, 806, may, in the liquidation of such project under the provisions of Section 3735.61, Revised Code, Section 1078-70, General Code, in the discretion of the county commissioners, be withheld from sale and assigned directly for use by the county engineer or by a county civil defense organization.

Respectfully,

C. WILLIAM O'NEILL

Attorney General