

parcels are more particularly described in said respective leases. The leases here in question are the following:

<i>Lessee</i>	<i>Location of Property</i>	<i>Valuation</i>
Mrs. Ella Harlow	Buckeye Lake	\$835.34
Ella W. Turner,	Buckeye Lake	1000.00
David H. Piper,	St. Marys or Grand Lake	600.00

The above mentioned leases are each for a term of fifteen years, and are executed under the authority of Section 471 and other sections of the General Code relating to the execution of leases of this kind, among which are Section 13965 et seq., General Code.

An examination of the above leases discloses that they have been properly executed and they are accordingly approved by me as to legality and form, which approval is evidenced by my authorized signature upon said leases and the duplicate and triplicate copies thereof, all of which are herewith returned to you.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3026.

APPROVAL, BONDS OF YORK TOWNSHIP RURAL SCHOOL DISTRICT,
MORGAN COUNTY, OHIO—\$45,000.00.

COLUMBUS, OHIO, March 6, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3027.

PHOTOSTATIC MACHINE—INSTALLED FOR USE OF COUNTY OFFICIALS—COUNTY COMMISSIONERS MAY NOT COMPEL ITS USE—CONDITIONS NOTED.

SYLLABUS:

1. *County commissioners have no authority to create a separate department of county government and appoint the necessary employes to operate a photostatic machine and compel other county officials to make use of the facilities thus provided. The commissioners may, however, if its use is necessary in connection with the work of their office, purchase such a machine, make it available for use by other county offices, and may, in the exercise of a reasonable discretion, refuse to purchase such a machine for any other office.*

2. *If a photostatic machine is installed in the county recorder's office, he may appoint the necessary employes, assistants or clerks for the operation of such machine in the business of the office.*

3. *The county commissioners may stipulate, upon the purchase of a photostatic machine, that it be available for the use of other county officers when not required by the office in which it is to be located.*

COLUMBUS, OHIO, March 7, 1931.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge the receipt of a communication from your office, which reads as follows:

"I have been unable to find an opinion relative to Section 32-1 of the General Code of Ohio with regard to photostatic machines, and if you have not rendered one will you kindly advise us whether or not the county commissioners, upon purchase of a photostatic machine, can establish a department, appoint the necessary photographer and assistants, and compel the county recorder and other county officers to make their record and copy work through such a department.

If they should install a photostatic machine in the county recorder's office, who would have the appointment of a photographer and assistants, the county recorder or the county commissioners?

If such machine is installed in the recorder's office, can they compel other county offices to record and copy instruments, etc., on the machine in the recorder's office?"

Section 32-1, General Code, to which you refer, reads as follows:

"Whenever any officer, office, court, commission, board, institution, department, agent, or employe of the state, or of any county of more than 50,000 population, according to the next preceding federal census, is required or authorized by law, or has the duty to record or copy any document, plat, paper, or instrument of writing, such recording or copying may be done by any photostatic or photographic process which clearly and accurately copies, photographs, or reproduces the original document, plat, paper or instrument of writing."

It is to be noted that the language of this section is not mandatory in directing that the various officers of the state or county government must record a copy of any document, plat or instrument of writing, by photostatic or photographic process, but is permissive in character.

In considering the question of the authority of county commissioners to compel the county recorder to use photostatic machine for his record and copy work, it is necessary that an examination be made of the powers of the county commissioners and of the county recorder.

Sections 2750, et seq., General Code, create the office of county recorder and fix his duties. Sections 2395, et seq., provide for the number of county commissioners constituting the board of county commissioners, the manner of their election and their powers and duties. As the above mentioned officers are created by statute, their powers and duties are such only as are expressly given by statute and as are necessarily implied from the language of the statute.

An examination of the statutes concerning these offices leads me to the conclusion that the relative powers and duties of the several county officers, in so far as the functions of one office may become dependent upon those of the other, are not clearly defined by statute.

As was stated in an opinion found in Opinions of the Attorney General for 1928, at page 1806:

"An examination of the several statutes relating to the duties of

the county recorder shows his duties to consist of the keeping of four separate sets of records in which he shall record in the proper manner all instruments in writing required by law to be recorded, and presented to him for that purpose; keeping proper indexes to the same; keeping a daily register of deeds and mortgages filed in his office, and noting the day and hour of their filing; transcribing records of other counties, when directed so to do by the county commissioners; keeping sectional indexes after the same are made; performing such duties as are required of him in the registration of land titles under what is commonly known as the Torrens Law (Sections 8572-1 to 8572-118, General Code); furnishing when required, certified copies under seal, of the records of his office; and, when going out of office, delivering to his successor the seal of office, all books, records, and other instruments in writing belonging to the office and taking his receipt therefor."

An examination of the statutes and cases concerning the office of county recorder leads me to the conclusion that such office is in its operation a distinct branch of county government and the methods by which that office is conducted are within the discretion and control of the county recorder. To cause the county recorder to be liable on his bond for various deeds of omission or commission, as is provided by section 2781, General Code, and then to hold the methods to be followed by his office can be dictated by another office, would be inequitable and unjust, and unauthorized by law. While it is true that section 2763 requires the recorder, when directed to do so by the county commissioners, to transcribe in suitable books provided for that purpose certain instruments of writing, I do not believe that this statute grants to the county commissioners the authority to designate in what manner the work should be done.

In answer to your first inquiry, it is my opinion that the county commissioners cannot compel the county recorder to install and use a photostatic machine for the record and copy work of the recorder's office.

As to your second inquiry concerning the authority of county commissioners to require other county officers than the recorder to make their record and copy work through a department set up in the county commissioner's office, it should be noted that "there is no supervising authority in county government. Each officer, within the realm of the duties of his office, is independent, yet each is dependent to some extent on the county commissioners, especially with respect to the furnishing of offices and supplies, and the providing of moneys for the payment of deputies and clerks, and other necessary expenses incident to the maintenance of the office." Opinions of the Attorney General for 1928, p. 1806.

Under Section 2419, General Code, relating to the furnishing of county offices, county commissioners are authorized to provide all the equipment, stationery and postage as they may "deem necessary for the proper and convenient conduct of such offices and such facilities as will result in expeditious and economical administration of the said county offices."

Undoubtedly, under the broad powers granted by this section, county commissioners may determine the practicability of requests for equipment made by various county officers. If a photostatic machine located in the county commissioners' office would amply provide facilities for the photostatic work which may incidentally originate in the various county offices, it would seem to be good business judgment to refuse to purchase such a machine for every county officer requesting the same.

I am of the opinion, therefore, that if adequate photostatic services may be

furnished by a photostatic machine set up in the office of the county commissioners, they may refuse to purchase additional machines for county officers requesting the same.

As to the power of the county commissioners or the county recorder to appoint a photographer and assistants in the event a photostatic machine is installed in the county recorder's office, your attention is directed to Section 2981, General Code, which provides that the elective county officers may employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation and discharge them, and that they shall file with the county auditor certificates of such action.

If a photostatic machine is installed in the county recorder's office at the instigation of the county recorder, the same would be under the jurisdiction of the county recorder and it would follow from Section 2981 that the recorder would have the authority to appoint the necessary employes, assistants or clerks for the operation of such machine.

Your fourth inquiry concerns the authority of a county recorder to compel other county officers to record and copy instruments, etc., on the machine in the recorder's office. As before stated, there is no supervisory authority in county government and a search of the Ohio law fails to reveal any authority vested in the county recorder to compel the other county officers to fulfill their duties in a manner dictated by the recorder. I believe, however, that the county commissioners could stipulate, upon the purchase of such machine, that it should be available for the use of other county officers when not required by the recorder.

Summing up the conclusions above determined, I am of the opinion that:

1. County commissioners have no authority to create a separate department of county government and appoint the necessary employes to operate a photostatic machine and compel other county officials to make use of the facilities thus provided. The commissioners may, however, if its use is necessary in connection with the work of their office, purchase such a machine, make it available for use by other county offices, and may, in the exercise of a reasonable discretion, refuse to purchase such a machine for any other office.
2. If a photostatic machine is installed in the county recorder's office, he may appoint the necessary employes, assistants or clerks for the operation of such machine in the business of the office.
3. The county commissioners may stipulate, upon the purchase of a photostatic machine, that it be available for the use of other county officers when not required by the office in which it is to be located.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3028.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—THREE RESIDENT DISTRICT DEPUTY DIRECTORS AND ONE RESIDENT DIVISION DEPUTY DIRECTOR.

COLUMBUS, OHIO, March 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted four bonds, each in the penal sum of