

2215.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—\$10,500.00.

COLUMBUS, OHIO, August 7, 1930.

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

2216.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—\$18,470.65.

COLUMBUS, OHIO, August 7, 1930.

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

2217.

COUNTY COMMISSIONERS—POWER TO SELECT PART OF COUNTY HOME FARM AS SITE FOR TUBERCULOSIS HOSPITAL.

*SYLLABUS:**A board of county commissioners may set aside part of the real estate of a county infirmary farm which is not needed for the purposes of the county infirmary as a site for a county tuberculosis hospital.*

COLUMBUS, OHIO, August 8, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The county commissioners of Licking County propose to select a site for the erection thereon of a county tuberculosis hospital, under authority of G. C., 3127, the bond issue for which was ratified at the last election. The commissioners have determined that the county infirmary farm is much larger than is required for that purpose, and have made inquiry of this office as to whether a part of such farm could be divorced from the remainder and used as a site, or part of the site, for the tuberculosis hospital, provided the approval of the State Department of Health thereto is obtained.

We have examined the statutes and have found sections which bear upon the subject, but which, in our opinion, are not entirely determinative of it.

Secs. 2447 and 2447-1 provide for the sale of real estate not needed by

the county and procedure under the same. In the Opinions of the Attorney General for 1924, at page 112, it is stated that a county infirmary could be abandoned and the property sold or leased.

Sec. 3148 provides that the site for a *district* tuberculosis hospital shall be separate and apart from the infirmary boundaries of any county. As to the *site* for a county hospital, the statutes seem to be silent, although Sec. 3148-2 provides that all laws applicable to the levy of taxes for the erection, maintenance and operation of said district hospitals shall apply to the leasing, erection, operation and maintenance of said county hospital for the treatment of persons suffering from tuberculosis. Licking County has never been affiliated with any other county in the establishment and maintenance of a district tuberculosis hospital.

The benefit of your opinion upon this matter and upon the necessary procedure in the premises is respectfully requested."

A board of county commissioners are authorized to construct a county tuberculosis hospital by virtue of Section 3148-1, General Code, which section provides:

"The county commissioners of any county having more than 50,000 population as shown by the last federal census may, with the consent of the state department of health, provide the necessary funds for the purchase or lease of a site and the erection and equipment or lease and equipment of the necessary buildings thereon for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis.

Any municipality within said county at present maintaining and operating a hospital for the treatment of tuberculosis may continue to maintain said hospital as a municipal hospital or may lease or sell the same to the county."

Section 3148-2, to which you refer, provides:

The management and control of such tuberculosis hospital shall be vested in a board of trustees, which board of trustees, shall have all the powers conferred by law upon the board of trustees of district hospitals for the care of persons suffering from tuberculosis, and all laws applicable to the hospitals shall apply to the leasing, erection, operation and maintenance of levy of taxes for the erection, maintenance and operation of said district said county hospital for the treatment of persons suffering from tuberculosis."

The provisions as to the powers conferred upon a board of trustees of a district tuberculosis hospital are contained in Section 3148, General Code. This section contains, inter alia, the following provision as to the site of such hospital:

" * * * * *
After the establishment of such joint district, either by voluntary action of the commissioners or as the result of such election, such joint board shall provide the necessary funds for the purchase of a site, which site shall be separate and apart from the infirmary boundaries in any county and also shall provide for the erection of the necessary buildings thereon; * * *
* * * * *"

A careful reading of Section 3148-2, *supra*, discloses that the legislature has not expressly incorporated therein the same limitation as to the site of a county tubercu-

losis hospital as is contained in Section 3148, *supra*, relating to a district tuberculosis hospital.

If a board of county commissioners may set apart a portion of the county infirmary grounds as a site for a county tuberculosis hospital, such site will necessarily adjoin the infirmary. Your inquiry, therefore, resolves itself into the question of whether or not a board of county commissioners may acquire land as a site for a tuberculosis hospital adjoining the property of the county infirmary. If they may, there is nothing to prevent such board from setting apart a portion of county infirmary land which they already own, not needed for infirmary purposes, as a site for a tuberculosis hospital.

The question of under whose supervision the legislature has placed the erection of a county tuberculosis hospital was considered in an opinion of this office appearing in Opinions of the Attorney General for 1928, Vol. IV, p. 2903, the syllabus of which is as follows:

"The erection of county tuberculosis hospitals is governed by general statutes relating to county buildings, including Section 2333, General Code, providing for a building commission composed of the county commissioners and four freeholders appointed by the Common Pleas Judge of the county."

Under authority of the foregoing opinion, I think it follows that as the erection of county tuberculosis hospitals is governed by general statutes relating to county buildings, the selection of a site for county tuberculosis hospitals is likewise governed by general statutes relating to sites of county buildings. The general statute on this subject is Section 2433, General Code, which provides:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, juvenile court building, detention home, public market houses, county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress."

This section was amended by the 88th General Assembly by the insertion of the words "juvenile court building." The amendment, therefore, has no bearing upon the question here under consideration. The section, as in force and effect prior to this last amendment, was under consideration by my predecessor in an opinion appearing in Opinions of the Attorney General for 1928, Vol. II, p. 1502. After quoting the section, the Attorney General said:

"This section authorizes the county commissioners to purchase additional land for the county infirmary but provides that said purchase shall be used for county infirmary purposes."

The opinion further held that Section 2433 authorized the commissioners to purchase or appropriate real estate adjoining an existing county infirmary site as such board may deem necessary for other institutions and buildings enumerated in the section, as well as for a county infirmary, the third branch of the syllabus being as follows:

"By the terms of Section 2433, General Code, as amended (112 v. 364),

county commissioners may purchase or appropriate such real estate adjoining the existing site of the county home as they deem necessary for infirmary purposes."

This opinion also held that a part of the real estate upon which a county home is situated could be set aside as a burial ground, the first branch of the syllabus being as follows:

"It is the duty of the board of county commissioners to pay the burial expenses of indigent county charges; and in the discharge of this duty the commissioners may provide burial lots in public or private cemeteries, or may set aside a part of the real estate, upon which the county home is situated, as a burial ground for such deceased persons."

It is evident in view of the foregoing that the legislature has not seen fit to provide that the site for a county tuberculosis hospital shall be separate and apart from the land of a county infirmary.

I infer from your communication that the electors have voted favorably upon the question of issuing bonds for the acquisition of a site and the construction thereon of a county tuberculosis hospital. I shall not in this opinion discuss the question of whether or not the entire proceeds of such bond issue may be used for the construction of the building and no part of such proceeds used for the acquisition of a site, since you do not inquire as to this point. It may be noted in passing, however, that a board of county commissioners may not issue bonds pursuant to authority of the electors for any purpose other than voted upon at such election.

In specific answer to the inquiry which you have presented, it is my opinion that a board of county commissioners may set aside part of the real estate of a county infirmary farm which is not needed for the purposes of the county infirmary as a site for a county tuberculosis hospital.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2218.

PERSONAL SERVICE CLAIMS—OHIO STATE UNIVERSITY—VACATION WITH PAY OR LUMP SUM PAYMENT FOR SERVING FOR TWELVE QUARTERLY PERIODS IN SUCCESSION—PAYABLE FROM CURRENT APPROPRIATIONS—NOT "DEBTS" WITHIN CONSTITUTION.

SYLLABUS:

1. *Under a rule adopted by the Trustees of Ohio State University, permitting professors and instructors in the university to render extra service by remaining on duty for a fourth quarterly period of any year for three years, and receive credit therefor on a vacation to be taken with pay at some time in the future, or a lump sum payment in lieu of such vacation, as he may elect, the said professor or instructor rendering extra service for such purpose may lawfully be paid his regular salary during such vacation period, when taken, or a lump sum in lieu thereof, from the appropriation for "personal service then current at the time the vacation is taken or the election made to accept a lump sum in lieu of such vacation.*

2. *Claims for pay for "Personal Service" during a vacation period earned by the accumulation of credits for extra service rendered some time in the past, or claims for*