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POWER OF BOARD OF COUNTY COMMISSIONERS TO PURCHASE SITE AND CONSTRUCT BUILDINGS FOR TRAINING SCHOOL FOR RETARDED CHILDREN—TO USE THE PROCEEDS OF A LEVY IN EXCESS OF THE TEN-MILL LIMITATION FOR THE PURPOSE OF CONSTRUCTING A PERMANENT IMPROVEMENT—§§307.02, 5153.16, 5705.19, R.C.

SYLLABUS:

1. Under the provisions of Sections 307.02 and 5153.16, Revised Code, a board of county commissioners may purchase a site and construct thereon necessary buildings for a training school for retarded children.
2. 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.

Columbus, Ohio, September 14, 1960

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under date of June 14, 1960 you issued your opinion No. 1464 in which you advised me that there was no authority per-

mitting a county child welfare board to purchase real property upon which to construct facilities for the training of retarded children. You did point out that boards of county commissioners are empowered to purchase necessary buildings and sites therefor and stated that you could see no reason 'why a board of county commissioners, after it approves the establishment of a training school, could not purchase the necessary building and site therefor'

"In the General Election held in November, 1958, the voters of Lucas County approved a .3 of a mill levy for five years for the support of the county retarded children's program. I am enclosing a copy of the Resolution and of the ballot.

"Your opinion is desired as to whether a board of county commissioners may, with the consent of the child welfare board, purchase real estate and construct a building in which to enable the child welfare board to perform its duties in connection with the establishment and operation of a training school for retarded children, and pay therefor out of the proceeds of the levy in question."

In addition to its other powers, a board of county commissioners is empowered by Section 307.02, Revised Code, to purchase and construct "a courthouse, county offices, jail, county home, juvenile court building, detention home, and other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, and related parking facilities, and sites therefor * * *" 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."

As I pointed out in my Opinion No. 1464, to which you refer, the power of a county child welfare board to establish a training school is specifically made subject to the approval of the board of county commissioners under the provisions of Section 5153.16, Revised Code. I am of the opinion, therefore, that Section 307.02, *supra*, confers upon the board of county commissioners the right to purchase a site and construct thereon whatever necessary buildings are needed for such training school.

Whether the board of county commissioners may use the proceeds of the levy mentioned in your request to construct the training school, assuming the resolution to be valid, is the next question.

Were these funds, now in question, derived from the general levy within the ten-mill limitation under Section 5705.03, Revised Code, there would be no question that they could be used for the purpose of acquiring or constructing permanent improvements. That a training school is a permanent improvement is evident from the definition of "permanent improvement" in Section 5705.01 (E), Revised Code, providing as follows:

"(E) 'Permanent improvement' or improvement means any property, asset, or improvement with an estimated life or 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."

The funds in question, however, are derived from a levy in excess of the ten-mill limitation. In Opinion No. 455, Opinions of the Attorney General for 1951, page 200, the board of county commissioners of Belmont County had submitted to the voters the question of levying a tax in excess of the ten-mill limitation. The then Attorney General stated on page 202 of the opinion as follows:

"Your resolution 'for the purpose of providing funds to supplement the general fund appropriations for dependent and neglected children under the care of the County Child Welfare Board' must therefore adhere to these specific requirements of Section 5625-15, General Code. In particular, the levy must be confined to one purpose, that is, one of the several permissible purposes mentioned in this section. Subdivision I specifies that such an excess levy may be laid for 'current expenses of the subdivision.' Since the other permissible purposes under said Section 5625-15 deal with more specific purposes, such as recreation, road building, etc., I assume that the Board of County Commissioners acted under subdivision I of that section. * * *"

Section 5625-15, General Code, is now Section 5705.19, Revised Code, and Subdivision I is now Subdivision (A).

One of the permissible purposes mentioned in Section 5705.19, *supra*, reads as follows:

"(F) For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue;"

If, therefore, the purpose of the board of county commissioners is to construct a permanent improvement, such as a training school, then they must specify such purpose in their resolution. In the absence of a clear expression of such purpose, I, like my predecessor in Opinion No. 455, *supra*, must assume that the board acted under subdivision (A) of Section 5705.19, *supra*, to provide for the current expenses of the child welfare board.

My predecessor in Opinion No. 455, *supra*, held that proceeds from the levy could not be expended for any permanent improvement because permanent improvements are specifically excepted from expenditures for "current expenses." See Section 5705.01 (F), Revised Code.

I have examined the resolution and the amendments thereto submitted with your request and am unable to find any purpose expressed therein to use the proceeds from the levy to construct a training school and it follows that the funds in question may not be so used.

It is my opinion, therefore, and you are advised:

1. Under the provisions of Sections 307.02 and 5153.16, Revised Code, a board of county commissioners may purchase a site and construct thereon necessary buildings for a training school for retarded children.

2. 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.

Respectfully,
MARK McELROY
Attorney General