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1. COMMISSION "FOR THE PURPOSE OF ACQUIRING NEW SITES FOR THE STATE SCHOOL FOR THE BLIND AND THE STATE SCHOOL FOR THE DEAF, AND THE CONSTRUCTION OF NEW BUILDINGS FOR SUCH SCHOOLS" — HAS FULL CONTROL OF GROUNDS PURCHASED UNTIL COMPLETION OF SUCH PROJECT — MAY TAKE NECESSARY STEPS FOR PROPER MAINTENANCE AND CARE OF GROUNDS — AMENDED SENATE BILL 27, 95 GENERAL ASSEMBLY.

2. IF COMMISSION DETERMINES GROUNDS, OR PORTION THEREOF WILL REMAIN UNUSED FOR A TIME, IT MAY LEASE SAME AND FIX TERMS AND CONDITIONS OF LEASING — DIRECTOR OF PUBLIC WORKS AUTHORIZED TO EXECUTE SUCH LEASE — SECTION 154-40, PARAGRAPH 9 G. C.

SYLLABUS:

1. The commission created by Amended Senate Bill No. 27 passed April 15, 1943, "for the purpose of acquiring new sites for the state school for the blind and the state school for the deaf, and the construction of new buildings for such schools", has the full control of the grounds purchased by it for such purpose, until the completion of such project, and may take such steps as are in the judgment of the commission necessary for the proper maintenance and care of such grounds.

2. If such commission shall determine that such grounds or a portion thereof will remain unused for a time, and should be leased, it may so order, and may fix the terms and conditions of leasing and may request the Director of Public Works to execute such lease, and such director is authorized to execute the same, pursuant to Section 154-40, paragraph 9 General Code.

Columbus, Ohio, November 20, 1944

Commission for New Residential Schools for the Blind and the Deaf
Columbus, Ohio

Gentlemen:

I have before me the letter of the Secretary of your Commission, requesting my opinion and reading as follows:

"The Commission created under Amended Senate Bill No. 27 which was approved by the Governor under date of April 26, 1943, 'for the purpose of acquiring new sites for the State School for the Blind and the State School for the Deaf and the construction of new buildings for such schools,' acquired during the summer a tract of 235 acres known as the Wyandot Golf Course, as a location for these two new schools. Subsequently, contracts have been entered into with the architectural firms for preparing the drawings and specifications for these schools. However, it now appears that some time will elapse before construction can actually get under way.

The question, therefore, which confronts the Commission is who has authority to care for this property pending the beginning of construction. The Commission was first under the impression that the tract, like all other state property, was under the control of the Department of Public Works. However, in an informal conversation which I had with two members of your staff, they expressed themselves as of the opinion that the Commission has control of this property until the project is completed.

Shortly the Commission must submit its budget requests for the next biennium. If it has the responsibility of caring for this

property, then some provision must be made in the budget for those services. Therefore, I am writing to task for a formal opinion covering the two following questions:

(1) Is the property known as the Wyandot Golf Course and purchased by the Commission as a site for these two residential schools under the control of the Commission until the project is finally completed? If not, under whose control is it?

(2) If the answer to question (1) is 'Yes', is that control interpreted to give the Commission authority to take such steps as in its judgment are necessary for the appropriate care of this site until the project is finally completed and the Commission discharged?

Since the budget requests which the Commission makes for the ensuing biennium are scheduled to be filed with the Director of the Budget by November 15, I should greatly appreciate an early opinion on this question so that the Commission may be guided accordingly."

The powers of your body are set forth in the act creating the Commission, Amended Senate Bill No. 27, passed by the 95th General Assembly on April 15, 1943. Section 1 of that act reads as follows:

"There is hereby created a commission, *whose duty* it shall be to *acquire new sites* and to *construct new buildings* for a residential school for the blind and a residential school for the deaf. The commission shall consist of the superintendent of public instruction, the director of public works and seven members appointed by the governor. Not more than six members of the commission shall belong to the same political party. The members of the commission shall be appointed within thirty days after the taking effect of this act."

(Emphasis added.)

Section 2 gives authority to the Commission to employ a secretary and such technical and other assistants as may be necessary, and requires the Director of Public Works to "furnish necessary office space and equipment for the Commission".

Section 3 sets forth the powers and duties of the commission, in the following language:

"The commission created in section 1 of this act shall have the following powers and duties:

(a) The commission shall acquire by purchase, by gift, or by condemnation proceedings the necessary land for the state residential schools for the blind and the deaf, and shall have suitable appraisals made of and take options on such sites as it deems advisable as provided in section 154-40, paragraph 5, of the General Code.

(b) The commission shall erect a new state residential school for the deaf and a new state residential school for the blind when funds are made available for this purpose by an appropriation by the general assembly, or from funds received from other sources for this purpose. Such buildings shall be constructed in accordance with plans and specifications approved by the commission and construction of new schools shall be *in accordance with the provisions of sections 2314 to 2332, inclusive, of the General Code, excepting that the commission shall act in all instances where the state building commission is named in the above mentioned statutes.*

(c) The commission shall give due consideration to the plans, specifications and recommendations for the construction of the different kinds and types of buildings to be used for such schools as prepared by the commission created under Amended Senate Bill No. 368, passed by the 94th General Assembly, and filed in the office of the secretary of state, June 6, 1941.”
(Emphasis added.)

Section 6 reads as follows:

“The commission shall do *all things necessary to promote and finish for occupancy* a new state residential school for the deaf, and furnish such equipment and furnishings which are necessary to complete these schools for the occupancy, education, health and welfare of the deaf and blind children of this state.”
(Emphasis added.)

The reference in Section 3a to Section 154-40, paragraph 5, of the General Code, calls for an examination of that section, and particularly the paragraph referred to. Section 154-40 outlines the powers and duties of the Department of Public Works, and paragraph (5) which by the terms of Senate Bill No. 27, is adopted as a part of the statement of the power and procedure of your Commission, reads as follows:

“(5) To purchase all real estate required by the state government, or any department, office or institution thereof; in the exercise of which power such department shall have authority to exercise the power of eminent domain, in the manner provided by law for the exercise of such power by the superintendent of public works in the appropriation of property for the public works of Ohio, as heretofore defined.”

The act creating your commission, in thus adopting the above quoted paragraph from Section 154-40, clearly shows the intention of the legislature to take the power from the Director of Public Works so far as the acquisition of land for the new schools in question is concerned and to confer it exclusively on your commission.

By the further terms of Section 154-40 General Code, the Director of Public Works is given authority to prepare or cause to be prepared, plans, specifications, etc. for the public buildings to be erected by the state departments, offices and institutions and to have general supervision over the construction and repair of such public buildings. But by the terms of Amended Senate Bill No. 27 all of these powers, so far as the buildings in question are concerned, are clearly conferred on your commission.

It is significant that at no place in the act creating your commission is the Director of Public Works mentioned or any power given to him or any duty conferred on him except that he is made a member ex officio of the commission, and is required to furnish it necessary office space and equipment.

It will be observed from the provisions already quoted from Senate Bill No. 27, that the commission, in the construction of the new schools for the blind and the deaf, shall be guided by the provisions of Sections 2314 to 2332, inclusive, of the General Code, except that "the commission shall act in all instances where the state building commission is named in the above mentioned statutes". This calls for a reference to the statutes creating the state building commission and a consideration of its powers. The state building commission is provided for by Section 2314, General Code, which deals with the construction and repair of all buildings for use of the state or any of its institutions. This section provides for the employment of an architect and the preparation of such plans, specifications and estimates of cost and such other data "as may be required by the governor, secretary of state, and auditor of state, acting as, and being the state building commission".

The subsequent sections up to and including Section 2332, outline the proceedings whereby public buildings are to be built under the direction and supervision of the state building commission. The provision of Senate Bill No. 27, to which reference has been made, providing that your

commission shall act in all instances where the state building commission is named in Sections 2314 to 2332, inclusive, clearly eliminates the state building commission, so far as the schools for the blind and deaf are concerned, and substitutes your commission with all the powers and duties of the state building commission. We find, however, that the state building commission has been abolished, and its powers lodged in the Director of Public Works, by the enactment of the State Administrative Code, in 109 O. L., p. 105. Section 154-40 of the General Code being a part of the so-called "Administrative Code", in its original enactment read in part as follows:

"The department of highways and public works shall have all powers and perform all duties vested by law in the superintendent of public works, the state highway commissioner, the chief highway engineer and the state building commission."

By Section 154-26 General Code, being a part of the same act, the state building commission was among the offices which were expressly abolished. It follows clearly, therefore, that your enabling act in transferring to your commission all powers that were vested in the defunct state building commission, now succeeded by the Director of Public Works, had the direct effect of relieving that officer of any responsibility for the construction of the buildings in question and placing the entire power and responsibility in your commission.

While it is true that Sections 2314 to 2332, inclusive, General Code, have to do with the erection of buildings and have no direct bearing upon the question of custody of grounds required for the erection of the buildings, still, they do, it appears to me, have a bearing in determining the legislative intent as to the power, duty and responsibility connected with this particular project.

Note again, the provisions of the act, whereby it is made the duty of your commission to "acquire new sites and construct new buildings" and to "do all things necessary to promote and finish for occupancy a new state residential school for the blind and a new state residential school for the deaf, and furnish such equipment and furnishings which are necessary to complete these schools for the occupancy, education, health and welfare of the deaf and blind children of this state".

There are certain provisions in Sections 154-40 General Code, which as already stated outline the general powers of the Director of Public Works, which should be given consideration. It is provided in paragraphs (9) and (12) that he shall have the following authority:

“(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof, excepting school and ministerial lands. * * *

(12) To exercise general custodial care of all real property of the state”.

I am informed that the particular situation that called for your request for my opinion grows out of the fact that your commission faces the possibility of some delay in starting actual construction work, and that a part of the ground which you have purchased and on which a golf course has been maintained, may be profitably leased to a golf club, and that there exists some uncertainty as to what authority should determine the advisability of making such lease and the terms thereof, and who should execute the same.

From a consideration of the entire act as well as the general statutes, it appears to me that your board is made responsible for every step in the construction of these schools, and that when you have acquired the grounds necessary therefor and are making plans for and carrying out the construction of the buildings, the entire and exclusive control of those grounds must rest in your commission. No other authority ought to have the privilege of determining what disposition should be made of the grounds between the time you acquire them and the time when the construction of the buildings is commenced. It might easily be that any such disposition made by an independent officer of the state would conflict with the immediate use to which your commission finds it necessary to devote such grounds.

In view of what has been said above, I am clearly of the opinion that the discretion as to the use of the land lies solely in the commission, and that it alone may determine whether the land will remain “unused” for such length of time as to warrant leasing a part of it, and also the terms under which it may be leased.

However, I cannot find that your commission has either express or implied power to lease this property. That power and duty is devolved by Section 154-40 General Code, above quoted, upon the Director of Public Works. It was so held in the case of *State v. Miller*, 66 Oh. App. 449, the syllabus of which in part, reads as follows:

“The director of public works, pursuant to the authority conferred by Section 154-40, paragraph 9, General Code, may make a valid sublease for vacant space in a building leased by the state for the use of the Bureau of Unemployment Compensation and bind the state and that bureau for the period of the term leased.”

In that case the court found that the bureau in charge of the building had determined that the space leased was unproductive but that the bureau itself was without power to make the lease.

I do not find it necessary at this time to determine who shall be responsible for the custody of these grounds after the buildings are completed, but it is my opinion in specific answer to your question that until the new residential schools for the blind and the deaf have been completed, your commission has full control and responsibility for the grounds which you have acquired for that purpose, and may take such steps as are necessary in the judgment of the commission for the proper care of the grounds and the maintenance and protection of improvements or property located thereon.

Respectfully,

THOMAS J. HERBERT

Attorney General