

699.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS TREASURER OF KENT STATE COLLEGE—C. W. SEIBERLING.

COLUMBUS, OHIO, August 1, 1929.

Board of Trustees, Kent State College, Kent, Ohio.

GENTLEMEN:—You have submitted a bond for the sum of \$30,000.00, upon which C. W. Seiberling appears as principal and the Fidelity and Deposit Company of Maryland as surety, conditioned for the faithful performance of the duties of said principal as treasurer of Kent State College from May 13, 1929.

Said bond is executed evidently in pursuance of the provisions of Section 4 of House Bill 44 as enacted by the 78th General Assembly, 101 Ohio Laws 320. Said section requires such treasurer to give a bond in a sum to be determined by the trustees, which shall not be for a less sum than the estimated amount which may come into his control at any one time. Said section further requires said bond to be approved by the Attorney General.

You have further submitted a certified copy of the resolution of the Board of Trustees adopted July 8, 1929, which fixes said bond at the sum of \$30,000.00.

I have found said bond to be in proper form, executed in pursuance of law, and I have therefore endorsed my approval thereon. Said bond is being returned herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

700.

MUNICIPALITY—UNAUTHORIZED TO JOIN WITH COUNTY IN CONSTRUCTING PUBLIC BUILDING—MAY LEASE SPACE IN COUNTY COURT HOUSE.

SYLLABUS:

1. *A county has no authority to join with a municipality for the purpose of constructing a joint county court house and city building either upon a site jointly acquired or upon land owned by the city or county.*

2. *In the event it is desired to devote a portion of the county court house to uses and purposes of a municipality, the county commissioners may execute a lease therefor under the provisions of Section 2419-2, General Code.*

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

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

“This office has been seeking authority upon the following question and request your opinion in the following matter:

Has a county the authority to join with a municipality in acquiring a site and constructing a joint county court house and city building? ”

Can they join in the construction of a joint building upon the property owned either by the county or by the city?”

Section 2418, General Code, provides that the county commissioners shall provide a permanent seat of justice in a county until proper buildings are erected therefor. Section 2419, General Code, is as follows:

“A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners 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. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein.”

Section 2433, General Code, as amended in 112 Ohio Laws, provides in part as follows:

“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, * * * 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.”

Municipalities are expressly authorized, under the provisions of Section 3939, General Code, as amended in 112 O. L. 379:

“(1) To acquire by purchase or condemnation real estate with or without buildings thereon, and easements or interests therein, for any lawful purpose;

(2) To extend, enlarge, reconstruct, repair, equip, furnish or improve a building or improvement which it is authorized to acquire or construct;

* * * * *

Section 3615-1, General Code, provides in part as follows:

“Two or more municipalities may enter into an agreement for the joint construction or management, or construction and management, of any public work, utility or improvement, benefiting each municipality, * * * * .”

It is noted that the authority here granted to two or more municipalities to enter into an agreement for a joint improvement does not extend to include the county.

The provisions of the Legislature for the acquisition and construction of county buildings by the county commissioners are separate and distinct from those relative to the acquisition and construction of municipal buildings by municipal councils. The authority for the construction of a county court house and the acquisition of a site therefor is expressly conferred upon the county commissioners. No provisions have been made which would directly or indirectly authorize a county to join with a municipality for the acquisition of a site and the construction of a joint county court house and city building. The county court house is the seat of justice of the county

and as such belongs to the county and is under the sole control of the county commissioners.

Considering your second question, in view of the foregoing conclusions, the matter of whether the property on which such joint building is sought to be constructed belonged to the county or to the city would have no bearing upon the situation.

In case it is desired that a portion of a county court house which is to be constructed be used by a municipality, the county commissioners may lease such portion of the county court house to a municipal corporation under the provisions of Section 2419-2, General Code. This section is as follows:

"The county commissioners may by agreement with the city council, the director of public safety or his successor or the person, persons or board charged with the erection, maintenance or repair of police stations, jails, police and municipal court houses and court rooms, lease to any municipal corporation in said county suitable quarters in county buildings (erected or to be erected) for municipal courts, police stations, police courts, prosecutors' offices, probationers' offices and other similar municipal purposes. Whenever the commissioners of any county have made an agreement with a municipal corporation as herein provided, such commissioners may erect county building anticipating and making provision for such municipal quarters."

An analysis of this section discloses a legislative recognition of the fact that there may be instances in which the public would be most efficiently and economically served by such joint occupancy, and although no authority is granted for joint ownership, the county may erect a county building "anticipating and making provision for such municipal quarters." It may be that the joint construction and ownership of a public building to serve the purposes of both the county and the municipality, which is the county seat, would result in effectual economy in the expenditure of public funds, and would not be objectionable from a governmental standpoint. Nevertheless, it is fundamental that, however advisable such an undertaking would be, statutory authority therefor must exist, and accordingly, in the absence thereof, the right so to do must be denied.

In conclusion and in specific answer to your question, I am of the opinion that a county has no authority to join with a municipality for the purpose of constructing a joint county court house and city building either upon a site jointly acquired or upon land owned by the city or county. I am further of the opinion that in the event it is desired to devote a portion of the county court house to uses and purposes of a municipality, the county commissioners may execute a lease therefor under the provisions of Section 2419-2, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.