

1371

- 1 COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO GIVE OPTION FOR PURCHASE IN FUTURE OF ANY PROPERTY ACQUIRED PURSUANT TO HOUSE BILL 508, 96 GENERAL ASSEMBLY.
- 2 MUNICIPALITY—HAS AUTHORITY TO CONVEY REAL ESTATE TO COUNTY COMMISSIONERS TO SUPPLEMENT COUNTY VETERANS HOUSING FUND.
3. NO AUTHORITY FOR COUNTY COMMISSIONERS UNDER SUCH TRANSFER TO GRANT MUNICIPALITY OPTION TO PURCHASE REAL ESTATE AT A FUTURE TIME.
4. FUNDS OR PROPERTY CONTRIBUTED BY MUNICIPALITY TO COUNTY COMMISSIONERS—PURPOSE, TO SUPPLEMENT COUNTY VETERANS HOUSING FUND—COMMISSIONERS WITHOUT AUTHORITY TO CONTRACT WITH MUNICIPALITY TO REIMBURSE IT PRO RATA:

SYLLABUS:

1. Under the provisions of House Bill No. 508 passed by the 96th General Assembly, special session, the county commissioners are without authority to give an option for the purchase in the future of any property acquired pursuant to said act.
2. Under the provisions of said act a municipality has authority to convey real estate to the county commissioners for the purpose of supplementing the county veterans housing fund therein provided for.
3. The county commissioners are without authority to grant to a municipality so transferring real estate to them an option to purchase the same at a future time.
4. Where funds or property have been contributed by a municipality to the county commissioners for the purpose of supplementing the county veterans housing fund provided in said act, the county commissioners are without authority to contract with such municipality to reimburse it pro rata at the time of the sale of property purchased or constructed with the aid of such contribution.

Columbus, Ohio, November 19, 1946

Honorable Mary F. Abel, Assistant Prosecuting Attorney
Bellefontaine, Ohio

Dear Madam:

I have before me your communications in which you request my opinion on several questions arising under House Bill No. 508, passed by the 96th General Assembly, special session, providing for temporary emergency housing for veterans of World War II and their families.

The questions submitted are as follows:

1. Do the county commissioners have authority to give an option to a veteran occupying said temporary housing to purchase the same at the time provided for the sale of the property?

2. Does a municipality have authority to purchase real estate and in turn transfer said real estate to the County Commissioners as a site for the building to be erected under this bill?

3. If it is possible and legal for municipalities to transfer real estate to the County Commissioners for this purpose have the County Commissioners authority to grant the municipality an option to purchase at the time when the building is sold?

4. Does a municipality have authority to supplement the funds expended by the Commissioners in the erection of these buildings and if so can the Commissioners contract with the municipality to reimburse at pro rata at the time of the sale?

I will undertake to answer these questions in their order.

1. The only provision in the act in question concerning the sale of the properties which may be acquired pursuant to its provisions is found in Section 9 which reads as follows:

"The county commissioners of any county which has acquired property in accordance with provisions of this act may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county."

The act itself is not explicit in defining the precise time and circumstances under which such properties may be sold. However, in my Opinion No. 1197 rendered September 12, 1946, it was held as shown by the fifth syllabus:

“The authority given by Section 9 of said act to sell properties acquired pursuant to its provisions is to be exercised only for the purpose of liquidation after the shortage of housing for veterans has been relieved and the purposes of the act accomplished.”

Consistent with that opinion it would appear to me that it would hardly be practicable for the commissioners now to arrive at a fair or safe valuation of any particular unit of the property which they are authorized to acquire and which they are to operate up to December 31, 1951, if the emergency created by the housing shortage lasts that long, and they may not, in the absence of express authority, obligate themselves to sell to any particular person at some indefinite future time, at a price now agreed upon.

Furthermore, attention should be called to the provisions of the statutes which govern generally the sale of real estate by the county commissioners. Section 2447, General Code, provides in part as follows:

“If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use * * *.”

Section 2447-1 prescribes the procedure that must be followed. That section reads in part as follows:

“No sale of such real estate shall be made unless authorized by a resolution adopted by a majority of such commissioners. When such sale is so authorized a deed therefor shall be made by such board of county commissioners and only to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. Such board of county commissioners may reject any or all bids and readvertise until all such real estate is sold.
* * *”

I can see no reason why real estate acquired pursuant to the provisions of the act in question should not be disposed of in accordance with the general statutes above quoted, when it is no longer needed for the purposes for which it was acquired. It is therefore my opinion that the board of county commissioners does not have the right to grant an option to any person for the purchase at a future time or at a stipulated price, of any part of the property acquired under said act.

2. Section 3 of the act reads as follows :

“The county commissioners of each county are authorized to accept contributions from any political subdivision within the county and from the federal government or any agency thereof and from persons, corporations and associations for the purpose of supplementing the county veterans housing fund.”

No reason is perceived why the contribution thus authorized could not be in the shape of real estate as well as in money. Each would “supplement the county veterans housing fund.” The question of municipal authority to make such contribution seems to me to be sufficiently covered by the language of the section just quoted since the grant to the county commissioners of authority to accept contributions from any political subdivision within the county clearly implies authority to such subdivisions to make such contribution. Furthermore, in my opinion it is quite within the power of a municipality under the powers granted by Section 3 of Article XVIII of the Constitution, to convey property to the county for a public purpose in which the municipality has a vital interest. As to the authority of a municipality to make disposition of property without compliance with the statutes relative to sale of property not needed for any municipal purpose, see 1942 Opinions Attorney General, page 745, in which it was held :

“A municipality, by virtue of the power granted to it by Section 3, Article XVIII, Constitution of Ohio, may sell personal property, not needed by it, in such manner as may be prescribed by its charter, if any charter has been adopted, and in the absence of any charter provision in such manner as may be provided by ordinance, and need not comply with the provisions of Sections 3699 and 3703, General Code.”

The opinion there expressed could apply to real estate as well as to personal property.

3. The answer to this question is, I believe, sufficiently indicated by my answer to the first question propounded. I do not consider that the county commissioners have any authority under the law to grant an option to purchase property acquired pursuant to this act to any person or corporation, even to a municipality which may have originally donated it. The county commissioners have authority, however, under the act, to acquire property for the purposes of providing emergency housing, by

lease as well as by purchase or gift, and if the municipality desires to protect itself in the ultimate disposition of the property, it might be leased to the county for the period of the emergency instead of being conveyed outright.

4. As hereinabove pointed out, a municipality does have authority to supplement the funds in the hands of the commissioners for the purposes set out in the act, but I do not find any authority whereby the county commissioners can borrow money for that purpose and the proposition of having the municipality advance funds which are to be repaid either outright or by a pro rata share in the proceeds of sale seems to me to amount to nothing more than a borrowing on the part of the county commissioners, and it is therefore my opinion that the commissioners could not make a contract with the municipality whereby the latter would advance funds to be repaid to it pro rata at the time of the sale of the properties acquired by the commissioners.

Respectfully,

HUGH S. JENKINS
Attorney General