

OPINION NO. 72-119**Syllabus:**

Under R.C. 123.01 (A) (14) the Department of Public Works may enter into a lease-purchase contract to provide housing for senior correctional staff members at Lucasville, Ohio.

To: R. Wilson Neff, Director, Department of Public Works, Columbus, Ohio
By: William J. Brown, Attorney General, December 18, 1972

I have before me your request for my opinion, which reads as follows:

This office has been asked to lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof, four houses or residential units for the Department of Rehabilitation and Correction on the grounds of the Southern Ohio Correctional Facility at Lucasville, Ohio.

The purpose of the proposed lease-purchase plan is to meet Director Cooper's expressed

need for emergency housing for senior staff members of the Institution.

We respectfully request a formal opinion, at your earliest convenience, as to the legality of the proposed project which would be undertaken pursuant to the provisions of Section 123.01 (A) (14) of the Ohio Revised Code.

The Section to which you refer, R.C. 123.01 (A) (14), reads in pertinent part as follows:

(A) The department of public works has the following powers:

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(14) To lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, buildings, structures, and other improvements for any public purpose, and in conjunction therewith, to grant leases, easements, or licenses for lands under the control of the state, or any department, office, or institution thereof, for a period not to exceed forty years. Such lease-purchase plan shall provide that at the end of the lease period such buildings, structures, and related improvements together with the land on which they are situated shall become the property of the state without cost. (Emphasis added.)

Your question asks, in effect, whether the leasing of land at a state correctional institution to a builder, who agrees to construct housing for correctional personnel, is a lease for a public purpose.

The restriction that funds and property of the state must be used for a "public purpose" rests on Article VIII, Section 4, Ohio Constitution, which reads as follows:

The credit of the state shall not, in any manner, be given or loaned to, or in the aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

What constitutes a "public purpose" is, of course, ultimately a question for judicial interpretation. Housing Authority v. Evatt, 143 Ohio St. 10, 16 (1944). The early decisions were quite strict in their interpretation of Article VIII, Section 4. See, e.g. Kohler v. Powell, 115 Ohio St. 418, 425 (1926). Recent decisions of the Supreme Court have, however, indicated a broadening of the concept of "public purpose". State, ex rel. Bruestle v. Pich, 159 Ohio St. 13, 26-27 (1953); Fazell v. City of Cincinnati, 13 Ohio St. 2d 63 (1968). See Opinion No. 71-080, Opinions of the Attorney General for 1971; Opinion No. 72-041, Opinions of the Attorney General for 1972; Opinion No. 72-076, Opinions of the Attorney General for 1972; and Opinion No. 72-096, Opinions of the Attorney General for 1972.

Illustrative decisions concerning funds held to be used for a public purpose include: those used by agricultural societies for the

holding of annual fairs to aid the advancement of agricultural education, State ex rel. Leaverton v. Kearns, 104 Ohio St. 550, 555 (1922) those used for the acquisition of land by a municipality for the construction of sports stadiums and off-street parking facilities, Razell v. City of Cincinnati, supra; State ex rel. McElroy v. Baron, 169 Ohio St. 439 (1959); State, ex rel. Gordon v. Rhodes, 156 Ohio St. 81 (1951); and those granted to veterans' organizations for "the rehabilitation of war veterans and the promotion of patriotism", State, ex rel. v. Defenbacher, 164 Ohio St. 142 (1955). And in Opinion No. 1147, Opinions of the Attorney General for 1957, my predecessor held that the Department of Public Works could lease land on the campus of Kent State University for the purpose of construction of student dormitories.

I can see no reason why the proposed lease-purchase plan should not be held to fulfill a "public purpose". The erection and operation of correctional facilities, whether by a state, a county, or a municipality, is a purely governmental function, being an indispensable part of the administration of the criminal law. Bell v. Cincinnati, 80 Ohio St. 1 (1909). Such institutions are a part of the police system for the preservation of order and the security of society, and are established by the state in the exercise of its sovereign powers, in performance of its duty to provide for the custody employment, and maintenance of convicts. They are a public necessity. District of Columbia v. Totten, 5 F.2d 374 (1925). Because of the complexities and problems involved in running a large correctional institution; the Department of Rehabilitation and Correction has found it necessary that senior staff members must be immediately available in case of emergency. The new facility at Lucasville is in a comparatively isolated situation and there is a shortage of satisfactory housing. I am satisfied, therefore, that the erection of houses on the grounds of the institution fulfills a public purpose.

This does not mean that the staff members should be provided free lodging. R.C. 143.10 (D) provides that, "If meals, lodging, laundry, or other personal services are furnished an employee, such employee shall pay the actual costs therefor, in such amounts and manner as shall be determined by the appointing authority and approved by the department of finance."

My predecessor, in Opinion No. 5964, Opinions of the Attorney General for 1955, construed this statute to mean that the particular state employees who are to receive lodging, meals, etc., is a matter of administrative discretion. Such discretion should be exercised so as to promote the efficiency of public services and should have regard to the duties and responsibilities of the individuals concerned and the peculiar nature of the conditions under which the institution is operated. But this is necessarily subject to the requirement that each recipient pay the "reasonable costs" incurred by the state in furnishing such services.

In specific answer to your question it is my opinion, and you are so advised, that under R.C. 123.01 (A) (14) the Department of Public Works may enter into a lease-purchase contract to provide housing for senior correctional staff members at Lucasville, Ohio.