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THE LEASE OF A PORTION OF A COUNTY BUILDING TO AGENCIES OF THE FEDERAL OR STATE GOVERNMENTS DOES NOT DESTROY ITS TAX-EXEMPT STATUS—THE LEASE OF A PORTION OF A COUNTY BUILDING TO A MUNICIPAL BAND WOULD NOT DESTROY ITS TAX-EXEMPT STATUS—§§5709.09, R.C., 5709.12, R.C., 5709.08, R.C., 5713.08, R.C.

## SYLLABUS:

1. Because of the provisions of Sections 5709.08 and 5709.12, Revised Code, the lease of a portion of a county building purchased primarily for court, jail and county office uses to agencies of the federal and state governments, to be used exclusively for public purpose, would not destroy the tax-exempt status of the building.

2. The lease of a portion of a county building purchased primarily for court, jail and county office uses to a city municipal band would not destroy the tax-exempt status of the building since the county would be using the property exclusively for a public purpose within the purview of Section 5709.08, Revised Code.

Columbus, Ohio, July 27, 1962

Hon. Thomas L. Tribbie, Prosecuting Attorney  
Guernsey County, Cambridge, Ohio

Dear Sir:

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

“Recently the County Commissioners of Guernsey County purchased a building that they intend to use to house a county jail and other county offices. However, it is also possible that they would rent or lease a part of this building to a federal agency or state agency or agencies for office space. It is also intended to use the same to house the equipment to the Cambridge Municipal Band, and permit band practice in the building for which a rent would be paid by the Cambridge Municipal Band. The Cambridge Municipal Band is a corporation not for profit.

“Under Sec. 5709.09 this building shall be exempt from taxation if it is used for courts, jails or other county offices. The following questions have arisen as the result of the intended use for this building:

- “1. If the County Commissioners lease or rent a part of the space in this building to a federal agency for office space, and for which rent is received, does this take the building out of the exempt class for tax purposes?
- “2. If the County Commissioners lease or rent a part of the space in this building to a state agency for office space, and for which rent is received, does this take the building out of the exempt class for tax purposes?
- “3. If the County should rent or lease a part of the building to the Cambridge Municipal Band, which is a corporation not for profit, to be used by the band for storage of equipment and practice purposes, and for which a rental

would be paid, would this take the building out of the exempt classification under Sec. 5709.09?

“Would appreciate very much your opinion on this matter.”

Section 5709.09, Revised Code, to which you refer, reads as follows:

“Buildings belonging to counties and used for courts, jails, or county offices, together with the ground, not exceeding ten acres in any county, on which such buildings are erected, shall be exempt from taxation.”

As you point out, Section 5709.09, *supra*, would provide exemption from taxation for the building in question if it were used only for courts, jails and other county offices.

So far as your first question regarding lease of space in the building to a federal agency is concerned, I see no reason why such a lease would operate to remove the building from a tax-exempt status. As to this, Section 5709.08, Revised Code, reads, in part, as follows:

“Real or personal property belonging to the state or United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation. \* \* \*”

Noting this section of the law the Supreme Court in *City of Dayton v. Haines*, 169 Ohio St., 191, ruled that real property owned by a city and leased to the federal government did not lose its exempt status. The syllabus of that case reads:

“Where real property owned by a city is leased to the United States and used by that lessee exclusively for public purposes, such real property should be exempted from taxation pursuant to Section 5709.08, Revised Code. (*City of Dayton v. Haines, Aud.*, 156 Ohio St., 366 overruled.)”

It is my opinion that this decision may be extended to include county-owned property.

Turning to your second question regarding a lease to the state, I direct your attention to Section 5709.12, Revised Code, which reads, in part, as follows:

“Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. \* \* \*”  
(Emphasis added)

It appears to me that the above-underlined language is sufficient answer to your second question. That language specifically permits tax-exempt status to be retained when county property is leased to the state to be used for public purposes.

Your third question regarding the effect of a lease of part of the building to the Cambridge Municipal Band raises a more difficult question. Basically, the problem is whether such a lease would constitute the use of the property exclusively for a public purpose, for Section 5709.08, *supra*, as I noted above, exempts "public property used exclusively for a public purpose." In the recent case of *City of Cleveland v. Carney, et al.*, 172 Ohio St., 189, the Supreme Court had occasion to consider whether the Cleveland Public Auditorium owned by the city and leased to various individuals, groups and organizations on a rental or concession basis for trade shows, conventions, public shows and sports events, religious gatherings, graduations, veterans' meetings, luncheons, dinners, dances and concerts was being used exclusively for a public purpose under Section 5709.08 of the Revised Code, so as to retain a tax-exempt status. In that case the Court said, at page 195 :

"The question then raised and the one which will determine this controversy is whether the exercising of their permit by the concessionaires is the fulfilling of a public purpose so as to make the use of this property, which admittedly is public property, a use 'exclusively for a public purpose.'

"Undoubtedly, trade shows and conventions, although not open to the public generally, nevertheless provide a benefit to the city as a whole. Hotels, restaurants, department stores, night clubs and other businesses profit directly and others connected therewith as employees profit indirectly from the presence of such events in a city. Were not such affairs of general benefit to a community there would not be the competition which exists among cities in the inducing of organizations to bring their conventions and trade shows to one city or another. Such a benefit is a public benefit because it affects all in the community directly or indirectly. Similarly, shows and musical entertainments, as well as meetings of various groups (whether luncheon or dinner meetings or not), and graduation and religious gatherings, intended to educate or to entertain, make for a more enlightened happier citizenry. That a variety of use is made of the auditorium is indicative of its attraction for all segments of the public, the flower lover as well as the circus fan or the sportsman. Such uses can only make for the common good, for the common prosperity of the community."

The court then went on to uphold the tax-exempt status of the auditorium.

While the decision of the Supreme Court in the *Carney* case seems to depend in great part upon the possible economic benefits to the community as a whole and equates such benefits with "public purpose," it also indicates that a use of the property to make a more happy and enlightened citizenry would constitute a public purpose. It seems to me that the maintenance of a municipal musical organization would fulfill the requirements of contributing to an enlightened and happier citizenry. Consequently, I am of the opinion that the tax-exempt status of the county building would not be destroyed by a lease of a part of such building to a municipal band.

Before concluding, I would like to remind you that the statutes relating to removal of real property from the county auditor's tax list are not self-executing. Section 5713.08, Revised Code, reads in part:

"\* \* \* No additions shall be made to such exempt lists nor additional items of property exempted under such sections without the consent of the board of tax appeals \* \* \*"

The above statute has been held to give the Board of Tax Appeals exclusive jurisdiction to exercise authority relative to the exemption of property from taxation. *Wehrle Foundation v. Evatt*, 141 Ohio St., 467. Consequently, authority for removal from the tax lists of any building purchased by the county must be obtained from the Board of Tax Appeals. This opinion will not operate to provide authority for exemption.

Accordingly, I am of the opinion and you are hereby advised:

1. Because of the provisions of Sections 5709.08 and 5709.12, Revised Code, the lease of a portion of a county building purchased primarily for court, jail and county office uses to agencies of the federal and state governments, to be used exclusively for public purpose, would not destroy the tax-exempt status of the building.

2. The lease of a portion of a county building purchased primarily for court, jail and county office uses to a city municipal band would not destroy the tax-exempt status of the building since the county would be using the property exclusively for a public purpose within the purview of Section 5709.08, Revised Code.

Respectfully,  
MARK McELROY  
Attorney General