

2. The exemption granted pursuant to the provisions of Section 6351, General Code, is a personal exemption applicable only to the veteran himself and does not extend to non-veteran partners who may be engaged in business with such honorably discharged soldier.

3. A veteran or a non-veteran who goes from house to house and takes orders for merchandise but who makes delivery at a later date is not required to secure a license under an ordinance of a Village requiring persons who engage in hawking or peddling merchandise on the streets of such Village to secure a license before engaging in such practice.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

4163.

CITY—MAY NOT CONTRACT WITH COUNTY COMMISSIONERS FOR  
LEASE OF OFFICE SPACE TO COUNTY IN CITY OFFICE BUILDING  
WHEN.

*SYLLABUS:*

*A city, which is the county seat of the county in which it is situated, and the county commissioners of such county, may not enter into a contract for the leasing of office space for ten years to the said county, in a city office building proposed to be erected by such city.*

COLUMBUS, OHIO, April 17, 1935.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“Will you kindly give me your opinion on the following question:

The City of Marion is contemplating building a new city office building and expect to rent a part of it to the County Commissioners of this county. (I might say that in connection with this the Court House is too small and it is now necessary for the County Commissioners to rent outside space) Have the County Commissioners the right to enter into a ten year lease with the City of Marion for office space in the proposed new city building?”

Section 2419, General Code, reads 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 rooms, 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."

The foregoing section of the General Code has been construed by former attorneys general to give implied authority to the county commissioners to rent or lease space outside the Court House for county officers, if there is not sufficient space available in the Court House. See Opinions of the Attorney General for 1930, Volume II, page 1544, at page 1545; Opinions of the Attorney General for 1917, Volume I, page 833. The space, however, must be at the county seat, as provided for by sections 2560, 2638, 2752, 2786, 2832, 4744-6 and 10501-4, General Code. Marion is the county seat of Marion county, so that there would seem to be ample authority for the county commissioners of Marion county to enter into a contract such as proposed in your letter, since you state that the county commissioners need more space than that contained in the present Court House.

However, it does not clearly appear that the city of Marion has authority to enter into a lease as set forth in your communication.

Sections 3616, 3631, 3698, 3699 and 3713, General Code, provide as follows:

"Sec. 3616. All municipal corporations shall have the general powers mentioned in this chapter, and council may provide by ordinance or resolution for the exercise and enforcement of them."

"Sec. 3631. To hold and improve public grounds, parks, park entrances, free recreation centers and boulevards, and to protect and preserve them. To acquire by purchase, lease, or lease with privilege of purchase, gift, devise, condemnation or otherwise and to hold real estate or any interest therein and other property for the use of the corporation and to sell or lease it, or to donate the same by deed in fee simple to the state of Ohio as a site for the erection of an armory."

"Sec. 3698. Municipal corporations shall have special power to sell or lease real estate or to sell personal property belonging to the corporation, when such real estate or personal property is not needed for any municipal purpose. Such power shall be exercised in the manner provided in this chapter."

"Sec. 3699. No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and readvertise until all such real estate is sold or leased."

"Sec. 3713. The councils of municipal corporations may permit the use of public buildings under their control, upon such terms and conditions as they by ordinance provide."

In Opinions of the Attorney General for 1930, Volume I, page 37, it was held after considering all the foregoing statutes, that a village council might lease for five years, upon following the procedure set out in section 3699, General Code, and other related sections, a municipal auditorium not needed for municipal purposes, to private

individuals, providing a reservation was made in the lease for the use by the city whenever public occasion demanded.

However, under the facts stated by you in your communication it is proposed that the city contract with the county commissioners before the city begins to erect the building. From the clear wording of the foregoing statutes, it would appear that the power to lease is only conferred upon a municipality with reference to buildings and real estate that are already in existence at the time when the lease is to be entered into.

This conclusion finds additional support when sections 3616, 3624 and 2419-2, General Code, are considered. Such sections provide as follows:

"Sec. 3616. All municipal corporations shall have the general powers mentioned in this chapter, and council may provide by ordinance or resolution for the exercise and enforcement of them."

"Sec. 3624. To establish, erect, maintain and regulate jails, morgues, houses of refuge and correction, workhouses, station houses, prisons and farm schools, and to agree with the commissioners of any county in which said municipal corporation is located for the lease of suitable quarters in county buildings (existing or to be erected), for police and municipal courts, police stations, police prosecutors' offices, probation officers' quarters and other similar municipal purposes."

"Sec. 2419-2. 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."

These sections authorize municipalities to lease quarters in county buildings *erected or to be erected*. Nowhere in the statutes does a similar provision appear authorizing municipalities to lease space to county commissioners or to any other officials or private parties, for that matter, in municipal buildings *to be erected*.

In the case of *State, ex rel. Rettinger vs. Cincinnati*, 31 O. N. P. (N. S.), 230, decided by the Court of Common Pleas of Hamilton County, under date of September 7, 1933, the court held that a lease made by the county commissioners with the director of public service of Cincinnati, as authorized by city council, for office space for the civil division of municipal court of Cincinnati in the Hamilton county court house for a term of five years at a dollar per year was valid. The Court of Appeals in 49 Ohio Appellate Reports, 42, affirmed this holding. However, in that case the Court House was in existence and also the special statutes, sections 3624 and 2419-2, General Code, provided definite authority for such a lease. In the present situation, the municipal building is not in existence when the contract is desired to be entered into, and special statutes such as were before the court in such case are not applicable here.

In view of the foregoing discussion, I am of the opinion, in specific answer to your question, that a city, which is the county seat of the county in which it is situated, and the county commissioners of such county may not enter into a contract for the leasing

of office space for ten years to the said county, in a city office building proposed to be erected by such city.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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4164.

APPROVAL, BONDS OF MASSILLON CITY SCHOOL DISTRICT, STARK COUNTY, OHIO, \$31,000.00.

COLUMBUS, OHIO, April 17, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4165.

APPROVAL, BONDS OF SOUTH-EUCLID-LYNDHURST VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$1,500.00.

COLUMBUS, OHIO, April 17, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4166.

APPROVAL, BONDS OF HUDSON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$16,000.00.

COLUMBUS, OHIO, April 17, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4167.

SCHOOL DISTRICT—COUNTY AUDITOR UNAUTHORIZED TO REDISTRIBUTE BALANCE OF "COUNTY BOARD OF EDUCATION FUND" TO SCHOOL DISTRICT WHEN.

**SYLLABUS:**

1. *The law contemplates that no more shall be retained from the distributive*