

SYLLABUS:

1. Real estate "known as the court square", "to be reserved for public use" according to the original city plat dedication may when no longer needed for public use by the county, be leased for parking lot purposes pursuant to Section 307.09, Revised Code, by the county commissioners.

2. Real estate, no longer needed for public use by the county and leased under authority of Section 307.09, Revised Code, to a private corporation to be operated as a parking lot is not "public property used exclusively for any public purpose" and said real estate must be assessed by the county auditor pursuant to Section 5713.01, et seq., of the Revised Code.

Columbus, Ohio, August 12, 1963

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

Dear Sir:

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

"A question has arisen in this County as to the use of the grounds upon which the courthouse is located.

"Recently, the Guernsey County Jail was demolished, and moved to another location. The jail formerly was on the grounds known as the court square. In the original plat of the City of Cambridge, the persons who dedicated the plat reserved the square upon which the courthouse is located, and stated that this area was 'to be reserved for public use.'

"In the area where the jail was demolished, the Guernsey County Commissioners were thinking of leasing this space to a private corporation, organized for the purpose of establishing and operating parking lots. The private corporation would pay a set rental for the use of this space.

"My question is twofold:

"(1) When this ground is 'reserved for public use', can the Guernsey County Commissioners lease this to a private corporation who would operate the same for a parking lot?

(2) If this space is so leased, would it then have to be appraised and placed on the tax duplicate?"
17 Ohio Jurisprudence 2d, 88 reads in part as follows:

* * * * *

"* * * property dedicated to a public use, without any provision for a forfeiture, does not revert to the dedicators merely by reason of a misuser thereof, or by reason of the nonperformance of a condition in which it is to be kept, the only remedy in such case, as a general rule, being an action to enforce or preserve the proper use."

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The following syllabi are quoted in pertinent part from *Babin vs. City of Ashland et al.*, 160 Ohio St., 328:

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"7. Where the fee of land is conveyed for a valuable consideration to a public body for a public use or purpose and there is no provision for forfeiture or reversion and such public body is later authorized to sell the land when it determines that it is no longer needed for such use or purpose, neither the grantor nor his heirs will have any enforceable rights on such sale * * *."

"8. Where a proprietor recorded a plat of a town pursuant to the provisions of the Act of 1805 (22 Ohio Laws, 301) and set forth and described thereon public ground within such town and lots intended for sale and where such proprietor thereafter sold such lots, the conveyance of such public ground by the record of the plat under such act was a conveyance for a valuable consideration."

The opinion in *Board of Education vs. Unknown Heirs*, 99 Ohio App. 463, after citing the *Babin case*, *supra* contains the following statement on pages 467 and 468:

"In view of the foregoing, we find in the instant case no reversionary clause contained within the dedication; and, we further find that the dedication was made for a valuable consideration, so far as the dedicated purpose, as found in the *Babin case*, *supra*, would increase the value of the surrounding lands owned by the dedicators. It therefore follows that the title to the land in question vested in fee simple in the County of Auglaize, * * *"

The following is quoted from 17 Ohio Jurisprudence 2d, page 88:

“* * *

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“* * * And where the fee passes under a statutory dedication, neither the grantor nor his heirs have any enforcement rights on the disposition of the dedicated land when it has been determined that it is no longer needed for public use.”

Thus it is obvious that the reservation for public use in the dedication of the original plat of the City of Cambridge vested title in fee simple with power of sale or lease by the County Commissioners if authorized by statute.

In Opinion No. 399, Opinions of the Attorney General for 1957, I concluded:

“The leasing of county land for that length of time” (20 or 25 years) is clearly prohibited by Section 307.09, Revised Code. Pursuant to this section, a board of county commissioners is authorized to lease county lands for a period of not more than one year (with exceptions not here applicable); the pertinent language of the statute providing as follows:

“If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use, or may lease it, *but no such lease shall be for a longer term than one year * * ** (Emphasis added)

“The provision of this section is mandatory and allows no other interpretation than as stated.”

As to appraisal and placing upon the tax duplicate when such property is so leased, Section 5701.02, Revised Code, defines real property as follows:

“As used in Title LVII of the Revised Code, ‘real property’ and ‘land’ include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, and all things contained therein, and, unless otherwise specified, all buildings, structures, improvements and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.”

It should be noted that the words “unless otherwise specified” have no application to a lease by the county commissioners as there is no statute giving such authority to exempt such leased property from taxation as realty.

The following are syllabi of *Reed vs. County Board of Revision of Fairfield County et al.*; and *Howell vs. County Board of Revision of Fairfield County et al.*, 152 Ohio St., 207 :

“3. Even if a structure or building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of ‘real property’ as that term is defined in Section 5322, General Code” (now Section 5701.02, Revised Code) “unless the General Assembly has otherwise specified.”

“4. A cottage, erected on land leased from the state and situated on the banks of Buckeye Lake, is a structure or building located on land and is, therefore, real property within the definition of that term in Section 5322, General Code.” (Section 5701.02, Revised Code).

By Section 5713.01, Revised Code, the County Auditor is required to assess for purposes of taxation all real estate in the county, and by Section 319.28, Revised Code, he is required to make up the tax duplicate as to all taxes imposed against real property. By Section 5713.07, Revised Code, he is required to make a separate list of all realty exempt from taxation and such section exempts “public buildings and property used *exclusively* for any public purpose.” (Emphasis added).

The tests “*for exclusive public use*” imposed by the courts are best stated in the third syllabus of *City of Cleveland, Appellant, v. Board of Tax Appeals et al., Appellees*, 153 Ohio St., 97, which reads as follows :

“3. A use of public property for any public purpose, to warrant exemption from taxation, must be an exclusive use by the public, open to all the people on a basis of equality to such extent as the capacity of the property admits, or an exclusive use by some public or quasi-public agency on behalf of the public.”

The constitutional requirement for taxation by uniform rule precludes the use of tax exempt property to the competitive disadvantage of other private business. The fifth syllabus of 153 Ohio St., 97, *supra*, reads as follows :

“The provisions of Section 2, Article XII of the state Constitution, do not authorize the General Assembly to exempt from taxation municipally owned real property used in carrying on a private or proprietary function in

competition with others engaged privately in similar enterprises.”

It is therefore my opinion and you are advised that:

1. Real estate “known as the court square”, “to be reserved for public use” according to the original city plat dedication may when no longer needed for public use by the county, be leased for parking lot purposes pursuant to Section 307.09, Revised Code, by the county commissioners.

2. Real estate, no longer needed for public use by the county and leased under authority of Section 307.09, Revised Code, to a private corporation to be operated as a parking lot is not “public property used exclusively for any public purpose” and said real estate must be assessed by the county auditor pursuant to Section 5713.01, et seq. of the Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General