## OPINION NO. 72-068

**Syllabus:**

The language of Section 501.09, Revised Code, precludes, in appraising the land to be sold, consideration of any improvements on or in the area of the land to be sold. In the case of a ninety-nine year lease, renewable forever, or for a like term, the rental value of the lease fairly reflects the financial interest to be conveyed, and therefore can be used as the appraised value.

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To: R. Wilson Neff, Director, Department of Public Works, Columbus, Ohio

By: William J. Brown, Attorney General, August 15, 1972

I have before me your request for my opinion regarding the appraisal of ministerial lands pursuant to Section 501.09, Revised Code. Your request reads as follows:

> "Section 501.09 states, in part that the appraisal shall not take into consideration the value added to the property by other improvements in the area.
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> "Our appraisers advise that if this means they are to ignore the value added to these ministerial lands by the gradual development, over the years, of township and county roads, state highways, gas and electric service, sewer and water facilities, zoning regulations, police and fire protection, and other neighborhood improvements, they lack the criteria required to estimate the value of the property.
>
> "If the statute does preclude consider-

ation of such improvements, we cannot comply with the prerequisite of an appraisal.

"Accordingly, we respectfully request your opinion as to the proper interpretation of the subject statute."

Section 501.09, supra, reads, in part, as follows:

"Lands defined in division (C) of section 501.06 of the Revised Code shall be sold subject to section 501.04 of the Revised Code and subject to the terms and conditions in section 501.08 of the Revised Code, except that the appraisal of the property shall not take into consideration the value added to the property by other improvements in the area." (Emphasis added.)

The lands referred to in Section 501.09 are identified by Section 501.06 (C), Revised Code, as "lands leased for ninety-nine years, renewable forever, or leases which have been renewed for a like term." Section 501.08, Revised Code, the provisions of which are made applicable to these lands by Section 501.09, reads as follows:

"Lands defined in division (B) of section 501.06 of the Revised Code shall be sold, subject to section 501.04 of the Revised Code, as provided in this section. Substantial improvements added at the expense of the lessee shall not be considered as a part of the land to be appraised or sold. Appraisal by at least two disinterested appraisers undertaken by the department of public works shall consist of the land offered for sale, plus any improvements undertaken by the state supervisor of lands appropriated by congress for the support of schools and ministerial purposes or his predecessor in the supervision of the lands at their expense. The lessee shall have first option to purchase the land at the appraised amount. If the lessee does not purchase the land within sixty days of the offer made by the state supervisor the property shall be sold as provided in section 501.07 of the Revised Code.

"The lessee of land upon which a lease has not yet expired may request that an appraisal be made of that land by the department of public works prior to expiration of the lease. The lessee may accept an offer of the state supervisor of the appraised value of the land and agree to purchase the land immediately. Under such circumstances, the lease shall be cancelled upon the lessee's payment of the purchase price and the lessee shall receive a deed in fee simple to the property." (Emphasis added.)

A reading of Section 501.08 in conjunction with Section 501.09 makes it clear that the exclusion from the appraisal of "other improvements in the area", pursuant to Section 501.09, is in addition to the exclusions in the appraisal mentioned in Section 501.08. An interpretation of this phrase requires a consideration of the words "improvements" and "area."

In Informal Opinion No. 36, Opinions of the Attorney General for 1963, one of my predecessors cited State v. Babcock, 242 N.W. 474, 476 (1932), for the proper definition of the term improvement, stating as follows:

> "The words 'improve' and 'improvement' are frequently used in connection with land. They are used as denoting some betterment, such as by cultivation, clearing, drainage, irrigation, erecting buildings, or otherwise enhancing the value or usefulness of the land. So far as we know, it has never been claimed that the purchasing of the title to the land or the acquiring of an easement or other right therein is an improvement of the land. The word 'improve' has several meanings: To make better; to increase the value or good qualities of; to ameliorate by care or cultivation--are some of the common definitions."

In Black's Law Dictionary (4th ed. 1951), the following definition of "improvements" is recognized at page 891:

> "A term used in leases, of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to the amelioration of every description of property, whether real or personal; but when contained in any document, its meaning is generally explained by other words."

The word "area" has a somewhat elastic meaning. See 4 Words and Phrases 9. It has been assigned a variety of interpretations, ranging from an "enclosed place" on which a building stands, to a "broad expanse" of open land. In the present context, the frequent use of more specific words, such as "property" and "land," in speaking of the parcel to be sold suggests that the term "area" should be treated as describing the territory surrounding the parcel to be sold.

Therefore, a normal reading of the phrase would indicate that the appraisal may not take into account any improvements, on or in the area of the land to be sold, which affect the value of that land. Such a reading of the Section does, however, make it difficult to appraise the value of the property, since the appraisers are left without the usual criteria, all of which depend to some extent on such improvements.

Because of this apparent defect in the procedure for selling the lands in question, it is necessary, in determining the proper course of action, to consider the interest to be appraised and the purpose of excluding improvements from the appraisal.

As indicated above, your question concerns the appraisal of lands leased for ninety-nine years, renewable forever, or

renewable for a like term. Because these lands are subject to leases, what the State is selling is the interest it holds as lessor of the property. Thus, the nature of the lease determines the type of interest which the lessor retains and may convey. The Sections cited recognize this and reflect a legislative intent that the State receive only the fair value of the interest it is conveying, and that the lessee, as purchaser of this interest, should not pay an inflated price which reflects improvements he has already financed or any increase in the value of the interest that is already his. Such is the logic underlying the requirement in Section 501.08, that substantial improvements added at the expense of the lessee should not be considered as part of the value of the land to be appraised or sold.

Because the lessee's interest under a perpetual lease is tantamount to ownership, the exception set out in Section 501.09, is broad enough to make it virtually impossible to use the present value of the land as an element in an appraisal of the State's remaining interest. The State's interest consists of only a possibility of reverter whose value is negligible, and the right to receive the rents specified in the lease. Many of these leases date back to the early 1800's, and provide for an annual rental fee of less than one dollar. The lessee, of course, must pay the taxes on the property pursuant to Section 5709.06, Revised Code, as well as other costs associated with ownership.

In many cases, the cost of keeping records on a lease exceeds the annual return from it. Also, as to many of the parcels, the minuscule rental fee has not been collected for years, from as many as the last six or seven owners; and the current title records make no mention of the fact that the present holders of the property do not have the fee simple. Many holders think of themselves as owners of the fee, since they, to all intents and purposes, are the owners.

For these reasons it is necessary for those officers charged with implementing Section 501.09, to determine a method of obtaining an appraisal which meets legislative standards, while recognizing and protecting the interests of both the lessor and the lessee.

Since the appraisal is intended to protect the State's interest by setting the minimum price at which the property may be sold, the method used should be designed to determine the value of that interest. As I have indicated, the State's interest is that of lessor. The courts in several cases have discussed the interest that a lessor retains under a lease such as those involved here. In Welfare Federation of Cleveland v. Glander, 146 Ohio St. 146, 147 (1945), the court held in paragraph 5 of the Syllabus as follows:

> "The only interest left in a fee owner who grants a ninety-nine year lease, renewable forever, is a possibility of reverter, the right to receive the stipulated rental or consideration, and the right to enforce performance of other contractural covenants contained in the lease."

In Rawson v. Brown, 104 Ohio St. 537, 543 (1922), the

court quoted from Smith v. Harrison, 42 Ohio St. 180, 185 (1884), as follows:

> "'A perpetual leasehold estate is not a fee simple, although, by our statutes, it has many incidents of a fee simple estate, Taylor v. Debus, 31 Ohio St., 468. The fee simple remains in the lessor, his heirs and assigns. The principal value of which is the right to the rents reserved by the lease.'"
> (Emphasis added.)

It appears clear in the absence of other covenants of value in the lease, the value of the right to rents is an accurate measure of the value of the State's interest as lessor. Certainly, the improvements both on and in the area of the property do not enhance the value of the property as far as the lessor is concerned. This is undoubtedly the reason the legislature excluded consideration of them for purposes of appraising these parcels of land. Appraisal of the lessor's interest by capitalization of the rents is a practical and necessary alternative. Such an appraisal would be consistent with the statutes involved and would establish a fair price at which a lessee could purchase the State's interest as lessor, thereby perfecting his title to the land.

In specific answer to your question it is my opinion, and you are advised, that the language of Section 501.09, Revised Code, precludes, in appraising the land to be sold, consideration of any improvements on or in the area of the land to be sold. In the case of a ninety-nine year lease, renewable forever, or for a like term, the rental value of the lease fairly reflects the financial interest to be conveyed, and therefore can be used as the appraised value.