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STATE-OWNED PROPERTY — STATE UNIVERSITY — UNPRODUCTIVE AND UNUSED LANDS MAY BE LEASED FOR PERIODS NOT TO EXCEED 15 YEARS—§ 123.01 RC—LESSEE MAY USE SUCH LAND; CONSTRUCTION OF STUDENT HOUSING.

SYLLABUS:

The department of public works may, by virtue of the authority of Section 123.01, Revised Code, lease unproductive and unused lands at Kent State University, but any such lease may not be for a period in excess of fifteen years. There is no restriction in law prohibiting the use of such leased land for the construction by the lessee of student housing facilities.

Columbus, Ohio, October 11, 1957

Hon. George A. Bowman, President
Kent State University, Kent, Ohio

Dear Sir:

I have before me your request for my opinion, reading in part as follows:

“I would like an opinion from your office as to the legal right and limitation upon the Director of Public Works to lease

state-owned land under the control of the Board of Trustees here to organizations, clubs, sororities and/or fraternities for the purpose of constructing student housing. More specifically, is it within the prerogatives of the Director of Public Works to lease such land to such organizations for a period of 99 years? It is understood that it would be necessary for the Board of Trustees to go on record requesting the Director to enter into a lease and, presumably, it would be necessary for them to declare that the land is not presently or in the foreseeable future going to be needed for the construction of facilities necessary for the operation of the University."

Section 123.01, Revised Code, reads in pertinent part:

"The department of public works has the following powers:

"(I) To lease or grant easements or licenses for unproductive and unused lands or other property under the control of the state, or any department, office, or institution thereof, excepting school and ministerial lands, such leases, easements or licenses to be granted for a period not to exceed fifteen years and shall be executed for the state by the director of public works and shall be approved as to form by the attorney general; * * *."

It appears that the above quoted statute is dispositive of both queries which are contained in your request. That is, if it is ascertained that there are lands at Kent State University which are unproductive and unused, then the Director of Public Works and the Governor may execute a lease of such land, but any such lease may be for a period no longer than fifteen years.

There is nothing in the statute restricting the department of public works as to its choice of lessees, nor is there any restriction that might prohibit use of the leased land for purposes of constructing thereon student housing facilities.

An analogous situation was discussed in Opinion No. 3870, Opinions of the Attorney General for 1948, page 498, where the second paragraph of the syllabus reads as follows:

"When a portion of a state armory is not immediately needed for armory purposes, the department of public works has authority with the consent of the adjutant general to lease such portion of said property, pursuant to the authority of Section 154-40, General Code (now Section 153.01, Revised Code)."

The government of Kent State University is vested in the board of trustees by Section 3341.02, Revised Code, which reads in part :

“The government of Bowling Green state university and Kent state university, respectively, is vested in a board of five trustees, who shall be appointed by the governor, with the advice and consent of the senate. * * *”

Section 3341.04, Revised Code, gives the board of trustees of Kent State University broad general powers, for it reads in part :

“* * * The boards shall do all things necessary for the proper maintenance and successful and continuous operation of such universities. * * *”

Certainly it would be within the power of the board of trustees of Kent State university to request the department of public works to make a lease of unproductive and unused lands at such university.

Accordingly, it is my opinion and you are hereby advised that the department of public works may, by virtue of the authority of Section 123.01, Revised Code, lease unproductive and unused lands at Kent State University, but any such lease may not be for a period in excess of fifteen years. There is no restriction in law prohibiting the use of such leased land for the construction by the lessee of student housing facilities.

Respectfully,
WILLIAM SAXPE
Attorney General