

1879

## REAL ESTATE, COUNTY OWNED:

1. NOT NEEDED FOR PUBLIC USE—MAY BE LEASED TO ANYONE OTHER THAN MUNICIPALITIES OR OTHER GOVERNMENTAL SUBDIVISIONS FOR TERM NOT MORE THAN ONE YEAR WITHOUT ADVERTISING AND COMPETITIVE BIDDING—SECTIONS 2447, 2447-1 G. C.
2. EASEMENTS—COUNTY OWNED REAL ESTATE—MAY BE GRANTED ONLY TO MUNICIPALITIES AND OTHER GOVERNMENTAL SUBDIVISIONS.

## SYLLABUS:

1. County owned real estate, not needed for public use, may, under the terms of Sections 2447 and 2447-1, General Code, be leased to anyone other than municipalities or other governmental subdivisions, for a term of not more than one year without advertising and competitive bidding.

2. Easements in county owned real estate may be granted only to municipalities and other governmental subdivisions.

Columbus, Ohio, May 14, 1947

Hon. D. Deane McLaughlin, Prosecuting Attorney, Stark County  
Canton, Ohio

Dear Sir:

This will acknowledge receipt of your communication, which reads as follows:

“Stark County is the owner of certain lands which by virtue of the Platting Laws of Ohio were dedicated for park purposes a number of years ago. These lands are not under the control of a township or a city board of park commissioners. The Ohio Power Company wishes to construct a high tension line across these lands, and the commissioners wish to enter an easement for this purpose.

We request your opinion on the following questions arising out of these facts:

1. Is the granting of an easement such a sale of real estate that the commissioners would have to advertise according to Section 2447-1?

2. Is the granting of an easement the sale of real estate at all under Section 2447?

3. Could the commissioners enter into a lease arrangement by virtue of Section 2447 by which a grant would be made to the Ohio Power Company for one year, with the privilege of renewing from year to year?"

The powers and duties of county commissioners in the sale of county lands or the granting of leases, rights and easements are governed by the provisions of Sections 2447 and 2447-1 of the General Code, which read as follows:

Section 2447:

"If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use, or may lease the same, but no such lease shall be for a longer term than one year; provided, however, that in any event they may grant leases, rights and easements to municipalities or other governmental subdivisions for public purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement shall not be deemed by the commissioners to be inconsistent with the need of such land for public use by the county. Any such lease, right or easement so granted to a municipality or other governmental subdivision may be for any length of time or period of years and upon such terms and for such purposes and may provide for such renewals thereof as said commissioners may deem to be for the best interests of the public; and in case of the sale of such real estate not used for county purposes, and in case of such a grant of lease, right or easement to a municipality or other governmental subdivision, all or such part of the proceeds thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance or repair of the county buildings and for the acquisition of sites therefor."

Section 2447-1:

"No sale of such real estate shall be made unless authorized by a resolution adopted by a majority of such commissioners. When such sale is so authorized a deed therefor shall be made by such board of county commissioners and only to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within

such county. Such board of county commissioners may reject any or all bids and readvertise until all such real estate is sold.

“Said commissioners, by resolution adopted by a majority thereof, are empowered to grant leases, rights and easements to municipalities and other governmental subdivisions in accordance with the terms of Section 2447 without advertising for bids. When such grant of lease, right or easement is so authorized, a deed or other proper instrument therefor shall be executed by said board of county commissioners.”

It is necessary to approach the questions here presented having in mind the familiar rule that public officers or boards have only such powers as are expressly granted by law, and, in addition, such implied powers as may be necessary to carry into operation the expressly granted powers. 32 O. Jur. 934.

The first power given to the county commissioners by Section 2447, *supra*, is to sell real estate belonging to the county when the same is not needed for public use, and when in their opinion the interests of the county so require. The second power granted to them is to lease such real estate with the restriction that no such lease shall be for a longer term than one year. The third power given to them is to grant leases, rights and easements to municipalities or other governmental subdivisions for public purposes, under conditions set forth in that section.

It was held by one of my predecessors in Opinion No. 4198, 1935 Opinions of the Attorney General, p. 487:

“Counties have generally been held to be agencies of the state for the performance of functions of the state, and, while necessarily clothed with some corporate powers, to have only such powers as are conferred by statute. Board of Commissioners v. Gates, 83 Ohio St. 19. \* \* \* the General Assembly enacted what is now Section 2447 et seq., General Code, prescribing the method by which county commissioners may sell real estate which is not needed for county purposes. \* \* \*

There is no other statutory authority empowering the commissioners of a county to sell real estate belonging to the county than the statutes quoted above. \* \* \* in view of the strictly limited powers of boards of county commissioners, it clearly follows that they can act in the sale of county property only through the power conferred by Sections 2447 and 2447-1, *supra*.”

From the foregoing, we have no difficulty in arriving at the conclusion that county commissioners may sell or lease real estate belonging to the county, not needed for public purposes, but that leases are restricted to a term of not more than one year.

Easements and rights may only be granted to municipalities or other governmental subdivisions for public purposes. Leases may also be entered into with the same agencies of government for public purposes. The provisions of the statute, Section 2447, *supra*, are more liberal with reference to such leases, rights and easements to municipalities or other governmental subdivisions, in that such instruments "may be for such length of time or period of years and upon such terms and for such purposes and may provide for such renewals thereof as said commissioners may deem to be for the best interests of the public;".

Section 2447-1, General Code, *supra*, provides that no sale of such real estate shall be made unless authorized by a resolution adopted by a majority of the county commissioners and then only to the highest responsible bidder after advertisement once a week for four consecutive weeks in a newspaper of general circulation within the county. It further provides that the county commissioners are empowered to grant leases, rights or easements to municipalities and other governmental subdivisions without advertising for bids. No procedure is set forth with reference to leases to other than municipalities or other governmental subdivisions.

However, in the case of *Minamax Gas Co. v. State, ex rel. McCurdy, Pros. Atty.*, 33 O. A. 501, decided by the Court of Appeals for Scioto County on June 1, 1929, it was held that county commissioners may lease real estate owned by the county when public needs require, without complying with Section 2447, *et seq.*, of the General Code, requiring competitive bids after due advertisement in case of sale of real estate not needed for public use.

At the time said case was decided, the applicable provisions of law, as set out in then existing Sections 2447 and 2447-1 of the General Code, contained no express language such as is found in the present statute, authorizing county commissioners to lease county owned real estate.

Notwithstanding the absence of express terms providing for the leasing of such real estate, the court held that the power to lease was incidental to and grew out of the power to sell, which was granted under

the statute. With respect thereto, it was contended by the relator that a valid lease could only have been made by the county commissioners by complying with the terms of Section 2447-1, General Code, as it then existed, and as the terms of said section require competitive bids after due advertisement, the lease was invalid because it was effected without such competition and advertisement.

In answer thereto, it was stated by Mauck, J., who delivered the opinion of the court (page 507) :

“Other counties have found it convenient and profitable to temporarily lease property for which there was no immediate need, and we hesitate to unequivocally condemn a practice that properly carried out results in even a slight public advantage. Moreover, it appears a forced interpretation to say that the General Assembly, in regulating the sale of county real estate for which the county has no use, intended to inhibit the leasing of property which the county could not sell. This appears to us not only a strained construction, but one not necessary to fully protect the public interests. Until the commissioners find that county real estate is ‘not needed for public use’ all such property must be deemed of some potential use to the county. So long as it has such potential use, the interests of the county do not require its sale, nor does Section 2447 permit its sale. In the absence of a finding that would enable the commissioners to sell, title must be retained by the county, but, under the doctrine of the Reynolds case, supra, there is no reason why it should not be temporarily leased, subject to repossession whenever the public needs so require. The commissioners could not, however, lease for a definite term and thereby embarrass either themselves or their successors in using the property for public purposes.”

Therefore, if implied power to lease without competitive bidding after advertisement is derived from express power to sell only after such competitive bidding and advertisement, power to lease without competitive bidding after advertisement would a fortiori exist where the statute, as it does in its present form, expressly grants such power to lease without specifically requiring advertisement and competitive bidding.

In view of the foregoing, and in answer to your inquiries, you are advised that in my opinion :

1. County owned real estate, not needed for public use, may, under the terms of Sections 2447 and 2447-1, General Code, be leased to anyone

other than municipalities or other governmental subdivisions. for a term of not more than one year without advertising and competitive bidding.

2. Easements in county owned real estate may be granted only to municipalities and other government subdivisions.

Respectfully,

HUGH S. JENKINS,  
Attorney General.