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GRAVEL, OTHER MATERIAL, TAKEN FROM COUNTY OWNED GRAVEL PIT—MAY NOT LEGALLY BE SOLD BY COUNTY COMMISSIONERS TO SUBDIVISIONS WITHIN COUNTY—OPINIONS ATTORNEY GENERAL, 1930 VOL. II PAGE 1471-1940 VOL. I PAGE 162.

SYLLABUS:

Gravel and other material taken from a gravel pit owned by a county may not legally be sold by the commissioners of such county to subdivisions within the county. (Opinions of Attorney General, 1930, Vol. II, page 1471 and Opinions of Attorney General, 1940, Vol. I, page 162, approved and followed.)

Columbus, Ohio, July 11, 1942.

Hon. William M. Summers, Prosecuting Attorney,
Marietta, Ohio.

Dear Sir:

Acknowledgment is made of your communication requesting my opinion as follows:

“The Commissioners of Washington County own and operate a gravel pit for the purpose of removing and hauling gravel for the maintenance of county roads in this county. Ordinarily, the material produced from this gravel pit is loaded with county owned equipment and hauled by trucks on county roads wherever needed.

Certain Township Trustees in Washington and adjoining counties and adjoining boards of county commissioners, having no other suitable source of supply of gravel, would like to obtain gravel from this pit for the maintenance of roads within their respective jurisdiction, the same to be loaded with Washington County equipment.

I would like your opinion on the question of whether it is permissible for the County Commissioners to charge the Township Trustees of this county and the Township Trustees and County Commissioners of adjoining counties a reasonable price for the gravel and for the loading of the same.

Former Attorney General Gilbert Bettman, by opinion numbered 2353, rendered September 17, 1930, construed General Code Section 2447 in such a manner as to preclude the procedure that we have in mind in requesting this opinion. However, this section has been amended and we will appreciate it if you will advise us concerning your opinion in view of the amendment which became effective February 3, 1936."

It is noted that your specific inquiry arises by reason of an amendment which became effective February 3, 1936. However, your attention is directed to my opinion found in O.A.G., 1940, Page 162, in which it was held as disclosed by the syllabus:

"A county cannot legally sell material for road repair to political subdivisions within the said county. (Opinions of Attorney General, 1930, Vol. 2, page 1471, approved and followed.)"

In the body of said opinion the following is stated:

"Inasmuch as the statutes contain no provisions which either expressly or by implication would authorize the county commissioners to sell material for road repair to political subdivisions, I am inclined to the view that the opinion above mentioned constitutes a precedent precisely applicable to the present controversy and should not be departed from."

While the opinion last mentioned gave no consideration to the changes made in the amendment of the statute, an examination of said Section 2447, General Code, discloses that the only change made therein related to the length of time which a lease could legally be granted. In other words, the original section provided that commissioners could grant a lease for such length of time as they deem for the best interest of the public. However, the amended section provided that no lease should be for a longer term than one year, excepting as to leases, rights and

easements granted to municipalities or other governmental subdivisions for public purposes.

It follows, therefore, that by analyzing the original section and the amended section, it is very apparent that the sole purpose of the amendment was to limit the right of the county commissioners to lease premises for more than one year, excepting as to municipalities and other governmental subdivisions.

In connection with your inquiry, attention is directed to Section 3298-24 of the General Code, which specifically authorizes the township trustees to engage in the business of selling gravel and other material to residents of the county, townships, etc. The fact that the Legislature has expressly authorized township trustees to engage in such activities, is indicative of the fact that when the Legislature intended a public authority to engage in such enterprises it has so stated, all of which supports the conclusion hereinbefore reached in the opinions referred to. However, it may be pointed out that the conclusion hereinbefore reached, which inhibits the sale of such material generally, should not be construed as affecting or limiting the power granted to the county commissioners with respect to entering into co-operative contracts in connection with specific improvements as provided for in Sections 7464, 6949, 6955, 3298-53a and other related sections of the General Code.

In view of the foregoing and in specific answer to your inquiry, you are advised that in my opinion gravel and other material taken from a gravel pit owned by a county may not legally be sold by the commissioners of such county to political subdivisions within the county.

Respectfully,

THOMAS J. HERBERT
Attorney General.