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BOARD OF COUNTY COMMISSIONERS—LEASE—PURCHASE AGREEMENT—CONSTRUCTION OF JAIL AND COUNTY OFFICE STRUCTURE ON COUNTY PROPERTY—NO AUTHORITY FOR SUCH AGREEMENT—SECTION 307.09 RC.

SYLLABUS:

A board of county commissioners is without authority, in view of the provisions of Section 307.09, Revised Code, to enter into a lease whereby county owned land is leased to a third party for a number of years with the provision that such third party erect thereon a building suitable to be used for county offices and jail, and which lease further provides for the purchasing of such building by the county commissioners by stated installments or rentals extending over an equivalent number of years.

Columbus, Ohio, April 22, 1957

Hon. Bernard T. McCann, Prosecuting Attorney  
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows :

“The Board of County Commissioners of Jefferson County have requested an opinion regarding the legality of a lease-purchase agreement for the construction of a new building which would house county offices and jail to be erected on real estate owned by the county adjoining the Court House and upon which is now situated the present county jail.

“The jail facilities now being used have been condemned by the Grand Juries for years past as being unfit for habitation and it is the opinion of the County Commissioners that a new jail is needed. It is also the opinion of the County Commissioners that many county offices now located outside of the Court House could be moved into the new structure thereby eliminating rental expense which is now incurred.

“The matter of a new Court House and Jail has been submitted to the electorate of our county on three occasions and has never received the necessary majority. The erection of a county building housing offices and jail has not been submitted as a separate issue.

“The County Commissioners wish to know if they could consider a proposal by which the present county jail could be demolished and the ground leased to a bank, insurance company or other private business concern which would in turn finance and erect a building for the purpose of housing county offices and jail, entering into a lease-purchase agreement with Jefferson County for a period of approximately 20 or 25 years. The lease purchase agreement would also provide for the payment of a stipulated amount at stipulated periods with Jefferson County becoming the owner of the building upon the compliance with the terms and provisions of the lease-purchase agreement.

“I have reviewed the opinions of the Attorney General’s office and find no ruling covering this fact situation. The opinion numbered 5184, page 383, given in 1942 concerns the authority of the commissioners under Section 2433, now R. C. 307.02 to purchase a building to be used for county offices with the purchase price to be paid at the time of conveyance and the balance thereof in annual installments.”

On two previous occasions, requests concerning the authority of county commissioners to enter into a contract calling for the purchase of county buildings through extended payments have been considered by this office. In Opinion No. 2491, Opinions of the Attorney General for 1938, page 1078, the question presented was whether the board of county commissioners could purchase a building for the sum of \$15,000.00 by the terms and conditions of which purchase they would pay a stipulated monthly amount over a period of years at the end of which time the building would become the property of the county. It was there stated that since Section 2433, General Code, 307.02, Revised Code, authorizes the board of county commissioners to purchase by installment payments, buildings required for county purposes, the plan as presented was valid.

Section 307.02, Revised Code, where pertinent provides as follows:

“The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct \* \* \* a courthouse, county offices, jail \* \* \* and other necessary buildings \* \* \*”

In Opinion No. 5184, Opinions of the Attorney General for 1942, Page 383, the question presented was as follows:

“Can the commissioners purchase a building to be used for County Offices by means of a contract with the vendor which provides that the vendor immediately convey title by Warranty Deed to the commissioners and which further provides that the commissioners make a down payment and pay the balance of the unpaid purchase price in installments over a period of not less than five years?”

An affirmative answer was given, Section 2433 General Code, Section 307.02, Revised Code, being cited as authority and Opinion No. 2491, *supra*, being referred to with approval.

As the above cited opinions state, by virtue of Section 307.02, Revised Code, statutory authority does exist whereby a board of county commissioners may enter into a financial arrangement for the purchase of a building, payment for which may be extended over a number of years; and although acquisition of realty by lease purchase agreement is not specifically mentioned, the language of the statute is broad enough to encompass this type of financial arrangement. However, this determination is not

dispositive of the present issue. Whereas in the opinions cited the questions involved the purchase of buildings only (land being included), here we have a distinctive problem; this being that the land upon which the proposed building is to be erected is owned by the county. According to the facts set forth in your inquiry, this land is to be leased to a private concern which would finance and erect the building, the lease to continue for 20 or 25 years depending upon the terms of the lease purchase agreement.

The leasing of county land for that length of time 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.

Since the leasing of the county land for a period longer than authorized by statute is an integral part of the plan presented, the entire arrangement is invalid.

Hence, it is my opinion and you are further advised that a board of county commissioners is without authority, in view of the provisions of Section 307.09, Revised Code, to enter into a lease whereby county owned land is leased to a third party for a number of years with the provision that such third party erect thereon a building suitable to be used for county offices and jail, and which lease further provides for the purchasing of such building by the county commissioners by stated installments or rentals extending over an equivalent number of years.

Respectfully,  
WILLIAM SAXBE  
Attorney General