

## OPINION NO. 72-040

## Syllabus:

A board of county commissioners has authority under Sections 307.02 and 307.09, Revised Code, to lease from, and lease back to, a private non-profit corporation, land on which such corporation will construct an amphitheater for the purpose of presenting historical dramas. (Opinion No. 71-070, Opinions of the Attorney General for 1971, approved and followed.)

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To: David A. Cutright, Ross County Pros. Atty., Chillicothe, Ohio  
By: William J. Brown, Attorney General, May 16, 1972

I have before me your request for my opinion, which reads as follows:

"The Ross County Commissioners have been approached by the Scioto Society, a non-profit Ohio corporation which owns land upon which the Scioto Society is going to construct an amphitheater for the purpose of presenting an historical drama. In order to qualify for federal funds the Scioto Society desires to lease certain land to the Ross County Commissioners and then to have the Commissioners sub-lease this land back to the Society for a nominal sum.

"It would appear that the sub-lease would be authorized under R.C. 307.09, but I specifically desire to know the following: Do the Ross County Commissioners have the authority to lease land from the Scioto Society, a non-profit Ohio corporation, with the object of sub-leasing it back to said non-profit corporation so that it will enable the corporation to qualify for federal funds?"

I think it clear that the Board of County Commissioners has authority to lease the land from the Scioto Society under Section 307.02, Revised Code; and I agree with you that they may sub-lease it back under Section 307.09, Revised Code. Section 307.02, supra, reads as follows:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with

option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, community mental health facility or community mental retardation facility, other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, \* \* \* and sites therefor, \* \* \*."  
(Emphasis added.)

A very similar situation was discussed recently in Opinion No. 71-070, Opinions of the Attorney General for 1971. In that case a non-profit corporation desired to construct a mental retardation facility. Federal funds were available, but it was unable to obtain the necessary land. The board of county commissioners sought advice as to whether they could appropriate the necessary land and then lease it to the non-profit corporation. The Opinion held that such action would be proper under Section 307.02, *supra*. I see no essential difference between the two cases. In the one, the board appropriated, in the other, it leased, property which in both cases it then leased to a non-profit corporation for a public purpose.

The only remaining question is whether the terms "public stadium" and "public auditorium" include "amphitheater". I have no doubt that they do. Section 307.02, *supra*, is a general statute which mentions several different types of buildings, and consequently the designation of any type of building in it should be given a general construction. Moreover, the apparent intent of the legislature was to enable a board of county commissioners to provide a wide range of buildings and structures which serve public purposes. The question of whether an auditorium has a roof on it or not is completely irrelevant to that intent. I conclude that there is no significant difference between this situation and that in Opinion No. 71-070, *supra*.

In specific answer to your question it is my opinion, and you are so advised, that a board of county commissioners has authority under Sections 307.02 and 307.09, Revised Code, to lease from, and lease back to, a private non-profit corporation, land on which such corporation will construct an amphitheater for the purpose of presenting historical dramas. (Opinion No. 71-070, Opinions of the Attorney General for 1971, approved and followed.)