

**OPINION NO. 79-037****Syllabus:**

Where a deed of land to a county historical society expressly provides that if the premises cease to be used exclusively for park and museum purposes, the premises shall then revert to the State of Ohio as grantor, it is within the terms of the grant for the historical society to authorize the construction of an art museum separately funded and operated, but under the proprietorship of the historical society on such land.

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**To: Lee E. Fry, Darke County Pros. Atty., Greenville, Ohio**  
**By: William J. Brown, Attorney General, July 23, 1979.**

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

By virtue of the provisions of Senate Bill No. 378, passed by the 105th General Assembly of the State of Ohio on December 6, 1963, approved December 11, 1963 and effective March 10, 1964, Governor Rhodes executed a deed in the name of the State of Ohio conveying certain real property, located in the city of Greenville, to the Darke County Historical Society, Inc. In the deed, as required by the act, the state of Ohio retained a reversionary interest should such land be used for other than park and museum purposes.

My question evolves from the contemplation of the Darke County Historical Society of the construction upon these lands of an Art Museum to be separately funded and operated, but under the proprietorship of the Historical Society. The question arising is whether or not the fact that this new Art Museum will not be directly under the control of the Darke County Historical Society will violate the provisional use of the reverter clauses of the deed, the act, or both.

The deed in question sets forth the terms of the conveyance as follows:

[T]he Governor of Ohio . . . hereby executes this deed in the name of the State of Ohio conveying to the Darke County Historical Society, Inc., the Grantee, its successors and assigns forever, for and in consideration of mutual advantage and benefits to be derived by the State of Ohio and the grantee and upon the further condition that the land conveyed be used and maintained for park purposes and museum purposes only, all right, title, and interest of the state, including mineral rights and right of entry in certain real estate

. . . .

The habendum contains the following reversionary clause:

TO HAVE AND TO HOLD said premises and all of the right, title and interest of the State of Ohio therein, unto the Darke County Historical Society, Inc., its successors and assigns forever, providing however, should the premises cease to be used for park and museum purposes exclusively the same shall revert to the State of Ohio. (Emphasis added.)

Since the grant conveys the State's entire interest, the Darke County Historical Society has a fee. In addition, the grant and the habendum, by their terms clearly indicate that the Historical Society's interest in the land is freely alienable, subject always to the express condition that the land be used exclusively for park or museum purposes. The traditional language indicating alienability, referring to "successors and assigns", is present here. *Taylor v. Binford*, 37 Ohio St. 262 (1881); *Clark v. Smith*, 89 Ohio Law Abs. 229 (C.P. *Paulding Co.*, 1962).

I note that you do not question the fact that the proposed structure is a museum and I concur in your judgment. The common meaning of the word "museum" is quite broad. For example, it has been stated that a museum "embraces not only collections of curiosities for the entertainment of the sight, but also such as would interest, amuse and instruct the mind." *Bostick v. Purdy*, 5 Stew. and P., Ala., 105, 109 (1833). It is my understanding from your letter that the proposed structure is intended to house an art collection and to provide facilities and services for the various performing arts. Thus, there can be no doubt that the intended use is permissible and the construction of the new museum will not trigger the reversionary provisions.

Your specific question, however, is whether the fact that the new art museum will not be directly under the control of the historical society violates the terms of

the deed. According to your letter and attachments thereto, the proposed structure would be privately financed and operated as a "sister institution" to the existing Darke County Historical Museum. The art museum would be operated by a permanent committee comprised of private individuals, representatives of educational organizations and county government, and the Darke County Historical Society.

It should be noted that the deed does not require that structures on the land in question be owned or operated by the Darke County Historical Society. The deed only requires that the land be used for park or museum purposes. The deed recites as consideration the "mutual advantage and benefits to be derived by the State of Ohio and the grantee," but benefits may be reaped regardless of whether the museum is operated by the Darke County Historical Society or a third party, so long as public accessibility is maintained. Since you state that the art museum will remain under the proprietorship of the Historical Society, no property interest of the Historical Society will be transferred as a result of the operation of the museum by the permanent committee. Even if the operation of the museum by the permanent committee constituted a transfer of a portion of the Historical Society's interest in the land, such a transfer is permitted.

As noted above, the Historical Society owns the land in fee and may therefore, convey its entire interest in the land or any lesser interest. Anderson v. Cary, 36 Ohio St. 506 (1881). This is true of a qualified fee, as well as an absolute fee. In re Vine Street Congregational Church, 20 Ohio Dec. 573 (C.P. Hamilton Co., 1910). As long as the land continues to be used for a proper purpose, it is immaterial that the Historical Society has granted or assigned a right to improve, control or manage the property, in whole or in part, to a third party.

It is, therefore, my opinion, and you are advised, that where a deed of land to a county historical society expressly provides that if the premises cease to be used exclusively for park and museum purposes, the premises shall revert to the State of Ohio, as grantor, it is within the terms of the grant for the historical society to authorize the construction of an art museum separately funded and operated, but under the proprietorship of the historical society on such land.