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DEED OF CONVEYANCE—MADE TO COUNTY COMMISSIONERS — NAMED BENEFICIARIES — COMMISSIONERS HAVE AUTHORITY TO HOLD AND APPLY GIFT ACCORDING TO TERMS AND CONDITIONS OF GRANTOR—ORPHANED AND UNFORTUNATE CHILDREN—CHILDREN'S HOME.

SYLLABUS:

Where a deed of conveyance is made to the county commissioners for named beneficiaries, said commissioners have the authority to hold and apply the same according to the terms and conditions of the grantor.

Columbus, Ohio, December 20, 1950

Hon. James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir :

I am in receipt of your communication requesting my opinion as follows:

“I request a ruling with regard to the following situation :

“In 1914 one R. S. P., by general warranty deed, conveyed a farm to the Commissioners of Miami County, Ohio ‘In consideration of the public welfare and the benefits accruing to the orphaned and unfortunate children in Miami County and the further consideration that Miami County pay an annuity of Six Hundred Dollars (\$600.00) to the grantor and/or his wife during their respective lives and also pay all repairs, insurance, taxes and assessments on said farm.’ It is further provided in the deed that the net income shall be used for the benefit of the children named in said deed. The grantor and his wife are now both deceased. I am enclosing herewith a photostatic copy of the deed in question.

“The question is who should receive the proceeds from the farm and make disposition thereof? It has been the practice in the past to place all proceeds in the County General Fund, and all expenses have been paid from the appropriation made for the Miami County Child Welfare Board. Is this the proper procedure or would it be possible for the County Commissioners to give the child Welfare Board, who have been supervising the operation of the farm, authority to set up a fund for receiving the proceeds and making distribution thereof for expenses, with the net income accruing to the benefit of the Welfare Board? In other words, the question is just how to handle the farm proceeds so that it will result in the net income being used for the benefits intended by the donor.”

Your attention is directed initially to Section 18 of the General Code, which authorizes public authorities to accept gifts, devises and bequests. Said section reads as follows :

“The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys,

lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purpose."

This section unquestionably discloses that the county commissioners are authorized to accept real estate subject to certain terms and conditions and subject to any reasonable reservations and was so construed in Opinions of the Attorney General for 1941, p. 825, No. 4275, where the syllabus reads as follows:

"County commissioners, under authority of section 18, General Code, may accept a gift of land in fee subject to a reservation of rent for the duration of the lives of the donors provided the rent is limited by and issues out of the proceeds of the land donated as a part of its actual or possible profits and is deemed reasonable."

Now referring specifically to your inquiry, the problem of interpreting the deed in question arises, and this question resolves itself into the intent of the donor. Who did the donor wish to benefit when he made this gift to the county commissioners?

The deed in the recital of the consideration reads in part as follows:

"* * * in consideration of the public welfare and the benefits accruing to the orphaned and unfortunate children in Miami County * * *."

It is hardly reasonable that the donors could have intended two classes when they refer to "orphaned and unfortunate children" because "unfortunate children" would include a class almost unlimited in scope. To be sure, almost any child, regardless of economic or social standing, could in many respects be unfortunate. I believe, therefore, that the donors refer to but one class of children and merely use two adjectives to describe the particular class of children they intended to benefit. This contention is supported by the fact that the conveyance was made to the county commissioners, and therefore it must logically and necessarily follow that the donors intended to benefit wards of the county, in particular the orphaned and unfortunate children who are wards of the county.

At this point another stipulation contained in the deed assumes pertinent significance and reads as follows:

“The premises herein conveyed to be known as the Robert and Clara Sproul Annex to Knoop Children Home.”

This request in the deed could not reasonably have been made without consideration to justify it, and this writer believes that this statement limits the beneficiaries intended in the deed to the “orphaned and unfortunate children” for whom the county is required to provide a home. And this stipulation in the deed also clarifies the necessity of using the language “orphaned and unfortunate,” because it is common knowledge that the children assigned to county homes as wards of the county are not all orphans, but in many cases are unfortunate victims of family separations.

Relative to the care and distribution of the proceeds from the property conveyed to the county, your attention is redirected to Section 18 of the General Code, *supra*, which says that the county commissioners “may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, *and hold and apply the same according to the terms and conditions of the gift, devise or bequest.*” I am of the opinion that the authority contained therein necessarily implies the authority to manage the fund pursuant to the terms and conditions of the donor. For this reason it seems to follow that a special fund be set up under the care and control of the county commissioners, to be distributed according to the terms of the conveyance.

In summarizing, then, I am of the opinion :

1. That the intended beneficiaries of the conveyance to the county commissioners are the “orphaned and unfortunate” children who are wards of the county and for whom the county is required to provide a home.
2. That where a deed of conveyance is made to the county commissioners for named beneficiaries, said commissioners have the authority to hold and apply the same according to the terms and conditions of the grantor.

Respectfully,

HERBERT S. DUFFY,
Attorney General,