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BOARD OF COUNTY COMMISSIONERS MAY APPOINT A BUILDING COMMISSION PROVIDED THE QUESTION OF ISSUING BONDS OF THE COUNTY HAS BEEN DECIDED BY AN AFFIRMATIVE VOTE OF THE ELECTORS OF SUCH COUNTY—§153.21, R.C.

SYLLABUS:

Under the provisions of Section 153.21, Revised Code, a board of county commissioners may appoint a building commission provided the question of issuing bonds of the county has been submitted to a vote of the electors of such county and the question is determined in the affirmative.

Columbus, Ohio, June 14, 1961

Hon. Donovan Lowe, Prosecuting Attorney
Morgan County McConnellsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I am in receipt of a letter from the Commissioners of Morgan County, Ohio, asking that I obtain an opinion of your office. I am setting forth in full the request of such Commissioners, which is as follows:

“‘Moved by Coole that the Prosecuting Attorney seek a ruling from the Attorney General of Ohio pertaining to intent of Sec. 153.21 of the Rev. Code enacted by the 103rd General Assembly, namely clarification on that part stating that, “the Commissioners may appoint a Commission consisting of”, as to whether it specifically means if there is a voted and approved levy appointments may be made or if appointments may be made when funds are or will be available and a vote for a bond issue is not necessary.’”

Section 153.21, Revised Code, as amended by the 103rd General Assembly in 1959 (128 Ohio Laws, 742), reads as follows:

“When the board of county commissioners in a county having a tax duplicate of less than three hundred million dollars has determined, by resolution showing the necessity, to erect a courthouse or other county building, or to make an addition to, or to

make an improvement of any existing county owned building, at a cost to exceed one hundred thousand dollars, it shall submit the question of issuing bonds of the county therefor to a vote of the electors of such county. If the question is determined in the affirmative, within thirty days thereafter, the board may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and serve until the courthouse or other county building, or the addition thereto, or the improvements thereof are completed. Not more than two of such appointees shall be of the same political party."

The 1959 amendment to Section 153.21, *supra*, limited the application of the section to counties having a tax duplicate of less than three hundred million dollars, and increased the required cost from "to exceed twenty-five thousand dollars" to "to exceed one hundred thousand dollars," and provided that the board of county commissioners may themselves appoint a building commission rather than applying to the judge of the court of common pleas of the county to appoint such a commission, as was done under the former law. In Opinion No. 6738, Opinions of the Attorney General for 1956, page 481, one of my predecessors in construing the then existing Section 153.21, Revised Code, stated in the syllabus as follows:

"The provision in Section 153.21, Revised Code, for the designation of a building commission to erect a courthouse or other county building is permissive rather than mandatory, and if the board of county commissioners elect not to utilize the services of such a building commission the responsibility for proceeding with such a building project is placed on the board of county commissioners under the general provisions of Section 307.02, Revised Code."

Since the present Section 153.21, *supra*, still contains the permissive word "may," it is my opinion that the board of county commissioners may elect not to utilize the services of a building commission. If the board, however, should elect to utilize the services of a building commission, then it may do so only in accordance with the provisions of Section 153.21, *supra*. Under the provisions of Section 153.21, *supra*, the board may appoint a building commission if the question of issuing bonds of the county has been submitted to a vote of the electors of such county and the question is determined in the affirmative. There is no authority in Section 153.21, *supra*, for a board of county commissioners to appoint a building commission where a vote on a bond issue is not necessary. If funds are available for a building project without the necessity of issuing

bonds, then the board of county commissioners may proceed under the general provisions of Section 307.02, Revised Code.

Accordingly, it is my opinion and you are advised that under the provisions of Section 153.21, Revised Code, a board of county commissioners may appoint a building commission provided the question of issuing bonds of the county has been submitted to a vote of the electors of such county and the question is determined in the affirmative.

Respectfully,

MARK McELROY

Attorney General