

568

1. COUNTY BUILDING—COURT MAY NOT TAKE OVER PART OF COUNTY BUILDING OTHER THAN COURT HOUSE TO ACQUIRE ADDITIONAL ROOM AND SPACE TO CARRY ON ITS DUTIES.
2. COUNTY COMMISSIONERS—NO AUTHORITY TO PROVIDE SPACE FOR COURT IN ANY BUILDING OTHER THAN COURT HOUSE—EXCEPTION, PENDING ERECTION OF STRUCTURE FOR COURT TO CARRY ON ITS DUTIES.
3. COUNTY SHERIFF—AUTHORITY AND DUTY TO CONTROL COUNTY JAIL BUILDING AND ALL ROOMS, SPACES AND AREAS—SUBJECT TO REGULATIONS, COMMON PLEAS COURT—SECTIONS 3162, 3157 G. C.

SYLLABUS:

1. A court may not take over a part of a county building other than the court house for the purpose of acquiring additional room and space to carry on its duties.

2. County commissioners have no authority to provide space for a court to carry on its duties in any building other than the court house, except pending the erection of such a structure.

3. Section 3157 of the General Code confers upon the county sheriff the authority and duty of controlling the county jail building and all rooms, spaces and areas therein, subject only to such regulations as the common pleas court of the county may prescribe under Section 3162 of the General Code.

Columbus, Ohio, June 2, 1949

Hon. C. J. Borowski, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“For many years past there has been maintained in our county a county jail building, a part of which was used for the confinement of prisoners therein, and the rest of said building other than that part necessary for the confinement of prisoners

therein kept as quarters of the sheriff and the various matrons appointed by the sheriffs therein.

“The quarters of the sheriff and the matrons as hereinbefore enumerated, as well as the jail proper, all being one and the same building and under the same roof thereof. This building was originally constructed separate and apart from what is known as the court house structure. There was, however, built a number of years back, a connecting link between the court house and the jail, for the purpose of prisoners passing through the same to the court room and in return to the jail.

“The county commissioners of our county contemplate the taking over of part of the quarters heretofore used by the various sheriffs in the past and the jail matrons thereof, for the purpose of providing for the Probate Court of our county additional space in order to carry out the functions and duties of said court, and have notified the sheriff of this county not to use certain quarters in said jail building and to deliver the same to said commissioners for the purpose of making repairs necessary for additional office space for said Probate Court.

“The Probate Court of our county has by no order of any kind to this date notified said sheriff of its intention to take over said rooms in said part of the jail heretofore used by said sheriff as quarters for himself and the matron, and by reason thereof the sheriff of this county has requested of the undersigned an opinion as to whether or not he is compelled on the request of the county commissioners to turn over to them any part of the rooms that they so desire, which has always in the past been used by said sheriffs and matrons as quarters, or commonly known as the sheriff's residence.

“I am unable to reach a proper opinion in this matter, although I am aware of the decision in the case of Zangerle vs. Common Pleas Court, 25 Ohio Opinions, 199, as well as the opinions of the Attorney General rendered June 10, 1919 and found in Volume 1, page 635 of the Opinions of the Attorney General for the year 1919, and the cases therein cited, for the reason that the county jail building as heretofore stated in the previous facts given, is a separate building from the court house building proper.

“Under the facts hereinbefore enumerated, I submit the following questions:

“(1) Can a court take over any part of any building other than the court house building proper for the purpose of acquiring additional room and space to carry on its duties”

“(2) If the Probate Court or any other court does have such authority, will it be necessary for said court to issue an order

directed to the parties having control of other buildings ordering said parties to divest themselves of so much control for the purposes of the court?

“(3) Can the county commissioners of our county in view of the above situation now order the sheriff of this county to vacate any part of said jail building heretofore used exclusively for residence of various sheriffs and matrons therein, for the purpose of converting so much of said building for the use of any of the courts of the county and then proceed to make repairs therein?”

Your questions present the problem of control of county properties.

In the case of *Dall v. Cuyahoga County Building Commission*, 14 O. N. P. (N. S.) 209, at page 211, the court said:

“* * * The board * * * has exclusive and original jurisdiction over all matters pertaining to county affairs, except in respect to matters the cognizance of which is exclusively vested in some other officer or person.”

In the case of *Carder v. Fayette County*, 16 O. S. 353, at page 369, the court said:

“* * * The board of county commissioners is the body—the *quasi* corporation—in whom is vested by law the title of all the property of the county.”

In 11 O. J. 476, it is said that:

“* * * Such board may take and hold title to anything that a county may hold or own, although in the actual custody or expenditure the county may, under some statute, be obliged to act by an officer, or officers, other than its commissioners.”

It was held in *Nearing v. Toledo Electric Street Railway Co.*, 6 O. C. D. 669, that:

“* * * the commissioners * * * might exercise the rights of an owner over it (county property)—subject, of course, to any special uses of the county for which it may be held; but at least so far as the acts to be performed by owners are such as a trustee may legally perform, they are the owners, and the persons who are to act.” (Parenthetical matter added.)

In view of the foregoing, there can be no question as to the title of county property being vested in the county commissioners.

In 33 Corpus Juris at page 832, the word "jail" is defined as :

"A building designated by law or used by the sheriff for the confinement or detention of those persons who are judicially ordered to be kept in custody ; a house or building used for the purpose of a public prison, or where persons under arrest are kept ; any place of confinement used for detaining a prisoner ; a prison appertaining to a county or municipality, in which are confined for punishment persons convicted of misdemeanors committed in the county or municipality. It may include the dwelling house of the jailer living with his family in one part of it."

In Words and Phrases, Vol. 10, page 251, the term "court house" is defined as :

"The building occupied and appropriated for the holding of courts."

In view of the above definition, it is inconceivable to think that the jail building is a part of the court house, even though there is a connecting ramp between the two.

Keeping in mind that county officials are creatures of statute and have only those powers specifically granted by law and such as may necessarily be implied therefrom, it is now necessary to go to the statutes and ascertain whether or not the control of the county jail is exclusively vested in the probate court, the county commissioners or the sheriff.

Section 2419 of the General Code provides in part :

"A court house, jail * * * shall be provided by the commissioners when in their judgment they or any of them are needed.
* * *"

Section 3157 of the General Code provides :

"The sheriff shall have charge of the jail of the county, and all persons confined there, keep them safely, attend to the jail, and govern and regulate it according to the rules and regulations prescribed by the court of common pleas." (Emphasis added.)

The rules and regulations which may be prescribed by the Court of Common Pleas are governed by Section 3162 of the General Code as follows :

"The court of common pleas shall prescribe rules for the regulation and government of the jail of the county, not inconsistent with the law, upon the following subjects :

"First—The cleanliness of the prison and prisoners.

"Second—The classification of prisoners as to sex, age, crime, idiocy, lunacy and insanity.

"Third—Bed and clothing.

"Fourth—Warming, lighting, and ventilation of the prison.

"Fifth—The employment of medical or surgical aid when necessary.

"Sixth—Employment, temperance, and instruction of the prisoners.

"Seventh—The supplying of each prisoner with a copy of the Bible.

"Eighth—The intercourse between prisoners and their counsel, and other prisoners.

"Ninth—The punishment of prisoners for violation of the rules of the prison.

"Tenth—Other regulations necessary to promote the welfare of the persons."

So far as I am able to determine these are the only statutory provisions applicable to management and control of a county jail building. From the foregoing statutory provisions it becomes apparent that no provision has been made therein for the Probate Court to exercise any control or managerial authority over the jail building.

In further support of the proposition that the Probate Court is without the power of control over a jail building, I am guided by the cases of *State, ex rel. Babst*, 97 O. S. 64, 119 N. E. 136, and *Zangerle v. Court of Common Pleas*, 141 O. S. 70, 25 O. O. 257, 47 N. E. (2d) 199. In the *Zangerle* case, in which the *Babst* case was cited with approval, the court held as disclosed by the first and third branches of the syllabus:

"1. The primary and paramount purpose of a courthouse, as its name implies, is to furnish the rooms and facilities essential for the proper and efficient performance of the functions of the court. * * *

"3. Such courts may pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and may exercise control over the courthouse to the extent required to assure the provision, equipment and maintenance *in the courthouse* of rooms and facilities essential for their proper and efficient operation."

From the conclusions reached in these cases it would appear reasonably clear that the control of a court of common pleas over county buildings

extends only to the court house proper. It is not within the contemplation of the statutes creating the probate courts that their power in such matters be any greater than that of the courts of common pleas.

Coming now to the question of the extent of the power of the county commissioners over the jail building, I am of the opinion that in addition to the duty to provide such jail, when in the judgment of the county commissioners it is needed, as imposed by Section 2419, General Code, (*supra*) it may be implied that they have the added duty of maintaining the same once it is provided. Beyond the foregoing statutory and implied power of the commissioners over the jail, in view of the provisions of Section 3157, General Code, (*supra*) relative to the sheriff's duties, I fail to find any statute granting specific power and authority to the commissioners with reference to the control of the jail building or any statute from which further power or authority may be implied except Section 2447, General Code, which provides in part as follows:

“If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use, or may lease the same * * *.”

(Emphasis added.)

Before the commissioners could invoke their powers under this section of the General Code, it would be necessary for them to determine that the jail was no longer needed for public use.

In more direct relationship to your problem, since it presents the question of securing additional space for the Probate Court, I wish to call your attention to the case of *Dittrick, et al. v. Barr, et al.*, 22 O. L. R. 289, wherein, in discussing the powers of the county commissioners, the Court said at page 294:

“* * * There is no statutory power given the board to provide for rooms outside the court house for court purposes, or to make public expenditure therefor, except pending the erection of such a structure. * * *”

To the same effect see Opinions of the Attorney General for the year 1919 at page 1422, and 11 O. Jur. page 491.

This leads us to the consideration of Sections 3157 and 3162 of the General Code (*supra*). It appears from the latter section that the rules and regulations which the Court of Common Pleas may prescribe with reference to the jail is limited to the health and well being of the prisoners

and not to the use or occupancy of space therein. By the first phrase of Section 3157 the sheriff is specifically given charge of the jail of the county, and by a subsequent phrase, directed to govern and regulate it according to the rules and regulations prescribed by the Court of Common Pleas. Since the rules and regulations which the Court of Common Pleas may prescribe are limited by the provisions of Section 3162, it is my opinion that all the remaining attributes of control are thereby reposed in the sheriff by virtue of the foregoing statutory provision, so long as said building is used for jail purposes.

Further, from the definition of the word "jail" and in the light of the common acceptance of the term "jail building" I am of the opinion that the powers of control conferred on the sheriff by virtue of said Section 3157 extend to all rooms, spaces and areas contained within said building.

From the foregoing statutes and authorities I am of the opinion that a court has no authority to exercise control over a county jail building; that the county commissioners' authority with respect thereto extends only to its maintenance and that the sheriff of the county is the official charged with the control of such building.

In view of this opinion, it becomes unnecessary to discuss your second question.

In conclusion you are advised, therefore, that:

1. A court has no authority to take over any part of a county building, other than the court house, for the purpose of acquiring additional space to carry on its duties.

2. The county commissioners have no authority to provide space for a court to carry on its duties in any building other than the court house, except pending the erection of a court house.

3. Section 3157 of the General Code confers upon the county sheriff the authority and duty of controlling the county jail building and all rooms, spaces and areas therein, subject only to such regulations as the common pleas court of the county may prescribe under Section 3162 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.