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MACHINERY AND EQUIPMENT—COUNTY COMMISSIONERS
—WITHOUT AUTHORITY TO LEASE OR LEND TO DISTRICT
SUPERVISORS OF A SOIL CONSERVATION DISTRICT HIGH-
WAY MACHINERY AND EQUIPMENT—ACQUIRED UNDER
SECTION 7200 G. C.—COUNTY PROPERTY.

SYLLABUS:

County commissioners of any county are without authority to lease or lend high-way machinery and equipment acquired under Section 7200 of the General Code of Ohio, and belonging to the county, to district supervisors of a soil conservation district.

Columbus, Ohio, December 22, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“A Soil Conservation District has been established under the provisions of Sections 375-13 to 375-21, General Code, and the county commissioners have entered into a ‘Working Understanding’ with the District which reads as follows:

‘WORKING UNDERSTANDING

Between

THE COUNTY COMMISSIONERS OF GUERNSEY COUNTY

and the

GUERNSEY SOIL CONSERVATION DISTRICT

SUPERVISORS

A. Statement of Purpose:

The District and the County, through their governing bodies, desire to establish a working basis for carrying on undertakings of mutual interest and benefit. Both units of the local government are charged with responsibilities for the betterment of the public welfare. The district supervisors exercise public powers in connection with soil and water conservation and with erosion control; the county commissioners exercise their powers regarding a large number of subjects, among which is the building,

repair, and maintenance of certain roads and rights of way in the county.

B. The District's Contribution:

The work of the district supervisors through cooperation with farmers lowers the cost of highway maintenance more particularly by keeping silt out of the highway, off the right-of-way, and out of stream channels and by reducing the runoff on land near the highways. These objectives are achieved by:

- (1) Better land use. The steeper slopes and those with a more serious erosion hazard are retired to permanent vegetation as meadows, pasture, and woods.
- (2) The application of effective conservation practices in the way of treatment and management on such slopes improves the cover, thus further reducing the run-off and soil loss.
- (3) Limiting cropland to the more gentle slopes and applying such conservation measures as will decrease the run-off, slow up the velocity and thus reduce the silt carrying capacity.
- (4) Assistance and designing of facilities for the drainage of productive bottom land permits a more intensive use of such lands and reduces the cultivation of steeper slopes, still further reducing erosion hazards.

C. The Commissioners:

The Commissioners in turn will loan to the district at such times as will not interfere with other obligations such items of equipment as are available and that may be of use in promoting the purpose of the district supervisors.

The charge for the use of such equipment will be:

- (1) The wages of the operator or operators.
- (2) The cost of fuel, grease and oil.
- (3) A rental charge, the amount to be agreed upon by the commissioners and supervisors.
- (4) Moving costs will be included in the charge to the district.

D. General Provisions:

Work will be done only on farms, the owners of which are cooperating with the district and on which there is a complete soil conservation plan approved by the district supervisors.

The necessary surveys together with adequate designs and plans will be made by the district.

As the time approaches when the commissioners will make equipment available to the district the county engineer will so inform the supervisors. Whereupon the supervisors will present to the engineer a list of cooperators with the location of the farms and the type of work needed who are qualified for assistance. Additional names will be presented as more cooperators qualify.

The county engineer will from time to time in cooperation with the district representative determine the order in which jobs are to be done.

An estimate of the time required will be made by the district and approved by the county engineer. This estimate will include moving costs. On the basis of that estimate the probable cost of each job will be calculated.

Each cooperator for whom work is planned will, before that work is started, make a deposit with the county Treasurer for the estimated cost of the job. As the work progresses when it becomes apparent that the deposit is not sufficient to cover the cost of the entire job additional deposits will be made. If for any reason the cost equals or exceeds the deposits the equipment operator will stop work until additional funds are deposited.

The county engineer will bill the district indicating as far as practical the total amount of time spent on each project, including the time spent in moving.

The district supervisors will fairly distribute the costs among participating cooperators and will send a statement to each cooperator concerned with a copy to the county engineer. The county auditor will refund to the cooperator any excess deposit over the cost.

Failure of any cooperator to advance the full cost of the work to be done will not relieve him of the responsibility for payment.

The district will not be responsible for payment for work done, for damage to property of the cooperator, or for the damage to the equipment.

The commissioners will not be responsible for damage to the property of the cooperator.

The equipment will not be operated by anyone except qualified operators and under the direction of the county engineer.

The district supervisors will provide for maintenance by the cooperator for drainage facilities or other structures developed in accordance with the agreement through adequate conservation measures and by giving timely attention to such repair and maintenance tasks as may from time to time be needed.

This memorandum of understanding will become effective immediately upon signature of both parties and continue in effect for one year. It will be automatically renewed for like periods and may be cancelled by 30 days notice in writing by either party at any time.

THE GUERNSEY SOIL CONSER-
VATION DISTRICT

By DWIGHT MOORE, Chairman

DATE: Sept. 16, 1947'

The signing of the working understanding was authorized by resolution of the district Governing Body adopted at a meeting held Sept. 16, 1947.

By RAY FINLEY

By ROSS B. FERGUSON, Chairman

County Commissioners

Guernsey County

Authorized by action of commissioners and included in minutes for the meeting held Sept. 16, 1947.

By WILLARD PATTON, Auditor

Guernsey County

Following the execution of this working understanding the county commissioners have authorized the county engineer to proceed under Item 'C' of this understanding. Certain amounts of money have been collected by the county engineer for these services and the sums so collected have been accounted for to the county treasury by the county engineer.

Section 375-19, (5), General Code, empowers the supervisors of the district to accept various donations and we respectfully request your opinion as to the legality of the county commissioners participating in such projects through the loan to the district supervisors of the items set forth in Item 'C' of the working understanding since all of the work contemplated is to be performed upon privately owned lands."

From an examination of the copy of the contract which you have set forth in your request, it is not clearly indicated just what equipment is to be used in carrying out the project undertaken by the Guernsey Soil Conservation District Supervisors. However, from the nature of the work to be done, it is assumed that the equipment would be road construction and repair equipment primarily consisting of prime mover equipment, and would be that which was acquired by the county commissioners for the use of the county engineer pursuant to Section 7200, General Code.

Section 375-13, et seq., General Code, provides for the establishment of an agency for the creation of soil conservation districts under the supervision of such committee. They further provide for a governing body for each district thereunder of five supervisors whose powers are granted by Section 375-19, General Code, which reads as follows:

“And be it further provided that the supervisors shall be empowered:

(1) To conduct surveys, investigations and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research; provided, however, that no district shall initiate any research program except in cooperation or after consultation with the Ohio agricultural experiment station;

(2) To develop plans for the conservation of soil resources and for the control and prevention of soil erosion within the district; and to publish such plans and information;

(3) To carry out preventive and control measures within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands,

(4) To cooperate, or enter into agreements with any occupier of lands within the district, in the carrying on of soil conservation operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this act;

(5) To accept such donations, gifts, contributions in money, service, materials, or otherwise, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(6) To make, and from time to time amend and repeal, rules to carry into effect its purposes and powers.”

It will be noted from the above quoted section that no specific authority has been granted to enter into contracts with county commissioners either by way of cooperation or by lease or rental of property or equipment. Subdivision 4 permits agreements of cooperation between the district supervisors and occupiers of lands within the districts and permits the acceptance of donations, gifts of money, service and materials, but could not be construed to extend or enlarge the powers of the county commissioners. The board of county commissioners, being a creature of

statute, possesses only such powers and privileges as are expressly granted by the statutes, or which may necessarily be implied therefrom. Since the sections of the General Code pertaining to soil conservation districts do not authorize or extend the powers of the county commissioners, the problem presented resolves itself into whether or not the county commissioners would have authority to lease or loan machinery or equipment belonging to the county which was purchased for the use of the county engineer.

With respect to the powers delegated to county commissioners, it is stated in 11 O. Jur. p. 244, as follows:

“* * * Counties * * * possess only such powers and privileges as may be delegated to, or conferred upon, them by statute. These powers and privileges must be strictly construed, and may, in general, be modified or taken away.”

At page 332 the same authority speaking of the powers of county commissioners, says:

“* * * Some courts have gone so far as to say that the board of county commissioners cannot go beyond the limits of the powers expressly granted by law. The decisions generally, however, recognize that the commissioners have certain limited powers, in addition to those given in express terms. But such implied powers exist only ex necessitate and to the extent that they are essential as an incident to the very existence of the board, or to the complete discharge of all the powers, duties, and obligations conferred upon it by law.”

Section 7200, General Code, which authorizes the purchase by the county commissioners of machinery, tools and other equipment for construction, improvement, maintenance or repair of highways, bridges and culverts under their jurisdiction, and also the purchase, hire or lease of automobiles or other conveyances for the use of the county engineer, does not authorize the lease or rental of such equipment.

Other sections of the statutes grant specific authority to the county commissioners to lease certain property belonging to the county. Section 2486, General Code, authorizes the leasing of mineral lands. Section 2419-2, General Code, authorizes the commissioners to lease to municipal corporations certain county buildings for municipal purposes, and Section 2447, General Code, authorizes the commissioners to lease, under prescribed conditions, certain real estate belonging to the county, but I find

no authority given to county commissioners to lease tools and equipment purchased for highway construction and repair. If such authority exists it must be implied.

While the question which you have presented concerns the loan of county property for use for other than county purposes, it is only logical that if no power to lease such equipment exists, then the county commissioners would have no implied power to loan such equipment.

With respect to the power of leasing, one of my predecessors in office stated in Opinion No. 6660 of the Opinions of the Attorney General for 1944, at page 44, in the syllabus of said opinion as follows:

“County commissioners are without authority to lease to private persons, road machinery or automobiles or other conveyances purchased under authority of Section 7200, General Code, or furniture or equipment purchased for the use of the various county offices. (1935 Opinions, Attorney General, No. 4767, page 1300, overruled in part.)

While this opinion was limited to the leasing of equipment to private persons, I am of the opinion that it would apply as well to governmental or public agencies where there was an absence of specific authority to contract with, or cooperate with such governmental or public agencies. The fundamental problem involved is a lack of power or authority on the part of the county commissioners to do the specific act or acts proposed by the contract under consideration here.

If authority could be found for county commissioners to sell such equipment, it might be implied therefrom that the power of sale would include the power to lease or to loan such equipment.

However, the problem of the authority of county commissioners to sell road machinery owned by the county and purchased by them under authority of this section was under consideration by my immediate predecessor in office in Opinion No. 1659, Opinions of the Attorney General for the year 1947. In the syllabus of said opinion he stated as follows:

“County Commissioners are without statutory authority to sell automobiles and road machinery owned by the county, and purchased by them under authority of Sections 2412-1 and 7200, General Code.”

I have examined carefully both of the opinions of my predecessors from which I have quoted hereinabove, and concur in their reasonings and conclusions. It therefore appears reasonably clear that in the absence of

statutory provisions granting authority to the county commissioners to cooperate with or to loan equipment belonging to the county to other governmental or public agencies, the county commissioners are without authority to loan or lease such equipment.

In view of the foregoing, I am of the opinion that the county commissioners of any county are without authority to lease or lend highway machinery and equipment acquired under Section 7200 of the General Code of Ohio, and belonging to the county, to district supervisors of a soil conservation district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.