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COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO
CONTRIBUTE COUNTY FUNDS TO MUNICIPALITY.

SYLLABUS:

County commissioners are without legal authority to contribute county funds to a municipality to assist it in developing and improving a mall in the downtown or business area of such city, designed to stimulate trade in such area.

Columbus, Ohio, July 31, 1959

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“It has been proposed that Lucas County unite with the City of Toledo in the establishment of a mall in downtown Toledo. The project is to consist of closing certain streets to vehicular traffic and landscape them by the installation of sod, trees, etc., for the purpose of beautifying the downtown area of the City of Toledo.

“May the Board of Commissioners of Lucas County lawfully use the General Fund monies for this purpose?”

“The authorities hope to commence work on this project by July 8th and if it is at all possible to formulate your opinion by that time, it will be greatly appreciated.”

In a supplemental communication, you state that the purpose of the project is “to revive interest in the downtown Toledo area, attract shoppers and to revitalize the area for the benefit of the entire community.”

You also refer to Sections 301.26 and 307.26, Revised Code, as having a possible bearing.

Your entire problem depends for its solution upon the powers of the county commissioners. The specific question is whether they have authority to contribute county funds to a city for the accomplishment of what the city considers a worth while municipal enterprise. In considering this question, we must start with the well established legal principle expressed in 14 Ohio Jurisprudence, page 259, as follows :

“* * *

“Boards of county commissioners, being the creatures of statute, have such powers, and such only, as are conferred by statute or as are necessarily implied from those expressly given, and a board of county commissioners can act for and bind the county only within the limits of such authority. * * *”

Again it is said at page 390 :

“* * * The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

“* * *”

Citing *State ex rel. Locher v. Manning*, 95 Ohio St., 97.

I have been unable to find any provision in the statutes which directly, or by implication, attempts to grant authority to county commissioners to contribute funds to a municipal corporation to assist it in making a municipal improvement of any character.

Section 301.26, Revised Code, provides :

“The board of county commissioners of any county may acquire, construct, improve, maintain, operate, and protect parks, parkways, and forests, and provide an agency for their administration. For such purposes the board may acquire real estate in fee or a lesser interest, and may receive and execute the terms of gifts and bequests of money, lands, or other properties. In addition to other powers the board of county commissioners has the same powers with respect to county parks, parkways, and forests as the board of commissioners of a park district, established under section 1545.01 of the Revised Code, would have as to the park district under its jurisdiction.

“* * *”

Here it will be noticed that the power granted to counties is wholly predicated on *ownership* and *operation* of parks and similar facilities. There is no suggestion of contribution or even cooperation. Reference to Section 1545.01 *et seq.*, Revised Code, reveals that a park district may be created by order of the probate court, which district may include all or any part of a county, but may not "divide any existing township or municipal corporation within such county." Such park district is under the control of a board of park commissioners, who have extensive powers, but none that would contemplate a donation of county funds to a city, such as is contemplated by the plan which you present.

Section 307.26, Revised Code, to which you refer, provides as follows:

"The board of county commissioners may, provide for the organization and maintenance of civic and social centers throughout the county, employ an expert director who shall superintend and administer the centers, and levy a tax and create a fund for the payment of all expenses involved in the social and educational work contemplated in this section. * * *"

This section could hardly relate to such an improvement as is contemplated by your inquiry. The proposed "mall" is hardly designed for the "social or educational work" contemplated by the section just quoted. Furthermore, there is no suggestion of authority in the county commissioners to contribute money to a municipal plan.

The statutes do authorize certain contracts by the county commissioners, which may be beneficial to another political subdivision. For example, under Section 307.03, Revised Code, they may permit the use of county lands or buildings for a public library "or other public purposes." Under Section 307.27, Revised Code, they may make a direct contribution of "money * * * and other property or services to a conservancy district, if the board considers that the work of the conservancy district will be of value to the general welfare." And under Section 307.23, Revised Code, they may contribute to the support of a county historical society.

But I can find no authority in the statutes for a contribution by the county to a purely municipal purpose such as that referred to in your request.

It is accordingly my opinion and you are advised that county commissioners are without legal authority to contribute county funds to a

municipality to assist it in developing and improving a mall in the downtown or business area of such city, designed to stimulate trade in such area.

Respectfully,

MARK McELROY

Attorney General