

6660

ROAD MACHINERY OR AUTOMOBILES OR OTHER CONVEYANCES PURCHASED UNDER AUTHORITY SECTION 7200 G. C., OR FURNITURE OR EQUIPMENT PURCHASED FOR USE OF VARIOUS COUNTY OFFICES — COUNTY COMMISSIONERS — WITHOUT AUTHORITY TO LEASE TO PRIVATE PERSONS — OPINIONS ATTORNEY GENERAL 1935 PAGE 1300, NO. 4767, OVERRULED IN PART.

SYLLABUS:

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.)

Columbus, Ohio, January 27, 1944

Hon. Roland Pontius, Prosecuting Attorney

Jefferson, Ohio

Dear Sir:

You have requested my opinion upon questions raised by the

county engineer of your county, as set forth in his letter reading as follows:

“SUBJECT — Lease of county-owned equipment to private individuals.

Attorney General's opinion No. 4767 (1935) states, among other matters relating to highway procedure, par. 6 (syllabus):

‘The Board of County Commissioners may lease equipment owned by the county to Township Trustees or private persons as long as such action does not interfere with the county's use of the same * * *’.

This subject is further discussed on pages 1312 to 1314 of Volume 2, which is a part of the same opinion.

The reasoning in this opinion seems to imply a public benefit on page 1314: ‘It is a well-known fact that such equipment deteriorates rapidly when not in use and like other machinery its value decreases because of newer inventions coming to take its place and no doubt in many instances it would be to the financial advantage of the county to receive rental upon the equipment’ * * * etc.

How would this line of reasoning apply to county-owned automobiles or trucks when not in use, such as during the night time, or over week-ends? Also, how would it apply to office equipment, such as typewriters and adding machines, during holiday periods and at other times when out of use?

The opinion also states (page 1312): ‘However, inasmuch as such equipment undoubtedly would be used in public road work and would tend to aid some public authority’ * * * The experience of this office indicates that requests from private persons for county equipment is rarely based, if ever, on its use to benefit any public authority, but on the contrary, is proposed to be used for personal benefit.

In analyzing the various phases of this question, in the light of actual experience gained over a period of years in trying to supervise and control public-owned equipment, it is hard to understand the line of reasoning that is used in this opinion.

We are wondering if this opinion represents the current — accepted solution of this problem, and that we should be more receptive to requests from private persons for the use of public-owned equipment in our charge.”

The answer to these questions involves a consideration of Section 7200 of the General Code, which reads as follows:

“The county commissioners may purchase such machinery, tools or other equipment for the construction, improve-

ment, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor. All such machinery, tools, equipment and conveyances owned by the county shall be plainly and conspicuously marked as the property of the county. The county surveyor shall annually on the fifteenth day of November make or cause to be made, a written inventory of all such machinery, tools, equipment and conveyances indicating each article and stating the value thereof and the estimated cost of all necessary repairs thereto and deliver the same to the county commissioners, who shall cause the same to be placed on file. At the same time he shall file with the county commissioners his written recommendations as to what machinery, tools, equipment and conveyances should be purchased for the use of the county during the ensuing year and the probable cost thereof.

The county commissioners shall provide a suitable place or places for housing and storing machinery, tools, equipment, materials and conveyances owned by the county, and may purchase the necessary material and construct, or enter into an agreement with a railroad company to construct, one switch or spur track from the right of way of such railroad company to land or storage house owned by the county. All expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county."

This section deals with the purchase of machinery, tools and other equipment for construction and maintenance of highways, bridges and culverts and also with the purchase, hire or lease of automobiles or other conveyances for the use of the county surveyor.

Section 2419, General Code, authorizes the commissioners to purchase equipment which they may deem necessary for the proper and convenient conduct of the various county offices.

Certain sections of the statutes grant explicit 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 a municipal corporation quarters in county buildings for certain municipal purposes. Section 2447, General Code, authorizes the commissioners to lease for a short term real estate belonging to the county which is not needed for public use "if, in their opinion, the interests of

the county so require", and also authorizes the leasing of such real estate for a longer period to a municipality or other governmental subdivision for certain limited uses not inconsistent with the use of the land by the county.

I find, however, no authority given by law to the county commissioners to lease tools and equipment purchased for highway construction and repair, or to lease automobiles or other conveyances purchased for the use of the county surveyor, or any of the miscellaneous equipment of the various county offices contemplated by Section 2419, General Code; if any such authority exists, it must be implied. The very granting of authority to lease in these particular instances is strongly suggestive of the conclusion that county commissioners are without power to lease other public property.

The principle applicable to the powers of counties and county commissioners, that being mere creatures of statute established for the purpose of assisting the state in matters specifically committed to them, they have no powers except those that are expressly granted or necessarily implied from the powers granted, is too familiar to require elaboration. It is also a well settled principle in reference to implied powers that they must be *essential* to the carrying out of the powers granted and *not merely convenient*. In 11 O. Jur. p. 244, it is stated:

"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. (Citing cases.) The decisions generally, however, recognize that the commissioners have certain implied 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."

Reference is made to an opinion by a former Attorney General

found in Opinions of the Attorney General for 1935, No. 4767, wherein it was held:

“The board of county commissioners may lease equipment owned by the county to township trustees or private persons so long as such action does not interfere with the county’s use of the same, notwithstanding the surveyor has the custody thereof.”

An examination of that opinion shows that in arriving at that conclusion the then Attorney General relied to a considerable extent on a former opinion found in 1931 Opinions of the Attorney General, page 626, wherein it was held:

“Township trustees may legally lease road machinery to the county surveyor when the county commissioners have authorized him to improve a county road by force account under the provisions of Section 7198, General Code, providing such machinery is not needed by the township during the term of the lease.”

It will be observed that that holding is hardly an authority for the conclusion in the 1935 opinion referred to above, since it did not purport to decide that a lease of road machinery belonging to the county could be made to a *private individual*. On the contrary, the Attorney General was then dealing only with a lease by the *township trustees* to the *county surveyor* for purposes of improving a county road, and attention was directed to the fact that by the terms of certain sections of the General Code, power was given to township trustees to *cooperate* with the county commissioners in the improvement of roads. See Sections 7467 and 3298-1, General Code. In the course of his opinion, the Attorney General said:

“It is obvious that it may be to the mutual advantage of both political subdivisions to enter into such agreement. *If the question were whether this equipment could be rented to a private individual, of course, another problem would be presented.* However, in the case you present, the arrangement furthers a common purpose which such subdivisions may jointly accomplish.”

(Emphasis added.)

The 1935 opinion further proceeds on what seems to me to be unsound reasoning, in saying:

“It is a well known fact that such equipment deteriorates

rapidly when not in use and like other machinery its value decreases because of newer inventions coming to take its place and no doubt in many instances it would be to the financial advantage of the county to receive rental upon the equipment in order to help lighten the burden of the county in the construction of roads."

It might easily follow that putting such equipment as road machinery, automobiles, trucks and typewriters out into the hands of private persons would assist in getting the useful value out of it rapidly so that advantage might be taken of new models. But it appears to me that it would be a wholly unwarranted method of speeding the day when out-moded equipment should be discarded and newer inventions taken advantage of. There are obviously other modes of procedure whereby a county could keep its equipment reasonably up to-date.

I feel compelled to disagree with the proposition laid down in the 1935 opinion in so far as it purports to sanction the lease of equipment owned by the county to private persons and to the extent of such holding that opinion must be overruled.

Specifically answering your questions it is my opinion that the 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.)

Respectfully,

THOMAS J. HERBERT
Attorney General