

Upon examination of this lease, I find that the same has been properly executed by the Conservation Commissioner and by Bruce B. Gaumer, the lessee therein named. Upon examination of the provisions of the lease and of the conditions and restrictions therein contained, I find the same to be in conformity with statutory provisions relating to leases of this kind. I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

4198.

COUNTY COMMISSIONERS—MUST COMPLY WITH SECTIONS 2447 AND  
 2447-1, G. C., IN SELLING REAL ESTATE.

*SYLLABUS:*

1. *Where authority is extended by statute to public officers or boards to sell and dispose of public property, and the statute fixes the manner of consummating the sale, the terms of the authorization must be strictly complied with.*

2. *A board of county commissioners is without authority to sell real estate belonging to the county to a board of education within the county or to anyone else, without complying with the terms of Section 2447 and 2447-1, General Code, with respect to the passage of the proper resolution and the advertising for bids as fixed by the statute, regardless of the value of said property.*

3. *A board of county commissioners may by resolution adopted by a majority thereof, grant leases, rights or easements in real estate belonging to the county to municipalities and other governmental subdivisions without advertising for bids.*

COLUMBUS, OHIO, April 30, 1935.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"We respectfully request your opinion on the following set of facts:

The county owns a small tract of land which they wish to sell to the Board of Education of Licking Township. This is just a small strip of land and the sale price is only \$100.00.

Under Section 2447, it gives the county commissioners authority to sell any land, but they have to pass a resolution and advertise four times in a newspaper, and receive sealed bids for the same.

However, there is Section 7624-1, which gives authority to municipalities to sell real estate to boards of education without advertising.

In your opinion, would this section give the board of county commissioners authority to just sell the land, or does it apply strictly to municipalities?"

Counties have generally been held to be agencies of the state for the performance

of functions of the state, and, while necessarily clothed with some corporate powers, to have only such powers as are conferred by statute. *Board of Commissioners vs. Gates*, 83 Ohio St., 19. In other jurisdictions counties have no power to alien property unless express legislative authority exists therefor. See note in Ann. Cas., 191E, 528. In Ohio, however, there was early recognition of the fact that, while counties have no power to acquire property not needed for county purposes, the county might find itself actually possessed of property for which there was no public need. In such case, said the Supreme Court in *Reynolds vs. Commissioners of Stark County*, 5 Ohio 204, if the property is not held in trust, and not dedicated to public use, it may be sold because the right to sell follows necessarily as an incident to ownership. Later the General Assembly enacted what is now Section 2447 et seq., General Code, prescribing the method by which county commissioners may sell real estate which is not needed for county purposes. Sections 2447 and 2447-1, General Code, as amended in 1931 (114 O. L., 546) which sections fix the power and the manner of exercising that power for the county commissioners in the sale of real estate belonging to the county, read as follows:

“Sec. 2447. 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; and, in any event, they may grant leases, rights and easements to municipalities or other governmental subdivisions for public purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement shall not be deemed by the commissioners to be inconsistent with the need of such land for public use by the county; such lease, right or easement may be for such length of time and upon such terms and for such purposes and may provide for such renewals thereof as said commissioners may deem to be for the best interests of the public; and, in case of the sale of such real estate not used for county purposes, and, in case of such a grant of lease, right of easement, all or such part of the proceeds thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance or repair of the county buildings and for the acquisition of sites therefor.”

“Sec. 2447-1. No sale of such real estate shall be made unless authorized by a resolution adopted by a majority of such commissioners. When such sale is so authorized a deed therefor shall be made by such board of county commissioners and only to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. Such board of county commissioners may reject any or all bids and readvertise until all such real estate is sold.

Said commissioners, by resolution adopted by a majority thereof, are empowered to grant leases, rights and easements to municipalities and other governmental subdivisions in accordance with the terms of section 2447 without advertising for bids. When such grant of lease, right or easement is so authorized, a deed or other proper instrument therefor shall be executed by said board of county commissioners.”

There is no other statutory authority empowering the commissioners of a county to sell real estate belonging to the county than the statutes quoted above. These statutes contain no limitations or exceptions as to the value of property to be sold, and in view of the strictly limited powers of boards of county commissioners, it clearly follows that they can act in the sale of county property only through the power conferred by Sections 2447

and 2447-1, supra. It has been generally held that where the authority is extended by statute to public officers or public boards to sell public property the terms of the authorization must be strictly complied with else the purchaser does not acquire a good title. *Carstarphen vs. Plymouth*, 180 N. C., 103; *Southport vs. Stanly*, 125 N. C., 464; *City of Albany vs. Goodwin*, 203 App. Div., 530; *Leventhal vs. Gillmore*, 206 N. Y. S., 120.

Section 7624-1, of the General Code, to which you refer is a special statute authorizing a municipal corporation to transfer and convey by deed any real property owned by it and not needed for municipal purposes, to the board of education of such municipality, to be used by said board for school purposes, upon such terms and conditions as are agreed upon between the municipal corporation and the board of education. It is not necessary under this statute to advertise for bids. It is a special statute however, applying only to municipal corporations and then only to sales made by the municipal corporation to the board of education of the school district of which the municipal corporation is a part. It can not be held to apply to a board of county commissioners, nor is there any corresponding statute authorizing boards of county commissioners to transfer and convey by deed or to make a sale of real estate to a board of education without advertising for bids and otherwise complying with the terms of Sections 2447 and 2447-1, supra.

I am therefore of the opinion that the board of county commissioners of Licking County is not empowered to sell the land referred to in your inquiry to the board of education of the Licking Township Rural School District without complying with the terms of Sections 2447 and 2447-1, General Code, with respect to the passage of the proper resolution and the advertising for bids spoken of in the statute.

It will be observed, however, from the terms of said sections 2447 and 2447-1, General Code, that the commissioners might lease this property to the board of education of Licking Township Rural School District as provided by the statutes, without advertising for bids.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4199.

#### HIGHWAY DEPARTMENT—EXTRA WORK CONTRACT DISCUSSED.

##### SYLLABUS:

*The legality of an extra work contract discussed.*

COLUMBUS, OHIO, April 30, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

“We have before us approved for payment, 1934 Voucher 56593, dated April 8th, 1935, issued by the Department of Highways in favor of W. L. Johnson Construction Co. This voucher contains an item of \$3,320.10 as