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MEMORIAL BUILDING—ERECTED UNDER CHAPTER 345., RC
—BOARD OF COUNTY COMMISSIONERS—AUTHORIZED BUT
NOT REQUIRED TO EXPEND COUNTY FUNDS IN MAINTENANCE OF BUILDING.

SYLLABUS:

A board of county commissioners is authorized but not required to expend county funds in the maintenance of a memorial building erected under the provisions of Chapter 345., Revised Code.

Columbus, Ohio, April 12, 1956

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As you are undoubtedly aware, Franklin County has constructed a new Veterans Memorial Building under the provisions of Chapter 345., Revised Code. To our knowledge we are the

first county to erect a building since the provisions relating to county memorial buildings were recodified in 1945 into its present form. It is also our understanding that there are other memorial buildings throughout the state that are in the process of construction.

“There have been numerous questions that have arisen, most of which we have been able to answer ourselves. However, there is yet one fundamental question which we feel we would like to have the benefit of your ruling because of its state-wide application.

“This question may be stated as follows:

“In view of the fact that the Board of Trustees retains the title to the memorial property, is there a duty upon the County Commissioners to provide the funds to maintain the memorial? If there is no mandatory duty may the County Commissioners provide funds from the General Fund to help maintain the memorial?”

“The Courts have, in different cases, announced the rule that the County Commissioners have a duty to maintain all county buildings. See *Dittrick, et al. v. Barr*, 22 O.L.R. page 289. This duty was incumbent upon the Commissioners in respect to memorial buildings prior to the recodification in 1945, but a reading of Section 345.14 of the Revised Code, seems to indicate that the Board of Trustees must maintain the buildings from the earning or receipts of rental of the property. In the event that these specific statutory provisions are held to govern so that there is no mandatory duty upon the County Commissioners to provide the funds for maintenance, may they still, if they desire, expend public funds for maintenance of property?”

It would appear at first impression that the duty of the board of county commissioners to maintain a memorial building constructed as provided in Chapter 345., Revised Code, would be found, if at all, in the provisions of Chapter 307., Revised Code, relative to county offices and county buildings generally. As you indicate, the courts have fairly consistently recognized the board's duty to maintain county buildings. In addition to the Barr case, supra, see *Frocum v. State*, 36 Ohio App., 346, 349.

In view of the statutory provisions for the expenditure of county funds for the construction of such memorial buildings, and for their control and supervision by a county agency, board of trustees, I am unable to conceive how it could be thought that these structures are other than “county buildings.” Thus, the precise question is whether any of the

provisions in Chapter 345., supra, especially that relating to the maintenance of such buildings by the trustees, is sufficient to relieve the commissioners of such duty, or to deprive them of their authority, to maintain them. We may first note that Section 345.14, Revised Code, provides in part:

“The board of trustees, established by section 345.08 of the Revised Code, in addition to its usual powers shall:

“(A) Conduct, maintain, and operate a soldiers’ memorial, for the benefit of the entire county, for community, civic, and patriotic purposes; * * *

“(C) Use, rent, and lease office space in such memorial buildings to agencies of the United States and of this state or any of their political subdivisions engaged in any activity for the benefit of the men and women of the armed forces of the United States and the honorably discharged veterans thereof, and all earnings or receipts shall be used for the maintenance thereof; * * *”

Section 345.13, Revised Code, provides in part:

* * * The board of trustees shall make rules and regulations for the use, administration, and maintenance of such memorial as is fitting and necessary to carry out the purposes thereof.

* * * The building may include a public auditorium, music hall, and recreational facilities.

“The board may establish rental fees and other charges for the use of the memorial, and it may waive any portion of such charges.”

From these provisions it is obvious (1) that certain revenues will be realized by the trustees in the operation of a memorial building, and (2) such trustees have a duty to “maintain” the building, at least to the extent that such revenues will permit. Nothing in these sections *necessarily* implies that the imposition of this duty operates in such a way as to relieve the commissioners of their duty as to maintenance, even though there is a *suggestion* to that effect in these provisions when considered in relation to the circumstances that title is in the trustees rather than in the county, and the further circumstance that the trustees’ operations are to a great degree free of control by other county authorities.

It is believed, however, that the legislative intent in regard to the commissioners’ part in providing for the maintenance of memorial build-

ings constructed under Chapter 345., Revised Code, is clearly expressed in Section 345.01, Revised Code. That section reads in part:

“The taxing authority of any municipal corporation, township, or county, at any time not less than one hundred days prior to a general election in any year, by a vote of two thirds of all members of the taxing authority, may, and upon presentation to the clerk of such taxing authority of a petition signed by not less than two per cent of the electors of the political subdivision, as shown at the preceding general election held in the subdivision, shall declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such subdivision, and that it is necessary to levy taxes in excess of such limitation for either or both of the following purposes:

“ * * (B) For the operation and maintenance of a memorial, and for the functions related thereto. * * *”*

(Emphasis added)

There could be no possible necessity of such a declaration of insufficiency of revenues raised within the ten-mill limitation, as a condition precedent of a levy outside such limitation for “maintenance of a memorial,” unless such “maintenance” were regarded by the legislature as one of the “necessary requirements of such subdivision”; for it is obviously the amount of such “necessary requirements” which causes the insufficiency.

It will be noted, however, that in the absence of a petition by two per cent of the electors it is provided only that the taxing authority “may” initiate a levy outside the limitation. This language very strongly suggests that the use of revenues *within* the ten-mill limitation is discretionary also, especially when considered in relation to the “revenue” and “maintenance” provisions noted above in Sections 345.13 and 345.14, Revised Code. It would seem, therefore, that the trustees are required to use operating revenues for maintenance to the extent they are available and sufficient, and that the commissioners are given discretion, but are not required, to supplement such revenues for such purpose from county funds.

Accordingly, in specific answer to your inquiry, it is my opinion that a board of county commissioners is authorized but not required to expend county funds in the maintenance of a memorial building erected under the provisions of Chapter 345., Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General