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SYLLABUS:

1. A board of county commissioners may bring an action in ejectment to oust a city from encroaching upon the courthouse grounds with parking meters.

2. So long as a city uses and is permitted to use a strip of courthouse grounds for street purposes, then the city has full power to maintain parking meters on the strip.

Columbus, Ohio, January 25, 1963

Hon. William H. Weaver

Prosecuting Attorney

Williams County

Bryan, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I am requesting your formal opinion as to the following matter:

“Attached hereto is a survey made by the Williams County Engineer showing the location of the Court House and the streets, the width of the streets on the four sides of the Court House.

“Having reference to the south side of the Court House, you will note that Butler Street is 66 feet wide with a total width of 86 feet for traveling purposes. According to the original plat of 1840, the county property line extends south of the Court House on Butler Street to the line indicated on the survey as the “property line.” Recently the city of Bryan installed parking meters about 5 feet inside the county property line, and where the meters are installed the same are indicated by the broken line on the survey marked “meter line.”

“Further, you are advised that since 1840, the date of the original plat, the full width of 86 feet has been used by the public in traveling this particular street. For many years parking has been permitted along the sidewalk on the south side of the Court House.

“Question No. 1—What authority, if any, does the Williams County Commissioners have as to ordering the present parking meters removed from their present location as shown by the survey?

“Question No. 2 — Assuming the parking meters would be installed to the south of the county property line, as indicated by the survey, which would be on the main portion of Butler Street but the cars would be partly parked on county property, would the Williams County Commissioners have any authority of regulating the parking under this situation?”

The situation presented by your request is almost identical to the situation considered in *Turnbull et al., Board of Commrs. of Green County v. City of Xenia*, 80 Ohio App., 389 (1946). In that case the plaintiffs, board of county commissioners, brought an action to enjoin the defendants, City of Xenia, from installing parking meters on a four and one-half foot strip of the courthouse grounds lying parallel along one of the city streets. The defendants demurred to the plaintiffs' petition. The plaintiffs alleged in the petition that in the year 1933 the defendants used the four and one-half foot strip, under a verbal agreement with the county, to widen the street, but that such agreement was not in conformity with the applicable laws relating to county commissioners and was therefore null and void. The court sustained the demurrer on the grounds that the facts as stated in the petition raised a question of title to real property and such a question cannot be determined in an action for injunction. The court went on to say, however, that such facts were sufficient to constitute a cause of action in ejectment. The defendants contended that even conceding that the arrangement between the parties with reference to the four and one-half foot strip was null and void, still the plaintiffs did not state a cause of action. The Court answered this contention by stating on page 394 of the opinion as follows:

“If the arrangement as made was void, then the parties are in the same position as they were in 1933, and the defendants have no right to use the strip for street purposes in the event the county commissioners no longer desire the property to be so used, but so long as the City of Xenia uses and is permitted to use the strip for street purposes, the city, through its duly qualified officers, has full power and legal right to construct and maintain meters on the strip.”

In the instant case, if the board of county commissioners no longer desires that the five-foot strip along Butler Street be used

for street purposes by the City of Bryan, then it may bring an action in ejectment against the city, but so long as the city uses and is permitted to use the strip for street purposes, then the city has full power to maintain the parking meters on the strip. If the board of county commissioners should prevail in an action in ejectment and thereafter decide to use the five-foot strip of courthouse grounds for parking, then your attention is directed to the syllabus in Opinion No. 571, Opinions of the Attorney General for 1959, page 293, reading as follows:

“(1) A board of county commissioners may install parking meters on court house property but (2) such a board is without authority to impose meter rates or to impose fines or penalties, or have vehicles towed away for parking meter violations.”

Accordingly, it is my opinion and you are advised:

1. A board of county commissioners may bring an action in ejectment to oust a city from encroaching upon the courthouse grounds with parking meters.

2. So long as a city uses and is permitted to use a strip of courthouse grounds for street purposes, then the city has full power to maintain parking meters on the strip.

Respectfully,

WILLIAM B. SAXBE

Attorney General