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1. LEASE, COUNTY COMMISSIONERS — MAY BECOME LESSEE OF REAL ESTATE TO ACQUIRE ROAD MATERIAL — TO PROCESS AND REMOVE GRAVEL — REASONABLE PERIOD OF YEARS, OPTION TO RENEW, PROVISIO, CANCEL UPON DUE NOTICE.
2. CONSIDERATION, MAY PAY ANNUAL RENTAL ONE DOLLAR PLUS MONTHLY PAYMENTS ON ROYALTY BASIS — SECTIONS 7214, 2414, 5625-33 G.C.

## SYLLABUS:

1. *Under the provisions of Section 7214, General Code, the county commissioners may lawfully contract for the acquisition of road material by becoming the lessee of real estate with the exclusive right to enter upon such real estate for the purpose of processing and removing gravel therefrom, for a reasonable period of years, with an option to renew for a like period and with a proviso that the commissioners may, on thirty days notice, cancel such lease.*

2. *As consideration for such lease, the county commissioners may lawfully pay annually to the lessor a rental of one dollar plus monthly payments on a royalty basis for all sand and gravel removed by such commissioners for road purposes, provided that the provisions of Sections 2414 and 5625-33, General Code, be complied with.*

Columbus, Ohio, May 1, 1941.

Honorable William G. Batchelder, Jr., Prosecuting Attorney,  
Medina, Ohio.

Dear Sir:

Your letter of recent date requesting my opinion duly received.  
Your communication reads:

“The Board of County Commissioners of Medina County is considering producing its own gravel for use on our county roads. Under General Code 7214, it is provided that county

commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional lands necessary for cuts and fills together with a right of way to or from the same for the removal of material. In light of this statute:

(1) Can the Board of County Commissioners become the lessee of land for a period of 5 years with an option to renew for a like period and with a proviso for cancellation of said lease by the lessee on thirty-days notice, with the exclusive right to enter thereon for the purpose of processing and removing gravel therefrom?

(2) Further, can the Board, as consideration, pay annually to the lessor, a rental of \$1.00, plus monthly payments on a royalty basis for all sand and gravel removed or carried away by the lessee?"

Section 7214, General Code, reads as follows:

"The county commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional land necessary for cuts and fills together with a right of way to or from the same for the removal of material. If the county commissioners or township trustees, and the owner of such material or land, cannot agree on the price therefore, the county commissioners or township trustees may apply to the probate court or common pleas court of the county in which the same is located, and on receipt of such application, the court shall proceed to assess the value of the material or right to be appropriated in the manner hereinafter provided."

Sections 7215 to 7219, inclusive, of the General Code, contain provisions relating to the procedure to be followed when it becomes necessary to appropriate materials, land or rights of the kind described in Section 7214, General Code, *supra*.

You will note that by the express terms of Section 7214, *supra*, county commissioners are authorized and empowered to "*contract for and purchase*" material for the purpose of "*constructing, improving, maintaining or repairing any highways, bridges or culverts*" and to "*appropriate additional land necessary for cuts and fills, together with a right of way to and from the same for the removal of material.*" It is a fundamental rule of statutory interpretation and construction that it is to be

presumed that the law-making body has a knowledge of the English language and that it uses words advisedly. Or, as otherwise stated, "no part of a statute — whether it be sentence, clause, phrase, or word — should be considered as mere surplusage or as devoid of meaning, if it can possibly be avoided." See Crawford, *Statutory Construction*, p. 348.

In Black on Interpretation of Laws, the rule is stated thus at page 148:

"It is to be presumed, in the first instance, that the legislature understood the rules of grammar and the use of language, and they have expressed their will in apt and well-chosen terms.  
\* \* \*

See also 37 O. Jur. 616.

In *Cooper and Corathers v. Comm'rs. of Van Wert County*, 4 O.N.P. (N.S.) 185, 16 O.D. 638 (1905), the late Judge Killits, sometime United States District Judge for the Northern District of Ohio, quoted with approval the language of Judge Thurman from the opinion in *Bloom v. Richards*, 2 O.S. 387, 402 (1853), to the following effect:

"It is a general presumption that every word in a statute was inserted for some purpose. Mere idle and useless repetitions of meaning are not to be supposed, if it can be fairly avoided."  
(p. 189.)

Or, as put by the late Judge Dillon, of the Franklin County Court of Common Pleas, in the case of *Gease v. Carlisle, et al.*, 15 O.D. (N.P.) 435, 438 (1904), it "is the duty of a court where different words are used in a statute, to give to each word a separate meaning, if consistent with the fair interpretation of the statute."

Applying this canon of construction to the questions here under consideration, it must be said that it was the legislative intentment that the words or phrase "may contract for," as used in Section 7214, *supra*, should mean something other than the word "purchase."

And since something other than "purchase" was presumably intended to be meant by the phrase "may contract for," what is the meaning of this phrase? The word "contract," from the Latin "contractus," when used as an intransitive verb, and in the sense here involved, means "to

enter into an agreement." (New Century Dictionary.) In Webster's New International Dictionary this definition is given: "To make a contract; to covenant; agree; bargain;". Paraphrasing the sentence here being examined into, it seems clear that the Legislature intended to provide that, if they do not wish to make an outright purchase, the county commissioners may "make a contract" or "covenant" or "bargain" for, or "agree" to the purchase of, road material, in such manner and upon such terms, as the county commissioners, in the exercise of the sound discretion vested in them, determine to be for the best interests of the county. Certainly, the county commissioners are authorized to contract for, that is, to agree to purchase, road material mined or manufactured and in being at the time the contract is entered into; and I see no reason why the county commissioners may not lawfully agree to purchase road material, such as gravel, limestone, foundation rock, etc., in its natural state, mine or remove the same, and pay therefor on a royalty basis, or otherwise, as such material is acquired.

In Opinion No. 2844, Opinions, Attorney General, 1928, Vol. IV, p. 2564, it was held as follows:

"County commissioners have legal authority under existing law to purchase material for general use in connection with the construction of highways within their jurisdiction, as well as to make such purchases for the improvement, maintenance and repair of such highways."

In the opinion proper, after quoting Section 7214, supra, it was said at page 2566:

"The section last quoted (Sec. 7214, G.C.) seems to be general in its nature and expressly authorizes the purchase of material for the construction, as well as maintenance and repair of 'any highways' within the county. It may be pertinent to consider what the General Assembly meant by its use of the word 'any' in connection with its description of highways. The lexicographers in defining the word indicate that the context of the language in connection with which it is used, has much to do with the proper interpretation to be given it in a certain phrase. It has been defined as follows:

'Some: one out of many; an indefinite number; \* \* \*

It is synonymous with "either"; \* \* \* and is given the full force of "every" and "all"; \* \* \* but its generality may be restricted by the context.' Bouvier's Law Dictionary.

It is thought that the legislative reference to 'any highways' in the section being considered, means any number of highways or all highways of the county which the county commissioners have power and deem necessary to construct, improve, maintain or repair."

Opinion No. 2844 (1928) was quoted with approval and followed in Opinion No. 219, Opinions, Attorney General, 1933, Vol. I, p. 311.

At page 313 it was said as follows:

"In Opinions of the Attorney General for 1928, Vol. IV, page 2564, it is held that county commissioners have legal authority to purchase materials for general use in connection with the construction of highways within their jurisdiction as well as to make such purchases for the improvement, maintenance and repair of such highways. In an opinion of my predecessor found in Opinions of the Attorney General for 1931, Vol. I, page 566, it is held that county commissioners have ample authority to purchase road materials such as stone and gravel without reference to the construction of any particular designated highway or improvement, and when such materials have already been so purchased and they later decide to construct a road, they may let a contract for the labor for a designated road construction at competitive bidding and stipulate that these materials be used by the successful bidder. The following opinions hold that there is no statutory provision which requires county commissioners in purchasing such materials to let the contracts for the same by competitive bidding: Opinions for 1916, Vol. I, pages 523 and 882, and for 1917, Vol. I, page 110. Of course before a valid purchase can be made, the fund should be properly provided and the auditor's certificate, as required by section 5625-33, General Code, should be furnished.

It should also be noted that section 2414, General Code, provides that where such purchase involves the expenditure of a thousand dollars or more twenty days must elapse after the introduction of the proposition before the expenditure can be made, unless such expenditure is agreed to by the unanimous consent of all the members present of the board. \* \* \* "

While, as above suggested, it is my opinion that county commissioners may lawfully enter into a contract of the kind suggested in your letter, there are three limitations upon the exercise of such power. First, as pointed out in the above excerpt from Opinion No. 219 (1933), before purchases are made or contracted for, there must be funds in the county treasury not otherwise encumbered, duly appropriated to pay for the material purchased or contracted for and a certificate of the fiscal officer as required by Section 5625-33, General Code. As said in Opinion No.

2844 (1928), "of course, before any valid purchase could be made of such material the fund from which payment is to be made should be properly provided and the auditor's certificate under Section 5625-33, General Code, would have to be made before any such contract could be legally entered into." Second, by the express terms of Section 2414, General Code, if any such contract involves the expenditure of one thousand dollars or more, twenty days must elapse after "the introduction of the proposition," unless passed by unanimous consent of the members of the board, which must be taken by a yea and nay vote and entered on the record. And, third, any such contract must be "made in good faith, in the interest of the public, and for a time reasonable under the circumstances." See *County Commissioners of Franklin County v. Ranck*, 9 O.C.C. 301, 6 O.C.D. 133 (1895), and authorities therein cited.

In view of the foregoing and for the reasons given, in specific answer to your questions, it is my opinion that:

1. Under the provisions of Section 7214, General Code, the county commissioners may lawfully contract for the acquisition of road material by becoming the lessee of real estate with the exclusive right to enter upon such real estate for the purpose of processing and removing gravel therefrom, for a reasonable period of years, with an option to renew for a like period and with a proviso that the commissioners may, on thirty days notice, cancel such lease.

2. As consideration for such lease, the county commissioners may lawfully pay annually to the lessor a rental of one dollar plus monthly payments on a royalty basis for all sand and gravel removed by such commissioners for road purposes, provided that the provisions of Sections 2414 and 5625-33, General Code, be complied with.

Respectfully,

THOMAS J. HERBERT,

Attorney General.