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1. AGRICULTURAL SOCIETY, COUNTY — BOARD OF COUNTY COMMISSIONERS CAN PURCHASE REAL ESTATE WHEREON DULY ORGANIZED COUNTY AGRICULTURAL SOCIETY CAN HOLD ITS FAIR — SECTION 9887 G. C.

2. BOARD OF COUNTY COMMISSIONERS CAN ACCEPT DEED TO PROPERTY FOR USE OF COUNTY AGRICULTURAL SOCIETY — GRANTING CLAUSE — “TO THE SAID GRANTEEES T.G.M., M.C.M. AND K.R. AS THE BOARD OF COUNTY COMMISSIONERS OF HARRISON COUNTY, OHIO, AND THEIR SUCCESSORS IN OFFICE, AND ASSIGNS, FOR PUBLIC PURPOSES FOREVER” — QUALIFYING LANGUAGE IN INDENTURE “FURTHER PROVIDING THAT THE REAL ESTATE HEREIN TRANSFERRED SHALL BE KEPT AND RETAINED AS A WHOLE BY A PUBLIC AGENCY FOR PUBLIC PURPOSES IN PERPETUITY” IS A NULLITY, OF NO EFFECT — NO PROVISION FOR REVERSION, FORFEITURE OR RE-ENTRY MADE.

SYLLABUS:

1. A board of county commissioners can, in a county in which there is a duly organized county agricultural society, under and by authority of Section 9887, General Code, purchase real estate whereon such county agricultural society can hold its fair.

2. A board of county commissioners can accept a deed to property for the use of a county agricultural society, containing the following granting clause: “to the said Grantees T. G. M., M. C. M. and K. R. as the Board of County Commissioners of Harrison County, Ohio, and their successors in office, and assigns, for public purposes forever.”, and later, in the indenture, the following qualifying language, to-wit: “further providing that the real estate herein transferred shall be kept and retained as a whole by a public agency for public purposes in perpetuity,” the same being a nullity and of no effect, since no provision for reversion, forfeiture or re-entry has been made.

Columbus, Ohio, November 25, 1944

Hon. V. F. Rowland, Prosecuting Attorney
Cadiz, Ohio

Dear Sir:

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

“The commissioners of our county desire to purchase a tract of land upon which to hold the annual agricultural fair.

There is a duly organized and existing county agricultural society in Harrison County. The society has for a great number of years rented a tract of land upon which to hold their fair. The question of the county paying the debts of this society is not involved in this matter. Harrison County proposes to pay for this tract of land the sum of \$9000.00 from the general fund. The question I am presenting is: Have the Harrison County Commissioners the power and authority to purchase this tract of land for said purpose and for said price by virtue of the authority of Section 9887 of the General Code, or is there some other section of law they should proceed under?

The second question involves the following point: The deed which the present land owners propose to deliver to the said commissioners contains the following provisions: ‘Do hereby grant, bargain, sell and convey to the said grantees T.G.M., M.C.M. and K.R., as the Board of County Commissioners of Harrison County, Ohio, and their successors in office, and assigns, for public purposes forever.’ Also, ‘Free and clear from all incumbrances whatsoever except that Grantor shall not be liable for taxes after the June, 1944, installment thereof; and further providing that the real estate herein transferred shall be kept and retained as a whole by a public agency for public purposes in perpetuity.’

The question involving this second point that I would like your opinion on is whether or not a county is authorized to purchase real estate the deed to which contains the above limitations and restrictions?

I am enclosing a copy of the proposed deed for you inspection, which I would like returned if possible.”

Section 9887, General Code of Ohio, reads in part as follows:

“In any county in which there is a duly organized county agricultural society, the board of county commissioners is authorized to *purchase* or lease, for a term of not less than twenty years, real estate whereon to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve the same. * * *”
(Emphasis added.)

This section authorizes the purchase of this site by the board of county commissioners for the purpose outlined in your request.

Your second question is more involved and contemplates the effect of certain language employed in the deed, the evident intent of which is to attempt to hold the land conveyed, for public purposes and to the use of the public forever. The manner of acquiring title to land for public purposes exercises a profound influence on the effect or lack of effect of the words of limitation employed.

It is well established in Ohio that a county can accept donations of land or funds, and they may be controlled as to their use and disposition. However, that situation does not obtain in the instant case where a cash consideration will pass. The sum of \$9,000 can hardly be considered nominal. Therefore, consideration must be given to the controlling influence of the words of limitation contained in this deed in the face of all the language employed. If this instrument contains no words of limitation on the power of the county to sell this land in the future, no question could be raised as to the authority for doing so.

Section 9900-1 of the General Code reads as follows:

“When the premises in the possession or under the control of an agricultural society and used by it as a site on which to hold annual exhibitions, is greater in size than is necessary for the purposes and uses to which it is devoted, or is not suitable in its formation or character, such society, or if the title thereof is in the county, the county commissioners, may sell any part thereof, or exchange any part thereof for other lands, so as to reduce the size of such premises or site, or change the formation or character thereof.”

In addition to this specific authority, the General Code of Ohio in Section 2447 provides as follows:

“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, * * *.”

In the face of the statutory authority, will the language employed limit the right of the county to sell all or part of this tract in the event circumstances render its retention for the county or county agricultural

society unnecessary? My conclusion is that it will not, and since this form of conveyance will in nowise circumscribe the powers of the county over this land, or in any manner render this transaction any different than one wherein no limitations were sought to be imposed, I hold that the county commissioners can accept the deed containing the words of limitation. I take this position on the ground that no provision has been made therein for reversion or the right to re-entry.

The Supreme Court of Ohio, in the case of *In re Copps Chapel Methodist Episcopal Church*, 120 O. S. 309, held:

“Where a quitclaim deed for valuable consideration, conveys to trustees of an unincorporated church association certain real property, ‘To have and to hold * * * unto the said grantees and their successors * * * so long as said lot is held and used for church purposes,’ without any provision for forfeiture or reversion, such statement is not a condition or limitation of the grant. Since the deed contains no provision for reversion or forfeiture, all of the estate of the grantor was conveyed to the grantees. Hence a church building affixed to the realty does not pass to the heirs of the grantors when such lot and building cease to be used for church purposes.”

The same court, in the case of *City of Cleveland v. Herron*, 102 O. S. 218, held:

“Where a conveyance of real estate for park and boulevard purposes is made to and accepted by a municipality, the stated consideration whereof was the sum of \$3,000, which was paid, and the promise of the municipal authorities to improve said tract in the respects recited in the deed, ‘all of which shall be done as regards both manner and material pursuant to the direction and discretion of the board of public service * * * as rapidly as possible;’ and pursuant thereto a large sum of money is thereafter expended, the proposed improvement not being at any time abandoned, the grantor will not be awarded a decree of cancellation and rescission of the conveyance for delay in the prosecution and completion of such improvement, *particularly where no ground of forfeiture is stated in the conveyance.*”

(Emphasis added.)

In the case of *Cleveland Terminal & Valley Railroad Co. v. State*, ex rel. 85 O. S. 251, the court held:

“When land is granted to a city upon a valuable consider-

ation to be used for streets and other purposes, the title will not, in the absence of an express stipulation to that end, revert in the grantor because the land is subsequently used for street and railroad purposes.”

There are other cases holding along this line, but it seems futile to cite further.

I am not able to discern from your request if you are including in your question the matter of taxes, but in passing I will say that if only the installment of taxes due and payable in June, 1944, is paid, there will be a lien on the premises for the December, 1944, and the June, 1945, taxes. See Section 5671 of the General Code.

Therefore, and specifically answering your question, it is my opinion that:

1. A board of county commissioners can, in a county in which there is a duly organized county agricultural society, under and by authority of Section 9887, General Code, purchase real estate whereon such county agricultural society can hold its fair.

2. A board of county commissioners can accept a deed containing the qualifying and limiting words as recited in your request, the same being a nullity and of no effect since no provision for reversion, forfeiture or re-entry has been made.

Respectfully,

THOMAS J. HERBERT

Attorney General