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## COUNTY COMMISSIONERS:

1. MAY CONDEMN LAND, PAY DAMAGES, LAY OUT, GRADE AND SURFACE NEW PUBLIC ROAD—ROAD MAY BE TURNED OVER TO TOWNSHIP TRUSTEES FOR MAINTENANCE AND REPAIR—ROAD MUST BE WITHIN LIMITS OF TOWNSHIP.
2. COMMISSIONERS NOT AUTHORIZED BY LAW TO ESTABLISH SPECIAL FUND FOR MAINTENANCE AND USE OF COUNTY INFIRMARY—MONEYS RECEIVED FOR BOARD FROM INMATES OF HOME—RECIPIENTS OF AID FOR AGED.

## SYLLABUS:

1. County commissioners may condemn land, pay damages, lay out, grade and surface a new public road; and said new public road may be turned over to the township trustees for maintenance and repair, provided said road is within the limits of its township.

2. County commissioners are not authorized by law to establish a special fund for the maintenance and use of the county infirmary, from moneys received for board from inmates of said home, who are recipients of aid for the aged.

Columbus, Ohio, April 4, 1949

Hon. Howard G. Eley, Prosecuting Attorney  
Darke County, Greenville, Ohio

Dear Sir:

This is to acknowledge receipt of your letter requesting my opinion on the following questions:

“1. Whether county commissioners can condemn land to pay damages, lay out, grade and surface a new road; then, if township trustees will accept it, release it to them for maintenance and repair as a township road.

“2. Whether Aid to the Aged benefits received by inmates of the County Infirmary turned over by them to the officials of the County Infirmary, who in turn deposit the moneys into the general fund with the County Treasurer, can be placed in a special fund and used by the County Commissioners solely for the maintenance and use of the County Infirmary.”

County commissioners are creatures of statute and as such have only those powers specifically provided by law or naturally and necessarily implied therefrom.

Section 6906 of the General Code provides that :

“The board of county commissioners of any county shall have power, as hereinafter provided, to construct a public road by laying out and building a new public road, or by improving, reconstructing or repairing any existing public road or part thereof by grading, paving, widening, altering, straightening, vacating, changing the direction, draining, dragging, graveling, macadamizing, resurfacing or applying dust preventatives, or by otherwise improving the same, \* \* \*”.

Sections 6913, 6914 and 6915 of the General Code provide for the appropriation of property, claims for compensation and awarding of compensation and damages by the county commissioners and are so clear that reference to same by section number should be sufficient.

It is further provided in Section 6921 of the General Code that :

“The county commissioners, or joint board thereof, upon a unanimous vote, may without a petition therefor, order that all the compensation and damages, costs and expenses of constructing any improvement be paid out of the proceeds of any levy or levies for road purposes on the grand duplicate of the county, or out of any road improvement fund available therefor, or the county commissioners or joint board thereof may enter into an agreement with the trustees of the township or townships in which said improvement is in whole or part situated, whereby said county and township, or one or more of them may pay such proportion or amount of the damages, costs and expenses as may be agreed upon between them.”

Relative to the second part of question 1, I wish to call your attention to Section 3370 of the General Code which reads :

“The township trustees shall have control of the township roads of their township and shall keep the same in good repair. *The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or intercounty highway or main market road within the limits of their township. \* \* \**”

(Emphasis added.)

In view of the provisions of the foregoing statutes, it is my opinion that the county commissioners may condemn land, pay damages, lay out,

grade and surface a new public road; that the new public road may be turned over to the township trustees for maintenance and repair, provided said road is within the limits of its township.

With reference to your second question, your attention is directed to Section 2549, General Code, which reads:

“The net proceeds arising from the sale of such property shall be paid to the county or city treasurer, and by him placed to the credit of such person to be paid out on the warrant of the county auditor, upon the order of the county commissioners, or by the city auditor upon the order of the proper officer of the infirmary. The superintendent shall open an account with the person and charge him with board at a reasonable rate and items furnished for his exclusive use, which account shall be approved by the county commissioners or by the proper city officers at the close of each month.”

It has been stated in an opinion of my predecessor, with which I concur, Attorney General's Opinions, 1947, No. 2085, that:

“Funds received by an inmate of a county home from the division of aid for the aged, when turned over to the county, must be deposited with the county treasurer to the credit of such inmate and disbursed in accordance with the provisions of Section 2549 of the General Code.”

However, the question as I understand it, is this: Do the county commissioners have the right to establish a separate fund for the maintenance and use of the county home from moneys received for board from inmates of said home who are recipients of aid for the aged benefits? County commissioners, pursuant to the provisions of Section 2522 of the General Code, have the power to establish and maintain a county home. Therefore, the expenditures involved would be lawful.

Funds to be established by each subdivision are provided for in Section 5625-9 of the General Code which reads:

- “(a) General fund.
- “(b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- “(c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- “(d) A special fund for each special levy.
- “(e) A special bond fund for each bond issue.

“(f) A special fund for each class of revenues derived from a source other than the general property tax, which the law required to be used for a particular purpose.

“(g) A special fund for each public utility operated by a subdivision.

“(h) A trust fund for any amount received by a subdivision in trust for any lawful purpose.”

With reference to paragraph “f” of the above quoted section, I am unable to find any law which requires revenues received from recipients of aid for the aged as charges for board “to be used for a particular purpose.” That being the case, said moneys must be considered a part of the general fund.

Section 5625-1, paragraph “f”, defines “current operating expenses” as:

“(f) ‘Current operating expenses’ and ‘current expenses’ shall mean the lawful expenditures of a subdivision.”

Section 5625-5 of the General Code provides in part:

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, \* \* \* Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts \* \* \* in the case of counties \* \* \* for the relief and support of the poor. \* \* \*”

In view of the foregoing it is my opinion that:

1. County commissioners may condemn land, pay damages, lay out, grade and surface a new public road; and said new public road may be turned over to the township trustees for maintenance and repair provided said road is within the limits of its township.
2. County commissioners are not authorized by law to establish a special fund for the maintenance and use of the county infirmary, from moneys received for board from inmates of said home who are recipients of aid for the aged.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.