

## OPINION NO. 66-128

**Syllabus:**

1. Pursuant to Section 307.02, Revised Code, a board of county commissioners may lease a building for a courthouse or for other county business by other than a "lease-purchase" agreement for a number of years, so long as such term is reasonable. To be reasonable, such a lease must be entered into with the proper intent, for a necessary and proper purpose, and subject to such terms and rental as to make such a lease advantageous to the county.

2. Pursuant to Sections 715.01 and 715.011, Revised Code, a municipality may lease a building for city offices by any of three arrangements: "lease", "lease with privilege of purchase" and pursuant to a "lease-purchase" plan. The lease-purchase agreement is subject to a forty-year maximum limitation according to Section 715.011, supra. When other than a lease-purchase plan is employed, no specific maximum period is imposed and the lease is limited only in that it must be for a reasonable term as determined by such factors as apply to a lease by a county.

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**To: John D. Sears, Jr., Crawford County Pros. Atty., Bucyrus, Ohio**  
**By: William B. Saxbe, Attorney General, July 25, 1966**

Your request for my opinion reads:

"Section 307.02 of the Revised Code gives

the Board of County Commissioners of any County the authority to lease a building to be used for a Courthouse, County offices and other facilities and according to 1939 Attorney General's Opinion, this lease may be for a period of 10 years at a rental for such term, reasonable in amount, if in the use of its discretion, such lease is advantageous to the County.

"According to Section 307.02, effective October 13, 1965, the Board of County Commissioners may lease for a period not to exceed 40 years pursuant to a contract providing for the consideration thereof under a lease purchase plan with certain other provisions such as at the end of the lease period, the building shall become the property of the County without cost.

"I have two questions which I would respectfully request your opinion on:

"1. Can the Board of County Commissioners lease a building for a Courthouse or other County business for a period of 40 years without any provision as to a lease purchase plan, and

"2. Does the municipality have the authority to lease a building for city offices and if so is there any limitation as to the length of the term of the lease."

An Answer to your first question requires study of a portion of Section 307.02, Revised Code, which reads:

"The board of county commissioners of any county, in addition to its other powers, may \* \* \* enter into lease-purchase agreements, lease with option to purchase, lease, \* \* \* a courthouse, county offices, \* \* \* and other necessary buildings, \* \* \*.

\* \* \* \* \* \* \* \*

"The board of county commissioners of any county may lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, \* \* \*."

(Emphasis added)

It seems obvious from a reading of the statute that a board of county commissioners has the power to lease a building for permitted purpose by other than a lease-purchase agreement. This power existed even before the 1965 amendment to this section. The forty-year limitation, of which you speak, is found only in the paragraph quoted above and refers specifically to the lease-purchase plan, not to other leases authorized by the statute. There is no specific limitation upon the permissible duration of any lease authorized by this section other than a lease-purchase agreement.

Opinion No. 1062, Opinions of the Attorney General for 1939, to which you have made reference, deals with your question as far as a ten-year lease is concerned. The syllabus to that opinion states at page 1497:

"A board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code [now Section 307.02, Revised Code], enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the courthouse, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county."

The 1939 opinion does not attempt to decide whether any lease for a period of more than ten years would be reasonable or permitted, but merely answers a specific question concerning a ten-year lease. The factors used in determining whether that lease was permissible should also be used to determine whether a forty-year lease would be reasonable. These factors are: (1) whether the commissioners entered into the lease in good faith and without fraudulent intent; (2) whether the building to be leased is and will continue to be necessary and convenient for the purposes for which it is being leased; (3) whether the rental for the term will be reasonable in amount; (4) whether such lease will be advantageous to the county; and (5) whether the board of county commissioners has not abused its discretionary powers in entering into such a lease.

An answer to your second question requires a study of Sections 715.01 and 715.011, Revised Code. Section 715.01 reads:

"Each municipal corporation is a body politic and corporate, which shall have perpetual succession, may \* \* \* acquire property by \* \* \* lease, or lease with the privilege of purchase, for any authorized municipal purpose, \* \* \*"

(Emphasis added)

Whether or not a city may enter into a lease for city offices depends upon whether such offices will be used for "any authorized municipal purpose." Section 715.01, supra. It is assumed that the offices in question will be so used.

Section 715.01, supra, authorizes the municipality to lease a building for city offices by two different types of lease arrangements: (1) "lease" and (2) "lease with the privilege of purchase." There is no specific time limitation imposed on either of these arrangements. The only qualification that might apply to such leases is that they must be of reasonable duration as determined by factors such as those discussed above.

Section 715.011, supra, gives the municipality authority to enter into a third type of lease arrangement: a contract for construction of a building pursuant to a "lease-purchase" plan. This section specifically imposes a forty-year limitation on this type lease only.

It should also be noted in passing that while there is no requirement that it do so, the municipality has express authority under Section 715.16, Revised Code, to lease suitable quarters from county buildings for various purposes. This section states:

"Any municipal corporation may:

"\* \* \* \* \*"

"(B) Agree with the board of county commissioners of any county in which such municipal corporation is located for the lease of suitable quarters in county buildings, existing or to be erected, for police and municipal courts, police stations, police prosecutors' offices, probation officers' quarters, and other similar municipal purposes."

Therefore, in answer to your specific questions, it is my opinion that:

1. The board of county commissioners may lease a building, pursuant to Section 307.02, Revised Code, for enumerated purposes including a courthouse and county offices by other than a lease-purchase agreement. If other than a lease-purchase agreement is employed, then the forty-year limitation pertaining to lease-purchase agreements does not apply, and no specific maximum period is imposed. A "lease" or a "lease with option to purchase" is limited only in that it must be for a reasonable term as determined by such factors as: (a) whether the commissioners enter into the lease in good faith and without fraudulent intent; (b) whether the building to be leased is, and will continue to be, necessary and convenient for the purposes for which it is being leased; (c) whether the rental for the term will be reasonable in amount; (d) whether such lease will be advantageous to the county; and (e) whether the commissioners abuse their discretionary powers in entering into such a lease.

2. A municipality has the authority, under Sections 715.01 and 715.011, Revised Code, to lease a building for city offices by any of three arrangements: "lease", "lease with privilege of purchase" and pursuant to a "lease-purchase" plan. Only the lease-purchase agreement is subject to the forty-year limitation of Section 715.011, *supra*. If other than a lease-purchase agreement is employed, no specific maximum period is imposed and the lease is limited only in that it must be for a reasonable term as determined by such factors as discussed above.