

**Note from the Attorney General's Office:**

1942 Op. Att'y Gen. No. 42-5184 was questioned by 1987 Op. Att'y Gen. No. 1987-069.

5184

1. BUILDING TO BE USED FOR COUNTY OFFICES — COUNTY COMMISSIONERS AUTHORIZED TO PURCHASE — CONTRACT — TITLE SHALL PASS TO COUNTY, PART PURCHASE PRICE PAID AT TIME OF CONVEYANCE, REMAINDER IN ANNUAL INSTALLMENTS — SECTION 2433 G.C.
2. SECTION 2333 G.C. APPLIES ONLY TO ERECTION OF COURT HOUSE OR OTHER COUNTY BUILDING.
3. LIMITATION, \$20,000.00, SECTION 2293-16 G.C. — NO APPLICATION TO PURCHASE PRICE, BUILDING TO BE PAID FOR FROM FUNDS OTHER THAN PROCEEDS BOND AND NOTE ISSUE — UNIFORM BOND ACT — “NET INDEBTEDNESS” — BONDS AND NOTES.
4. OUTSTANDING BONDS ISSUED BY COUNTY COMMISSIONERS — TO IMPROVE AND REPAIR COUNTY COURT HOUSE BUILDING — SHOULD NOT BE COUNTED AND INCLUDED IN \$20,000.00 UNVOTED BONDS COMMISSIONERS MAY ISSUE TO PURCHASE ANOTHER COUNTY BUILDING.

## SYLLABUS:

1. The county commissioners are authorized by Section 2433, General Code, to purchase a building to be used for county offices pursuant to a contract which provides that the title thereto shall be immediately conveyed to the county, and that part of the purchase price be paid at the time of conveyance and the balance thereof in annual installments.

2. Section 2333, General Code, applies only to the erection of a court house or other building, and has no application to the purchase of a building already constructed and needed for county offices outside the court house building.

3. The \$20,000 limitation provision of Section 2293-16, General Code, has no application to the purchase price of a building to be paid from funds other than the proceeds of a bond and note issue put out under the provisions of The Uniform Bond Act, and the "net indebtedness" referred to in that statute refers solely to indebtedness created by the issuance and delivery of bonds and notes under that Act.

4. Outstanding bonds issued by the county commissioners for the purpose of improving and repairing the county court house building should not be counted and included in making up the \$20,000 of unvoted bonds which the commissioners may issue for the purpose of purchasing another county building.

Columbus, Ohio, June 4, 1942.

Hon. Hugo Alexander, Prosecuting Attorney,  
Steubenville, Ohio.

Dear Sir:

Your letter of May 16, 1942, relating to the contemplated purchase by your county commissioners of a building to be used for certain county offices now located outside the court house, and submitting several questions relating to financing the cost of such purchase, reads (omitting formal parts) as follows:

"The Board of County Commissioners of Jefferson County has had for consideration a proposal for the purchase of a building in the City of Steubenville to be used for County Offices, which are now located in the various parts of the City outside of the Courthouse Building.

The Commissioners are not now in position to pay the entire purchase price of said proposed building in cash, and the purchase price for the same exceeds the limitations of \$25,000.00 as provided in Section 2333 of the General Code, and also the limitations of Section 2293-16 of \$20,000.00 in a period of five years for the acquisition, etc. of any one County Building.

Before coming to a definite conclusion concerning the proposal, the Commissioners would like to have a number of legal questions in connection with such a transaction, submitted to you for your legal opinion. The questions are as follows:

1. Can the Commissioners purchase a building to be used for County Offices by means of a contract with the vendor which provides that the vendor immediately convey title by Warranty Deed to the Commissioners and which further provides that the Commissioners make a down payment and pay the balance of the unpaid purchase price in installments over a period of not less than five years?
2. In making such a contract do the limitations of Section 2333 apply requiring a vote by the people for the erection of a County Building at a cost to exceed \$25,000.00, in view of the fact that no erection is contemplated but merely the acquisition or purchase of a building already constructed and suitable for use?
3. In making such a contract, do the limitations of Section 2293-16, limiting the issue of bonds in an amount exceeding \$20,000.00 in any period of five years for the acquisition, etc., of any one County Building affect the right of County Commissioners under Section 2433 of the General Code, to purchase such a building by such a contract where the purchase price exceeds the sum of \$20,000.00, the payment of which may extend beyond the five year period?
4. Will such a contract, as above outlined providing for the payment of the unpaid balance of the purchase price in regular installments over a period of approximately five years or more, be considered an installment contract under Section 2433 of the General Code, and would such a contract be classified as a continuing contract?
5. Will such a contract be considered an obligation of the County that will affect the net indebtedness incurred without a vote of the people as provided in Section 2293-16?
6. The County Commissioners have already issued bonds under Section 2293-16 in the sum of approximately \$14,000.00 for the improvement and repair of the County Courthouse Building. Will the issuance of these bonds preclude the County Commissioners from issuing bonds in the sum of \$20,000.00 for the purchase and necessary improvement of a separate and distinct building not in any way connected with the County Courthouse?

You unquestionably realize the importance of this matter and I would sincerely appreciate your kind and immediate attention to this matter. Your cooperation in rendering an opinion on this matter as soon as possible will be greatly appreciated."

As I understand your letter, the county commissioners have two financial plans under consideration, one involving the payment of the purchase price from the proceeds of a bond issue, and the other the payment of the purchase price in installments from other available public funds.

1. Your first and fourth questions involve not only Section 2433, General Code, but also certain provisions of the budget law, Section 5625-1, et seq., General Code.

Section 2433, so far as pertinent reads as follows:

“The taxing authority of any county in addition to other powers conferred by law shall have the power to purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county home, juvenile court building, detention home, public market houses, county children’s home and other necessary buildings, and sites therefor;” etc.

A case analogous to the one you have presented was before this office for consideration in 1938. See Opinions of the Attorney General, 1938, No. 2491, page 1078. In that case it appears that the county commissioners had under consideration the question of purchasing a building for \$15,000. The purchase price was to be paid in installments over a period of years, at the end of which time the building would become the property of the county. The syllabus to that opinion reads as follows:

“Under the provisions of Section 2433, General Code, the county commissioners are expressly authorized to purchase by installment payments a building deemed necessary for any of the purposes mentioned in said section.”

In the opinion it was said:

“The above quoted section, \* \* \* in very clear language, is dispositive of your first question in that your attention is directed to that part of the section which specifically authorizes the county commissioners to purchase by installment payments such a building as is contemplated provided the same is deemed necessary for any of the purposes mentioned in said section.

At this time I wish to direct your attention to Section 5625-36, General Code, which authorizes the fiscal officer to make his certificate in case of contracts running beyond the

termination of the fiscal year for only the amount needed for the fiscal year and that thereafter the amount that would become payable during the next fiscal year should be included in the annual appropriation measure for such next year as a fixed charge. You will note, therefore, that this section is an exception to the provisions of Section 5625-33, General Code."

Another somewhat analogous case involving the lease of a building was considered by me in 1939 (Opinions of the Attorney General, 1939, No. 1062, page 1497). In that opinion I held that:

"A board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General 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 court house, 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 two opinions just mentioned, as well as the statutes therein referred to, justify an affirmative answer to your first question, and it is also my opinion that the contract mentioned in both your first and fourth questions may be classed as one of the contracts referred to in Section 5625-36, General Code.

2. Section 2333, General Code, referred to in your second question, so far as pertinent to your case, reads as follows:

"When county commissioners have determined to erect a court house or other county building at a cost to exceed \$25,000, they shall submit the question of issuing bonds therefor to a vote of the electors thereof."

This statute, according to its terms, applies only when the county commissioners have determined to "erect" a court house or other county building, and then only when a bond issue is contemplated. It has no application to the purchase of a court house or other building already constructed, or to the alteration or extension of any such existing building. See also Opinions of the Attorney General, 1930, No. 1502, page 226.

For the reasons just stated, your second question is answered in the negative.

3. Section 2293-16, General Code, referred to in your third question, is one of the sections of "The Uniform Bond Act," and, so far as pertinent to your case, reads as follows:

"The net indebtedness created or incurred by any county without vote of the electors shall never exceed a sum equal to one per cent of the first one hundred million dollars or part thereof of the tax list of the county plus one-half of one per cent of such tax list in excess of one hundred million dollars. \* \* \*

Provided that, except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty thousand dollars in any period of five years, for the acquisition, construction, improvement, enlargement or extension of any one county building, including the acquisition of a site therefor, but this limitation shall not apply to buildings for a district consisting of two or more counties."

The statutory provisions just quoted would only be applicable in case the building referred to in your letter is to be purchased from the proceeds of a bond and note issue put out by the county commissioners under "The Uniform Bond Act," and in the event the commissioners should determine to issue bonds and notes for that purpose the amount of the issue could not exceed \$20,000 unless first approved by the requisite majority vote of the electors. But if, as just indicated, the purchase price is not to be paid from the proceeds of a bond and note issue, but from other available funds, none of the limitations of this section would have any application.

Your third question therefore is answered in the negative.

4. As already stated, Section 2293-16, General Code, which is also referred to in your fifth question, is one of the sections of "The Uniform Bond Act," and the "net indebtedness" referred to therein has reference only to an indebtedness created by the issuance of bonds and notes. This is made manifest by the descriptive definition of "net indebtedness" contained in Section 2293-13, General Code, as follows:

"The net indebtedness of any subdivision shall be the difference between the par value of the outstanding and unpaid bonds and notes of the subdivision and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. An indebtedness shall not be deemed to have been created or incurred until the delivery of the bonds or notes under contract of sale."

It is quite apparent therefore that if the purchase price of the building referred to in your letter is not to be paid from the proceeds of a bond and note issue, the net indebtedness provision of Section 2293-16 would have no application.

In this connection I quote from Opinions of the Attorney General, 1927, No. 718, page 1220, dealing with an analogous case (the purchase of real estate,) as follows:

“Section 2293-16 of the General Code, to which I have referred, is a limitation solely on the authority to issue bonds. In the event that there are available sufficient funds to acquire the real estate in question without the necessity of issuing bonds, the county commissioners may proceed under the authority of section 2433,” etc.

Your fifth question therefore is answered in the negative.

5. The provisions of Section 2293-16, General Code, with respect to the \$20,000 bond limitation, and also referred to in your sixth question, should be confined to the particular building referred to in your letter, if bonds are to be issued to finance its purchase. The reason for this is found in the language of the statute which confines the \$20,000 limitation to “any one county building.” In other words, the outstanding \$14,000 bond issue which was put out by the county commissioners for the purpose of improving and repairing the present county court house building, is not to be counted and included in making up the \$20,000 of unvoted bonds which the county may issue for the purpose of purchasing another county building, such as the one referred to in your letter.

Your sixth question therefore is answered in the negative.

Respectfully,

THOMAS J. HERBERT  
Attorney General.