

OPINION NO. 68-152**Syllabus:**

1. A board of county commissioners is authorized by law to issue bonds for the construction of a county courthouse larger than that required to meet the present and/or future needs of the county and with the express intention of leasing the surplus space to a municipal corporation located within the county.

2. There is no specific constitutional limitation upon the home rule authority of a charter municipal corporation to acquire and hold building space for municipal purposes or upon the manner of such acquisition. A charter municipal corporation may acquire interests in property for municipal purposes by purchase, gift, devise, appropriation, lease or otherwise, unless expressly prohibited by the Constitution, the municipal charter, or municipal ordinance. As to similar authority in noncharter municipal corporations, see Chapter 715, Revised Code.

To: Robert L. Balyeat, Allen County Pros. Atty., Lima, Ohio
By: William B. Saxbe, Attorney General, November 13, 1968

Your letter requesting my opinion reads in pertinent part as follows:

"Allen County and the City of Lima are presently considering the construction of a new joint facility which would replace the present county courthouse and also house the administrative offices of the City. Although the plans are merely at the formative stage at present, one of the methods under consideration for financing the improvement is the issuance of bonds by the Board of County Commissioners for the entire cost of the improvement. If this method were adopted, the County would, of course, own the building and would lease sufficient space to the City to meet the latter's needs. There are two questions which have arisen in connection with this method of proceeding upon which I would appreciate your consideration and opinion. They are as follows:

1. Is a board of county commissioners

properly authorized under the laws of this State to issue bonds for the construction of a county courthouse larger than that required to meet the present and/or future needs of the county and with the express intention of leasing the surplus space to a municipal corporation located within the county?

2. What is the maximum term for which the City of Lima could lease space from Allen County in the facility contemplated?

"For your information and assistance in answering the second question, I would point out that the City of Lima has home rule power under its Charter. The provisions contained in the Charter with regard to the leasing and acquisition of real estate are of a general nature and, rather than attempt to determine which provisions might be of significance in this connection, I have enclosed herewith a copy of the Charter of the City of Lima in its entirety for your examination. I would further point out, although it is probably unnecessary to do so, that the lease contemplated would be an ordinary lease without an option to purchase or any of the provisions normally associated with what we know and refer to as lease-purchase agreements."

Section 307.29, Revised Code (superseding Section 2419-2, General Code), reads as follows:

"The board of county commissioners may, by agreement with the city council, the director of public safety or his successor, or the person or board charged with the erection, maintenance, or repair of police stations, jails, police and municipal courthouse and courtrooms, lease to any municipal corporation in the county suitable quarters in county buildings, erected or to be erected, for municipal courts, police stations, police courts, prosecutors' offices, probationers' offices, and other similar municipal purposes. Whenever the board of any county has made such an agreement with a municipal corporation the board may erect a county building anticipating and making provision for such municipal quarters."

Such section authorizes the board of county commissioners to lease to any municipal corporation in the county suitable quarters in county buildings, erected or to be erected for specified municipal purposes. For further analysis of

such authority, see Opinion No. 700, Opinions of the Attorney General for 1929, and Opinion No. 1909, Opinions of the Attorney General for 1938.

Sections 307.01 and 307.02, Revised Code, empower the county commissioners to acquire or construct a county courthouse.

Section 133.24, Revised Code, reads in part as follows:

"The taxing authority of any subdivision may issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct. * * *"

Section 133.01 (C), Revised Code, provides that "taxing authority" means in the case of any county, the board of county commissioners. Section 133.01 (E), Revised Code, provides that "permanent improvement" means any property, asset or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and including reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more. The construction of a county courthouse is such a permanent improvement.

In my opinion, in answer to your first question, a board of county commissioners is authorized by law to issue bonds for the construction of a county courthouse larger than that required to meet the present and/or future needs of the county and with the express intention of leasing the surplus space to a municipal corporation located within the county.

Section 307.09, Revised Code, reads in pertinent part as follows:

"If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county

and not needed for public use, or may lease it, * * * provided further, the board may grant leases, rights, and easements to municipal corporations or other governmental subdivisions for public purposes * * *. Any such lease, right, or easement granted to a municipal corporation or other governmental subdivision * * * may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the public. * * *"

The board of county commissioners' authority to lease real estate belonging to the county to a municipal corporation is provided by this section. The determination of the maximum length of time, terms, purposes for granting such lease, and any renewal of leases to municipal corporations is, as lessor, within the sound discretion of the board of county commissioners as provided by Section 307.09, Revised Code.

Your second question concerns the authority of a particular charter municipal corporation, the City of Lima, as lessee, to lease space from the County.

There is no specific constitutional limitation upon the home rule authority of a charter municipal corporation to acquire and hold building space for municipal purposes or upon the manner of such acquisition. A charter municipal corporation may acquire interests in property for municipal purposes by purchase, gift, devise, appropriation, lease or otherwise, unless expressly prohibited by the Constitution, the municipal charter, or municipal ordinance. As to similar authority in noncharter municipal corporations, see Chapter 715, Revised Code.

I do not deem it appropriate for the Attorney General to review in detail the municipal corporation's charter and the municipal corporation's ordinances to determine the nature, manner and limitations upon the authority of such municipality to enter into leasing agreements, as lessee.

In my opinion, there is no constitutional nor an applicable statutory limitation upon the length of time which a charter municipal corporation might lease space in a county building.