

fendant has been erroneously bound over to the grand jury by a justice of the peace who, by law, had final jurisdiction to hear, determine and sentence such defendant.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3214.

COUNTY COMMISSIONERS—UNAUTHORIZED TO DONATE COUNTY REALTY TO STATE FOR ARMORY SITE.

*SYLLABUS:*

*County commissioners have no authority to donate and convey county real estate to the state for the site of an armory.*

COLUMBUS, OHIO, May 11, 1931.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—I wish to acknowledge receipt of your letter, inquiring whether county commissioners can convey to the State of Ohio for the site of an armory, real estate which had been purchased in fee simple by the commissioners in 1878 and which had been used as the site of a county children's home until about three years ago when the State Welfare Department and public building inspectors condemned the building thereon for the reasons that it was old, worn out, unsanitary, and unsafe to be occupied. Though you do not state it expressly, the tenor of your letter indicates, and I therefore assume, that the commissioners contemplate a *donation* of said real estate to the state for the purpose mentioned.

Having in mind the orthodox criterion which is determinative of matters of this nature—that is, that county commissioners have only such powers as are, by law, given to them expressly and such as are necessarily implied in order to effectuate those express powers—I fail to discover, after an examination of the statutes and judicial decisions, any authority for the commissioners to do that about which you inquire. In fact, an opinion rendered by former Attorney General Denman (1910-1911 Annual Report of the Attorney General, p. 1077) negatives it by analogy. There, it appeared that the county commissioners proposed, for a consideration of one dollar, to convey county land to the state of Ohio to be used as a site for a state normal school. The opinion held:

“Such a proceeding amounts to a mere donation. Commissioners are given no power to donate land. \* \* \*

For the foregoing reasons I do not believe that the proceedings proposed to be followed by the county commissioners of Cuyahoga County would be legal.”

Believing that, for the purposes of this opinion, there is no difference between a donation of land for the site of a state armory and one for the site of a state normal school, and that no change has been made in the law since the time of

the former ruling which would warrant a different conclusion, I am of the opinion, in specific answer to your question, that county commissioners have no authority to donate and convey county real estate to the state for the site of an armory.

Being of the opinion that your question may be decided upon the ground of want of authority, I find it unnecessary to discuss any constitutional questions which may be involved.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3215.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF HAROLD R. HUKILL AND RUTH L. HUKILL IN FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, OHIO, May 11, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—I have in hand your letter submitting for my examination and approval an abstract of title, copy of real estate option, deed, encumbrance estimate No. 815, authority of the controlling board, plat, and tax receipts for 1930, relating to the proposed purchase of 439 acres of land in Franklin Township, Ross County, Ohio, from Harold R. Hukill and Ruth L. Hukill, his wife, said land being composed of two tracts, the first tract being approximately 64 acres found in Virginia Military Survey No. 10634, and the second tract being approximately 375 acres found in Virginia Military Survey No. 13381-13382.

Prior to the time of both of these tracts coming into the hands of one John C. Hewitt, the chain of title to each of these tracts had a separate and distinct history; and subsequently they have had a common chain of title having been conveyed together. I should like first to consider several defects which are peculiar to the first tract alone, they having arisen in the separate history of the first tract prior to the time of its being owned by John C. Hewitt.

From the abstract (p. 4 of the last continuation), it appears that the county tax duplicate indicates that Survey No. 10634, of which the first tract is a part, was listed in the name of Governor Duncan McArthur from 1826 to 1841, and that it was then transferred to the name of Allen C. McArthur, his son. Governor McArthur died leaving a will in which he gave the land in question to executors and trustees and made a provision whereby the income therefrom was to be distributed to his children during their lives and whereby, upon the death of his children, the land was to be divided among the governor's grandchildren. See *McArthur vs. Scott*, 113 U. S. 340. Governor McArthur's will was probated in 1839, but shortly thereafter a suit, which appears to have been collusive, was brought by his children to have the will annulled. The will then having been set aside, the children of Governor McArthur had his lands partitioned among themselves, as heirs, Survey No. 10634 being awarded to Allen C. McArthur, a son. From said Allen C. McArthur the title to the first tract is traceable down to the present time.