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TOWNSHIP TRUSTEES—NO AUTHORITY TO LEASE BUILDING TO BE USED AS A TOWNSHIP HALL—§ 505.26 RC.

SYLLABUS:

Boards of township trustees, acting under authority of Section 505.26, Revised Code, have no authority to lease a building to be used as a township hall.

Columbus, Ohio, October 30, 1957

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

“I request your opinion as to whether township trustees may lease a building from the township clerk of the same township to be used as a township meeting place.”

Limited authority is given a board of township trustees to lease a building in the following language in Section 503.23, Revised Code, 90 Ohio Laws 257:

The board of township trustees shall fix the place of holding elections within its township, or within any election precinct in such township. For such purpose the board may purchase or lease a house and suitable grounds, or, by permanent lease or otherwise, may acquire a site and erect thereon a house.
* * *

This statute, however, limits the purpose for such leasing to the holding of elections. I further direct your attention to Section 3501.11, Revised Code, 113 Ohio Laws 307, reading in pertinent part:

“Each board of elections shall exercise by a majority vote all powers granted to such board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall:

(A) Establish, define, provide, rearrange and combine election precincts;

(B) Fix and provide the places for registration, when required, and for holding primaries and elections; * * *

Since Section 3501.11, *supra*, is the later enactment, I doubt that the board of township trustees has any authority to act under Section 503.23, *supra*, the duty of providing polling places having been given subsequently to the county boards of elections.

Authority to purchase and equip a township hall is provided in Section 505.26, Revised Code:

“The board of township trustees may *purchase*, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall, a township park, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites for any of such improvements.” (Emphasis added.)

It is a well established principle that boards of township trustees have only such powers as are expressly conferred by statute or are necessarily implied from express powers. In Section 503.23, *supra*, the expression “may purchase or lease” clearly reflects the legislative view that the two concepts are separate and need to be expressed.

In Opinion No. 4806, Opinions of the Attorney General for 1955, p. 68, my predecessor held that authority of the board of county commissioners to purchase automobiles did not imply the power to lease. Insofar as the grant of authority is concerned, I deem the reasoning in that opinion to be correct and adopt it herein.

In this relation I direct your attention to Section 307.02, Revised Code, reading in part:

“The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, lease with *option to purchase*, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children’s home, and other necessary buildings, and sites therefor;”
(Emphasis added.)

Such detail as provided in Section 307.02, *supra*, can hardly be said to be superfluous. Neither can the following provisions of Section 307.201, Revised Code:

“The board of county commissioners, in addition to its other powers, shall have the authority to *acquire, construct, own, lease* and *operate* subways for transportation systems not owned by the county, * * *” (Emphasis added.)

Section 505.12, Revised Code, reads in pertinent part :

“The board of township trustees may secure, maintain, and provide for sanitary dumps, if in its opinion, such dumps are necessary, and for such purpose the board may *purchase, rent, lease, or otherwise acquire* such land as is suitable for dumping purposes.” (Emphasis added.)

From these expressions of legislative intent to confer power to acquire property and to regulate the means for acquiring property rights, I am impelled to conclude that the authority to purchase property does not authorize the leasing of property.

Having reached this conclusion I need not consider the question of the authority to lease from the clerk of the board of township trustees.

Therefore, in specific answer to your inquiry, it is my opinion and you are advised that boards of township trustees, acting under authority of Section 505.26, Revised Code, have no authority to lease a building to be used as a township hall.

Respectfully,
WILLIAM SAXBE
Attorney General