

This opinion dealt with the question of whether there was any liability against the county by reason of a wrongful commitment to the State Hospital by the Probate Judge.

The board has asked us to ascertain whether or not you agree with the opinion so rendered. We are therefore enclosing a copy of our opinion and respectfully request that you advise us whether or not you are in accord with the same."

I note from the copy of your opinion rendered to the county commissioners, in which you advise them that no liability on the county of Cuyahoga exists on account of the matters complained of, you state:

"I understand the basis of the claim to be an alleged wrongful commitment to the State Hospital by the Judge of the Probate Court of Cuyahoga County. It should first be noted that the incident complained of happened some twenty years ago and in such case, it would seem obvious that if there be a liability on the county, some one of our many predecessors in office would have so ruled in that length of time."

In my opinion, you have advised the Commissioners correctly. In the first place, a probate judge, while sitting as a court, and passing on questions properly within his jurisdiction, in no wise acts as the agent of the county. The Probate Court is a branch of the judicial system of the State, made so by Section 1 of Article IV of the Constitution of Ohio, and the Probate Judge represents that court.

I also note you state in your opinion:

"If Miss H., and those interested in her were to present the matter to the General Assembly of Ohio, and they were to enact a statute authorizing the County Commissioners to pay this claim in some stipulated amount, then the County Commissioners would be empowered to pay to Miss H., any sum up to the maximum so fixed by the General Assembly."

I would hesitate to say that the General Assembly could, by any action, impose such a liability on the Treasurer of Cuyahoga County. At any rate, the question is not a "live" one at this time.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1869.

STATE OFFICE BUILDING—COMMISSION'S DUTY TO APPROPRIATE PROPERTY.

SYLLABUS:

1. *Under the provisions of House Bill No. 17, as enacted by the 88th General Assembly, 113 O. L. 57, the Department of Public Works, or the Superintendent of Public Works, has no powers to exercise in connection with the appropriation of lands for the state office building.*

2. *Such powers and duties are imposed upon the State Office Building Commission, which commission when exercising such power, is governed by the provisions of law setting*

forth the manner of appropriation of lands by the Superintendent of Public Works in Sections 442, et seq., of the General Code.

COLUMBUS, OHIO, May 16, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“My attention has been called to the provisions of Section 154-40 of the General Code, defining the powers and duties of the Department of Public Works, as passed by the 87th General Assembly of Ohio on the 21st day of April, 1927, and duly approved by the Governor on the 10th day of May, and filed in the office of the Secretary of State on the 24th day of May, 1927, and therefore became effective on the 22nd day of August, 1927. (See O. L. 112, pages 430-501).

Paragraph 5, of the schedule of duties defining the powers of the Superintendent of Public Works, as set forth in the act, recites:

“To purchase all real estate required by the state government or any department, office or institution thereof; in the exercise of which power such department shall have authority to exercise the power of eminent domain in the manner provided by law for the exercise of such power by the Superintendent of Public Works in the appropriation of property for the public works of Ohio, as heretofore defined.”

By an act of the 88th General Assembly of Ohio, passed March 14th, 1929, approved by the Governor, April 6th, 1929, and filed in the office of Secretary of State April 8th, 1929, effective July 7th, 1929, a State Office Building Commission was created, with authority to acquire a site for said ‘State Office Building’ by purchase, gift or appropriation, in the manner described in Section 3, of House Bill No. 17, as passed by the 88th General Assembly of Ohio, (O. L. 113, p. 58).

This section provides that ‘If the Commission is unable, within sixty days after the going into effect of this act, to purchase said land or any part thereof for a reasonable amount, the Commission shall institute proceedings to appropriate such property in the manner provided by law for the appropriation of property by the Superintendent of Public Works, and such proceedings shall be instituted in the name of the State, and it shall be the duty of the Attorney General to represent the State in such proceedings.’

The undersigned has no desire to participate in these proceedings, unless you hold that such participation is actually necessary in order that the condemnation of the property desired by the State may be brought legally by due process of law.

In case you find it necessary to have the Superintendent of Public Works commence the condemnation proceedings in accordance with the provisions of Section 154-40 of the General Code, you have only to indicate the duties I am to perform, and I will take pleasure in obeying your commands.

My object in addressing you at this time is merely to prevent delay that might ensue by deferring the question until the time arrives for commencing condemnation proceedings.”

As suggested in your communication, Section 154-40 of the General Code, confers upon the Department of Public Works the power to purchase all real estate required by the state government or any department, office or institution thereof, etc. It will further be observed that such power had previously been exercised by the Di-

rector of Highways and Public Works since the establishment of the Administrative Code in 1921. However, House Bill No. 17 as enacted by the 88th General Assembly in 113 Ohio Laws, 57, creates a State Office Building Commission. Section 3 of said act, which relates to the power of such Commission to acquire a site, reads in part:

"The Commission is hereby empowered to acquire a site for a state office building directly opposite the state house grounds on Broad, Third, State or High street or may acquire a site outside of the area above set forth but conveniently located near the state capitol in the city of Columbus, Ohio. The Commission is hereby empowered to acquire such land by purchase, gift or appropriation in the manner hereinafter provided. If the Commission is unable, within sixty days after the going into effect of this act, to purchase said land or any part thereof for a reasonable amount, the Commission shall institute proceedings to appropriate such property in the manner provided by law for the appropriation of property by the Superintendent of Public Works and such proceedings shall be instituted in the name of the state and it shall be the duty of the Attorney General to represent the state in such proceedings. * * *"

In analyzing the section last above quoted, it appears that in unambiguous language the Legislature empowered the Commission to acquire a site for a state office building by purchase, gift or appropriation. The section further provides that if the Commission is unable to purchase said land within sixty days after the effective date of the act "the Commission shall institute proceedings to appropriate such property in the manner provided by law for the appropriation of property by the Superintendent of Public Works".

It is a well established principle of law in this state that when general provisions relating to the same subject matter are in conflict, the one that is later in the order of enactment will control. It is a further rule of construction that special provisions will control over general provisions. The power granted to your department under the provisions of Section 154-40 are general powers. The power granted the State Office Building Commission to acquire property and appropriate, if necessary, is a special provision which relates to this Commission and its duties in connection with the construction of the state office building. It also is later in the order of enactment than Section 154-40.

Without further discussion, it will be concluded that the provisions of House Bill No. 17 confer the power of acquiring or appropriating lands upon the State Office Building Commission. That section, however, does by reference adopt the method of appropriating which is provided for appropriation by the Superintendent of Public Works. In other words, when the State Office Building Commission exercises its power in connection with the appropriation of lands, it shall be governed by the provisions of Sections 442, et seq. of the General Code. That is to say, House Bill No. 17, as enacted by the 88th General Assembly, confers the power upon the State Office Building Commission to appropriate such land as is necessary for the construction of the state office building, and in the exercise of that power it shall be governed by the proceedings outlined for the Superintendent of Public Works when undertaking to condemn land. In fact, the Department of Public Works proceeds to appropriate land under the provisions of Section 154-40 "in the manner provided by law for the exercise of such power by the Superintendent of Public Works."

In specific answer to your inquiry, it is my opinion that:

1. Under the provisions of House Bill No. 17, as enacted by the 88th General Assembly, 113 O. L. 57, the Department of Public Works, or the Superintendent of Public Works, has no powers to exercise in connection with the appropriation of lands for the state office building.

2. Such powers and duties are imposed upon the State Office Building Commission, which Commission when exercising such power, is governed by the provisions of law setting forth the manner of appropriation of lands by the Superintendent of Public Works in Sections 442, et seq. of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1870.

COUNTY AUDITOR—UNAUTHORIZED TO REASSESS ALL REALTY IN COUNTY AFTER ASSESSMENT MADE UNDER SECTION 5548-1, GENERAL CODE.

SYLLABUS:

Section 5548-1, General Code, does not authorize the county auditor to reassess all of the real estate in the county after the same has been assessed by him for taxation purposes under authority of Section 5548, General Code.

COLUMBUS, OHIO, May 17, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, in which you make inquiry as to whether this office has recently had occasion to construe or apply Section 5548-1 of the General Code. In your communication referring to this section of the General Code, you say:

“This is the section which involves the power of the county auditor to change valuations of real estate in subdivisions of the county. The precise question we are interested in is whether or not the county auditor has the power to make a blanket reduction on all property of the county, and if he has that power, how the notice should be given to each property owner affected by said reduction.”

This office has not had any occasion recently to consider the provisions of Section 5548-1, General Code, referred to in your communication.

By Section 5548, General Code, each county is made the unit for assessing real estate for taxation purposes, and the county auditor, in addition to his other duties, is the assessor of all the real estate in his county for such purposes.

Section 5548, General Code, which was enacted in its present form by the Act of April 17, 1925, (111 O. L., 418) further provides that in the year 1925 and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situated in the county, with the proviso that if the real property in any county or subdivision thereof has been reappraised in the years 1922, 1923 or 1924, and the Tax Commission of Ohio, upon the application of the county auditor, finds that the real property in said county or subdivision thereof is appraised at its true value in money, then there shall be no general reassessment of property in said county or subdivision in the year 1925. In making the assessment of the real estate in a county, pursuant to the authority provided by Section 5548, General Code, regard is had, of course, to the requirements of Section 5560, General Code, which provides that each parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon.