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UNITED STATES AGRICULTURAL ADJUSTMENT ADMINISTRATION—UNITED STATES FARM SECURITY ADMINISTRATION—COUNTY COMMISSIONERS—NO LEGAL AUTHORITY TO EXPEND MONEYS OF COUNTY TO LEASE OFFICES FOR SUCH ADMINISTRATIONS.

SYLLABUS:

County commissioners have no legal authority to expend moneys of the county in the leasing of offices for the United States Agricultural Adjustment Administration or for the United States Farm Security Administration.

Columbus, Ohio, June 4, 1943.

Hon. Ross Michener, Prosecuting Attorney,
St. Clairsville, Ohio.

Dear Sir:

I acknowledge receipt of your request for my opinion, reading as follows:

"I am writing to request your opinion on the following matter:

For some period of time the County Commissioners of this county furnished office space in the court house for the United States Agricultural Adjustment Administration (AAA) and for the United States Farm Security Administration. Later it became necessary to obtain larger quarters for these two departments and offices were obtained for them in a privately owned building adjoining the county court house at a monthly rental of \$90.00. The AAA by arrangement paid \$55.00 and Belmont County pays \$35.00, and the space is jointly used by both departments.

The question is, therefore, whether or not the county may lawfully pay rent for office space provided for a federal agency. I would appreciate your prompt opinion for the reason that the State Examiner is now working on Belmont County books and he indicates he finds no authority for such payment and will therefore make a finding, and we of course do not desire to perpetuate an error, if it is an error. It would appear that the County, State and Federal Agricultural Agencies are related closely enough by law as well as in practice to justify a continuance of this cooperation."

No principle of law is better settled in Ohio than that the Board of County Commissioners being an agency or instrumentality of the state government, has only such powers as are conferred upon it by law. We have, therefore, to look in each case to the statutes of Ohio to see whether the power sought to be exercised by the commissioners has been granted by the Legislature.

Many cases could be cited in support of this proposition, but I deem it sufficient to quote from the statement of Matthias, J., in the case of *Elder v. Smith*, 103 O. S. 369, 370, where it is stated:

"It has long been settled in this State that the Board of

County Commissioners has such powers and jurisdiction, and only such, as are conferred by statute."

The statutes of Ohio have made provision for offices for all county officers, and the commissioners are required to furnish such offices, and are given broad powers relative to the purchase, erection or leasing of buildings for that purpose.

Section 2419, General Code, reads :

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the County Commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all rooms, fire and burglar-proof vaults and safes and other means of security in the office of the County Treasurer, necessary for the protection of public moneys and property therein."

It will be noted that the provision here made is strictly limited to county offices and buildings.

Section 2433, General Code, provides in part as follows :

"The taxing authority of any county in addition to other powers conferred by law shall have 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; * * *."

The "taxing authority" here referred to is the board of county commissioners, and it will again be noted that the buildings which it is authorized to purchase or lease are strictly limited to county purposes and to the housing of county offices and institutions.

I find no statute which authorizes any county to provide, either by erection, purchase or lease, offices for either the United States Agricultural Adjustment Administration or the United States Farm Security Administration.

One of my predecessors had occasion to consider the question whether a board of county commissioners had authority to pay the expenses of a board known as a county relief board which, during the period of depression, had as its purpose the investigation and preparation of a list of unemployed persons within a county and the furnishing of such list to contractors on public, state or county projects. His opinion is found in (Opinions Attorney General, 1933, p. 769, and it was held that the county commissioners had no such power. The then Attorney General laid down the same principle which we have stated as to the limited powers of county commissioners and said:

“It would therefore appear that the County Commissioners have no statutory obligation to perform the duties which are being performed by the ‘county relief board’ referred to in your inquiry. If that be true, it is difficult to perceive a method by which they could employ an agent for compensation to do something which they had no authority to do and pay him from public funds.

While the end sought to be accomplished by the creation of the county relief board is undoubtedly laudable, it is apparently beyond the powers of the Board of County Commissioners to create such agency. I must therefore hold that the Board of County Commissioners has no power to employ such board.”

The last paragraph quoted above from the opinion in question furnishes an answer to the final suggestion in your letter that the “county, state and federal agricultural agencies are related closely enough by law as, well as in practice to justify a continuance of this cooperation.” It may be that cooperation with these federal agencies would be beneficial to the people of the county and such benefit might be the basis for legislative authority for the county commissioners to furnish them offices or other facilities, but since the Legislature has not seen fit to grant such authority, the county commissioners would be without power to expend public moneys for that purpose regardless of the benefits they might feel would follow from so doing.

To like effect it was held by a former Attorney General (1935 Opinions Attorney General, p. 485) that for want of statutory authority a county could not maintain offices for the Federal Relief Administration. In that opinion it was said:

“A search of the Ohio statutes fails to reveal any authority for the county to expend county funds for the purpose of paying the expenses, such as rent, light, heat, water and other office expenses, for the purpose of carrying on the Federal Relief Administration in the county, which administration is under the sole

control of the Federal Government, and consequently it is my opinion that such expenditure would not be lawful. The purpose of such expenditure may seem a laudable one but a laudable purpose is not necessarily a lawful purpose."

Accordingly, in specific answer to your inquiry, it is my opinion that county commissioners have no legal authority to expend moneys of the county in the leasing of offices for the United States Agricultural Adjustment Administration or for the United States Farm Security Administration.

Respectfully,

THOMAS J. HERBERT,
Attorney General.