

OPINION NO. 73-078

Syllabus:

1. The Ohio Building Authority has primary responsibility for the custodial care of the new state office building which is being constructed by the Authority pursuant to R.C. 152.19, and leased by the Authority to the Department of Public Works pursuant to R.C. 152.24.

2. Where it is determined that the requirements for custodial care can best be met on a contract basis, the Ohio Building Authority is the proper party to enter into a contract for these services.

To: Joseph J. Sommer, Director, Dept. of State Personnel, Columbus, Ohio
By: William J. Brown, Attorney General, August 1, 1973

Your request for my opinion poses the following questions in regard to the new state office building, now under construction in Columbus:

(1) If the state office building is leased in its entirety to the State of Ohio for the use of state agencies under a lease agreement between the Ohio Building Authority and the Department of Public Works, will the Ohio Building Authority or the Department of Public Works have primary responsibility for the custodial care of this facility?

(2) If it is determined that the requirements for custodial care of the new state office building can best be met on a contract basis under a bidding procedure, which agency, the Ohio Building Authority or the Department of Public Works, will be the proper contracting authority to enter into an agreement for these services?

The construction of the building was authorized and given priority under R.C. 152.19 which reads:

(1) The Ohio building authority may purchase, construct, reconstruct, equip, furnish, improve, alter, enlarge, maintain, repair, and operate office buildings and related storage and

parking facilities for the use of state agencies on one or more sites within the state.

(F) With the exception of construction by the adjutant general which involves federal funds that otherwise lapse, the first project of the authority pursuant to division (A) of this section shall be the acquisition, provision, or construction of office facilities, pursuant to the instructions of the legislative office building committee as provided in section 152.25 of the Revised Code. After the location of said facilities has been determined, the authority may proceed to subsequent projects.

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R.C. 152.24 provides as follows for the lease of a building constructed by the Ohio Building Authority for the use of state agencies:

The department of public works shall lease any building or facility acquired or constructed by the Ohio building authority for the use of any state agencies. An agreement between the authority and the department may provide for the transfer of the property to the state after bonds and notes issued by the authority for the purpose of the acquisition or construction of such building or facility have been repaid. A lease between the authority and the department of public works shall be for a period not exceeding the then current two-year period for which appropriations have been made by the general assembly to the department of public works and the state agencies which will occupy the building or facility being leased. An agreement between the authority and the department may provide for renewal of a lease at the end of each term for another term, not exceeding two years.

(Emphasis added.)

It should be noted that your question contemplates a lease of the entire building by the Department of Public Works, pursuant to R.C. 152.24, and not just a lease of office space in the building. Also, the lease may provide for the transfer of the building, now owned by the Authority, to the Department of Public Works after the debt incurred in constructing or acquiring the building has been paid off. In regard to this lessor-lessee relationship, it should be noted that R.C. 123.01 describes the powers of the Department of Public Works in pertinent part as follows:

(A) The department of public works has the following powers:

* * * * *

(1) To have general supervision and care of the storerooms, offices, and buildings leased for the use of the state, or any department, office, or institution thereof;

(12) To exercise general custodial care of all real property of the state;

* * * * *

The Department of Public Works then is charged with maintaining and providing general custodial care for all buildings and offices owned or leased by the state.

However, in the case of the new state office building being constructed by the Ohio Building Authority pursuant to R.C. 152.19, a specific provision has been made for the custodial care of the building. R.C. 152.21 states in part that:

With respect to buildings and facilities described in section 152.19 of the Revised Code, the Ohio building authority may:

* * * * *

(G) Manage and have general custodial care and supervision of its buildings and facilities or enter into contracts with the department of public works for such purposes; (Emphasis added.)

Since the Ohio Building Authority would, until its indebtedness is discharged, continue to own a building constructed pursuant to R.C. 152.19 and leased pursuant to R.C. 152.24, it follows that the Authority is charged under R.C. 152.21(G) with primary responsibility for the custodial care of the new state office building. While this might appear to conflict with the general provisions of R.C. 133.01 which gives the Department of Public Works responsibility for the care and supervision of all offices, buildings, and other real property of the state, you are referred to R.C. 1.51 which reads:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

In the present case, R.C. 152.21 (G) is a specific provision which applies only to buildings constructed pursuant to R.C. 152.19. In addition, the date of enactment of R.C. 152.21 (G) followed in time the enactment of those provisions in R.C. 122.01 which were discussed above. It should further be noted that R.C. 152.21 (G) makes participation by the Department of Public Works in the custodial care of the new building dependent on the determination of the Ohio Building Authority, as to how to provide such service.

Had the General Assembly intended that the Department of Public Works have primary responsibility for this service, they could have easily so provided. I must, therefore, conclude that the Ohio Building Authority has primary responsibility for the custodial care and maintenance of the new state office building.

My answer to your first question is dispositive of your second as well. R.C. 152.21(C) provides that, with respect to building and facilities described in R.C. 152.19, the Ohio Building Authority may enter into contracts and execute all instruments necessary in the conduct of its business. It follows that the Ohio Building Authority, which under R.C. 152.21(G) has the primary responsibility for the custodial care of the new building, is the proper party to enter into a contract for these services.

Therefore, in specific answer to your question, it is my opinion and you are so advised that:

1. The Ohio Building Authority has primary responsibility for the custodial care of the new state office building which is being constructed by the Authority pursuant to R.C. 152.19, and leased by the Authority to the Department of Public Works pursuant to R.C. 152.24.

2. Where it is determined that the requirements for custodial care can best be met on a contract basis, the Ohio Building Authority is the proper party to enter into a contract for these services.