

to the pupils of the State School for the Blind instruction in stand operation; and that, in order to effectively train such pupils in operating such stand the director of education and the Superintendent of the State School for the Blind, would have authority to erect and equip upon the campus of such school a model stand, erected and equipped in exact conformity with the type of stand adopted for use in federal buildings, wherein there would be sold or offered for sale merchandise, foods, candies, or like supplies, to the public, for profit, and all profit derived from such sales would be used for the purposes of the State School for the Blind or for any activity in connection with such school.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2441.

SECTION 3698 G. C.—MUNICIPALITY—MAY LEASE MUNICIPAL BUILDINGS OWNED BY CITY AND NOT NEEDED FOR MUNICIPAL PURPOSES—BUILDING SHALL BE IN ACTUAL EXISTENCE—LEASING MUST BE IN CONFORMITY WITH SECTION 3699 G. C.

SYLLABUS:

Section 3698, General Code, authorizes a municipality to lease municipal buildings provided the building is in actual existence, owned by the city and not needed for municipal purposes. The leasing of the same must be in strict conformity and in full compliance with Section 3699, General Code.

COLUMBUS, OHIO, May 13, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:

In am in receipt of your letter of recent date, requesting my opinion, which reads as follows:

“We are inclosing herewith copies of Ordinances Nos. 1074 and 1076, adopted by the council of the City of Wellston on the respective dates of December 3rd and December 7th, 1936, together with copy of an agreement made and entered into on the 17th day of December, 1936, by and between the City of

Wellston and the H. T. Company, which indicates that said Company joined with the City in the construction of a warehouse building through the donation by said Company of the sum of \$10,000, in return for which said Company was apparently given perpetual permission to occupy the building, or a part thereof, as a manufacturing plant.

Will you kindly examine the inclosures, and advise us in answer to the following question:

In view of the provisions of Sections 3698 and 3699 of the General Code, was the City of Wellston authorized to lease a part of the warehouse building constructed by said City from the proceeds of bonds, utility fund revenue and a donation of \$10,000 from the H. T. Company, which Company is given permission to occupy the building without further compensation?"

Section 3698, General Code, to which your letter makes reference, reads as follows:

"Municipal corporations shall have special power to sell or lease real estate or to sell personal property belonging to the corporation, when such real estate or personal property is not needed for any municipal purpose. Such power shall be exercised in the manner provided in this chapter."

Under the provisions of this section, a municipal corporation shall have the power to lease real estate provided the same is not needed for any municipal purpose. This provision makes it necessary that the property, in the instant case a municipal building, must first be in actual existence and being in actual existence, the part leased is not needed for municipal purposes. In the immediate case and from the contents of your letter and enclosures, it is apparent that at the time the agreement was entered into between the City of Wellston and the H. T. Company the building was not completed, but, as a matter of fact, was merely proposed and preliminary steps were being formulated for the construction of the same.

In a former Attorney General's opinion appearing in Vol. I, of the Attorney General's Opinions for the year 1935, at page 433, the then Attorney General had before him for consideration Sections 3698 and 3699. In this opinion on page 435 is found a statement quite pertinent to the instant case which reads as follows:

"In the present situation, the municipal building is not in existence when the contract is desired to be entered into, and the

special statutes such as were before the court in such case are not applicable here.”

The then Attorney General in making this statement was referring directly to Section 3698 and other sections pertinent to the powers of municipalities to lease municipal buildings and was likewise referring to *State ex rel. vs. Cincinnati*, 31 O. N. P. (N. S.) 230. Before a municipality has the power to lease a municipal building or a part thereof, the building must be in actual existence, owned by the municipality and not needed for municipal purposes.

The manner in which leases of municipal buildings may be let is to be found in Section 3699, General Code. The same reads as follows:

“No contract for the sale or lease of real estate shall be made unless authorized by ordinance, approved by the votes of two thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and readvertise until all such real estate is sold or leased.”

From the contents of your letter and the enclosures thereto attached, there is no evidence that such a procedure was followed, but, as a matter of fact, it is quite evident that Ordinance No. 1076, passed December 7, 1936, authorizing the director of public service to accept the sum of ten thousand dollars and to enter into a contract with the H. T. Company for the use and occupancy of the excess portion of the floor space in said proposed building, was substituted for that procedure specifically set forth in Section 3699, General Code. Inasmuch as the City of Wellston is not a charter city, the question of the home-rule doctrine is not involved and I will therefore treat only the procedure authorized by the general statutes.

Section 18 and Sections 3615, et seq., of the General Code, specifically authorize a municipal corporation through its proper officers to accept gifts, devises or bequests, moneys, lands or other properties, and although Ordinance No. 1076, passed December 7, 1936, by the city council referred to the ten thousand dollars given by the H. T. Company as a donation, there is, to my mind, considerable doubt whether or not the same could be classified as a donation in light of the terms and conditions contained in the agreement entered into the 17th day of December, 1936, between

the City of Wellston and the H. T. Company. In this agreement, the ten thousand dollars is treated more or less as a consideration for a certain term of rental and occupancy of the building by the H. T. Company. A municipality has no power to accomplish by subterfuge an end which is not authorized by statute, and in the instant case the lease entered into between the City of Wellston and the H. T. Company was not in conformity to and in compliance with Sections 3698 and 3699.

In answer, therefore, to your specific question, I am of the opinion that before a municipality may lease a part of a municipal building under the provisions of Section 3698, General Code, the building must be in actual existence, owned by the municipality and not needed for municipal purposes, and the leasing of the same must be in strict conformity and in full compliance with Section 3699, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2442.

APPROVAL—BONDS, CUYAHOGA COUNTY, OHIO, \$17,900.00,
PART OF TWO ISSUES DATED NOVEMBER 1, 1933.

COLUMBUS, OHIO, May 13, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$17,900.00.

The above purchase of bonds appears to be part of two issues of bonds of the above county dated November 1, 1933, bearing interest at the rate of 6% per annum, being Series A and Series C. I have examined the transcript of proceedings relative to the Series A bonds. From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said county.

The transcript relative to the Series C bonds was approved by this office in an opinion rendered to the Teachers Retirement System under date of September 6, 1935, being Opinion No. 4618. It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

HERBERT S. DUFFY,

Attorney General.