

4006

FIRE INSURANCE — AUTHORITY, BOARD COUNTY COMMISSIONERS TO ENTER INTO SUCH CONTRACT — PREMIUMS — FIVE YEAR PERIOD.

SYLLABUS:

Authority of board of county commissioners to enter into a contract of fire insurance for a period of five years and to pay the premiums thereon from year to year discussed.

Columbus, Ohio, July 19, 1941.

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

Gentlemen:

I am in receipt of your letter, together with enclosures, wherein a plan is outlined which is proposed to be used by the Board of Commissioners of Champaign County in insuring property of the county against loss by fire. You have requested my opinion as to the authority of the Board of County Commissioners to enter into a contract for insurance as outlined in the proposal.

Your inquiry is sufficiently broad in its scope to bring into question the power of county commissioners to insure property of the county against loss by fire in any manner. This power seems to be well established in Ohio. In Opinion No. 1221 of the Opinions of the Attorney General for 1927, found in Vol. III, page 2160 of the Opinions for that year, it was said at page 2163:

“Cognate sections of the General Code direct the county commissioners to furnish, at the expense of the county, necessary books, stationery and similar supplies as may be needed for the county offices. This express authority to provide office equipment and supplies necessarily includes within it the authority to protect and preserve this *physical property* by insurance or otherwise, whether that insurance be against losses by fire, theft, robbery or burglary. The same rule would apply to other county property which it is the duty of the county commissioners to provide and care for.”

See also Opinions of the Attorney General for 1937, Vol. II, page 1451.

In addition, your attention is directed to the provisions of Section 2402, General Code, which reads as follows:

“Special sessions of the board may be held as often as the commissioners deem it necessary. At a regular or special session, the board may make any necessary order or contract in relation to the building, furnishing, repairing or *insuring* the public buildings or bridges, the employment of janitors, the improvement or inclosure of public grounds, the maintenance or support of idiots or lunatics, the expenditure of any fund, or provide for the reconstruction or repair of any bridge destroyed by fire, flood, or otherwise, and do any other official act not, by law, restricted to a particular regular session.” (Emphasis mine.)

This section specifically empowers the board of county commissioners to enter into a contract insuring public buildings of the county.

Since it is clear that a board of county commissioners has authority under the law to insure county buildings and property against loss or damage by fire, no further discussion with respect thereto will be made in this opinion.

The other question raised by your communication and enclosures is whether the plan outlined therein is a proper exercise by the county commissioners of the power they possess. In other words, are the county commissioners authorized to effect fire insurance in the manner outlined?

A reading of the enclosures discloses the following: The premium on insurance policies insuring property and buildings of Champaign County against loss or damage by fire in the amounts desired for a term of one year is \$2563.57. If the proposal outlined is adopted, the total cost of the same for a five-year period will amount to \$11,119.49. The proposed plan briefly is that a policy for a term of five years be issued and upon the issuance thereof or within a short time thereafter the county commissioners pay on account thereof the sum of \$2563.57, which is equal in amount to the premium charged on a policy for the term of one year only. At the end of the first year, the commissioners may or may not continue the policy in force for another year. If they desire to continue the policy in force, in order so to do they must pay to The First Bancredit Corporation the sum of \$2138.98. Likewise, at the end of the third and fourth years, respectively, if the county commissioners desire to maintain the policy in force during the years next respectively ensuing thereafter, payments in the same amount must be made to The First Bancredit Corporation.

I have been informed by The First Bancredit Corporation that the premium for the five-year term policy would amount to \$10,254.29. If the proposed plan is adopted, the total cost to the county is \$11,119.49. This difference in the two amounts represents the charge made by The First Bancredit Corporation for its services. However, the plan does result in a saving of \$1698.36 to the county in a period of five years and it would seem that principles of sound economy would indicate its adoption unless forbidden by some statute.

Under the proposed plan, the commissioners are not bound to continue the policy in force during any year after the first year. Such an arrangement does not constitute a contract continuing in force for more than one year. All that it amounts to is the renewal of such contract at the beginning of each ensuing year after the first during the life of the policy. I know of no provision of law which prohibits the county commissioners from making such contract for the term of one year and renewing it from year to year.

I have also considered whether the proposed plan would constitute a borrowing of money by the county commissioners without authority of law. The commissioners do not under this plan borrow any money in any sense of the word. Borrowing imputes an obligation to repay and the commissioners are not under any obligation to make any payments by reason of the proposed plan. It therefore seems clear that they have borrowed no money.

Whether the commissioners could enter into a contract of insurance for a period of five years and obligate themselves to pay the premiums annually is a question not presented by you and I have therefore given no consideration to it. If they have such power, it would be a continuing contract within the meaning of the term as used in Section 5625-33, General Code, and certification could be made by the county auditor during each fiscal year for the amount required to be paid during such year.

Specifically answering your question, it is my opinion that the plan outlined in the enclosures accompanying your letter does not violate any provisions of law and it is within the authority of the county commissioners to enter into such an arrangement.

Respectfully,

THOMAS J. HERBERT,
Attorney General.