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COURT HOUSE — COUNTY BUILDINGS — ERECTION OF —
DESIGNATION OF BUILDING COMMISSION UNDER SEC-
TION 153.21 RC PERMISSIVE—COUNTY COMMISSIONERS
MAY PROCEED UNDER SECTION 307.02 RC

SYLLABUS:

The provision in Section 153.21, Revised Code, for the designation of a building commission to erect a courthouse or other county building is permissive rather than mandatory, and if the board of county commissioners elect not to utilize the services of such a building commission the responsibility for proceeding with such a building project is placed on the board of county commissioners under the general provisions of Section 307.02, Revised Code.

Columbus, Ohio, June 20, 1956

Hon. J. B. O'Brien, Prosecuting Attorney
Meigs County, Pomeroy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested by the Chairman of the Board of County Commissioners of Meigs County to request of you a written opinion on the following question:

"Is the appointment of a building commission necessary to construct a county home at cost of which will exceed \$125,000.00; bonds were voted several years ago to finance approximately one-half of this amount and said bonds have been redeemed and the money is now in the county treasury; approximately one-half of the cost thereof will be financed from the general fund of the county.

"Revised Code Section 153.21 and 1918 O. A. G. Vol. 1 Page 274, have a bearing on this question."

The syllabus of the 1918 opinion to which you refer reads in part as follows:

"Where bonds are issued by a county under authority of sections 5638 et seq., General Code, to erect a county children's home costing in excess of twenty-five thousand dollars, a building commission must be appointed under authority of section 2333, General Code."

To the same effect was the ruling in Opinion No. 1085, Opinions of the Attorney General for 1915, p. 2303, as to a county infirmary building; in Opinion No. 1156, Opinions of the Attorney General for 1915, p. 2507, as to a county children's home; and in Opinion No. 232, Opinions of the Attorney General for 1917, p. 585, as to county buildings generally.

All of these rulings, however, were based on the following language as then set out in former Section 2333, General Code:

“When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners *shall* apply to the judge of a court of common pleas of the county who *shall* appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. * * *” (Emphasis added.)

This language was amended in 1951 to read as follows:

“When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners *may* apply to the judge of a court of common pleas of the county who *may* appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. * * *” (Emphasis added.)

Because the sole effect of this amendment was to delete the word “shall” as it appeared in the second sentence of this section and to substitute the word “may” for it therein, and because of the necessity of giving some effect to the varying language thus used, it becomes necessary to conclude that the provision as to the appointment of a building commission is now permissive rather than mandatory.

Accordingly, if the county commissioners elect not to utilize the services of a building commission the responsibility for proceeding with the building project would remain with the board of county commissioners under their authority, set out in Section 307.02, Revised Code, to construct county buildings generally.

In specific answer to your inquiry, therefore, it is my opinion that the provision in Section 153.21, Revised Code, for the designation of a building commission to erect a courthouse or other county building is permissive rather than mandatory, and if the board of county commissioners elect not to utilize the services of such a building commission the responsibility for proceeding with such a building project is placed on the board of county commissioners under the general provisions of Section 307.02, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General