

## OPINION NO. 84-096

## Syllabus:

1. If a county owns real property which is not needed for use by the county, then the board of county commissioners may, pursuant to R.C. 307.09, lease such property, for a nominal sum, to a non-profit corporation for the purpose of establishing a park.
2. Pursuant to R.C. 301.26, a board of county commissioners may give money to a non-profit corporation for the improvement, maintenance, operation and protection of a park, and, toward that end, direct the current lessee to make his rental payments to the non-profit corporation which plans to establish the park.

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To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1984

I have before me your request for an opinion in which you raise the following questions:

1. May a board of county commissioners lease land, at a nominal price, to a private non-profit corporation which plans to establish a park with the land?
2. If so, may an individual who currently leases such land from the county make his rental payments to the non-profit corporation which plans to establish the park rather than to the county?

You have informed me that a non-profit corporation wishes to lease land from the county at a nominal price in order to establish a public park to be known as AmVets Park. The county is currently leasing this property to an individual who is farming the land. During the interim period before the land is converted into a park, the corporation which wishes to establish the park has asked the county for a donation, and the county wishes to know whether it may make a donation to the park group by directing the current lessee to make his rental payments to the non-profit corporation.

A board of county commissioners, as a creature of statute, has only those powers which are expressly granted by statute, or which may be necessarily implied therefrom. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947); State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). R.C. 307.09 provides, in part as follows:

(A) If the interests of the county so require, the board of county commissioners may sell any real property belonging to the county and not needed for public use. . . or may lease or rent the same. . . . In the case of real property used or to be used for the purpose of. . . public recreation facilities, [or] public parks. . . the primary term of such lease shall not exceed twenty-five years and the board of county commissioners may renew such leases for one or more periods of years. The total of such renewal periods, when added to the primary term of such lease, shall not exceed forty years.

(B) The board may grant leases. . . to corporations not for profit for. . . recreational purposes, including among other such purposes memorial structures, [and] parks. . . on or in lands owned by the county where such lease. . . is not deemed by the board to be inconsistent with the need of such land for public use by the county. Any such lease. . . granted. . . to corporations not for profit for. . . recreational purposes, may be for such length of time, upon

such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the county.

(C) . . . [I]n case of a lease of real property used or to be used for the purpose of . . . public recreation facilities, [or] public parks . . . to corporations not for profit for . . . recreational purposes, all or such part of the proceeds thereof as the board designates may be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor, or for the payment of principal of or interest on bonds of the county issued for any county building.

See R.C. 307.10(A) (requiring "sale[s] of real property, or lease[s] of real property used or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof" to be competitively bid). See generally 1971 Op. Att'y Gen. No. 71-070; 1951 Op. Att'y Gen. No. 555, p. 304.

In 1957 Op. Att'y Gen. No. 318, p. 91, 93-94, one of my predecessors explained the operation of R.C. 307.09 as follows:

Section 307.09, Revised Code, confers upon boards of county commissioners the right to sell land, but that power is limited by the provisions of Section 307.10, Revised Code, which requires advertisement of sale and sale to the highest responsible bidder. Clearly no sale can be effectuated without full compliance with the prescribed procedure, and if any bid higher than that of the [person] bidding a nominal amount [intending use for public or charitable purposes] should be submitted the purpose of the sale would be frustrated. . . . In short, one dissenting individual making a bid at such a sale could frustrate the purpose of the county in making land available for public or charitable purposes. In my opinion, the provisions of Section 307.09, Revised Code, granting boards of county commissioners broad power to lease county lands to . . . corporations not for profit are intended to remedy that situation. . . .

The legislative history of Section 307.09, Revised Code, and the analogous Section 2447, General Code, clearly suggests such a purpose. Section 2447, General Code, as enacted in 1915, 106 Ohio Laws, 299, did not contain provisions analogous to the . . . portion of Section 307.09. . . [regarding leases to non-profit corporations]. In the case of Minamax Gas Co. v. State ex rel. McCurdy, 33 Ohio App. 501, in 1929, it was held that a board of county commissioners could not lease real estate owned by the county for a definite term "and thereby embarrass themselves and their successors in using the property for public purposes." In 1931, the General Assembly amended Section 2447, General Code, significantly broadening the power here under discussion, 114 Ohio Laws, 87, and in 1935, provisions substantially analogous to the current provisions were enacted, 116 Ohio Law, pt. 2, 149. This legislative history strongly suggests that the purpose of the emphasized portion of Section 307.09, Revised Code, is to enable boards of county commissioners to grant to governmental authorities or charitable corporations sufficient interests in county lands to justify them in constructing substantial improvements thereon. By granting long term leaseholds on liberal terms, boards of county commissioners are able to secure to their counties the benefits of sales of county lands to governmental subdivisions and charitable corporations without being compelled to face the dilemma inherent in public sales.

Thus, a board of county commissioners has the authority under R.C. 307.09 to lease county lands not needed for public use when such lands are to be used for park purposes. Any lease for park purposes under R.C. 307.09 may, with renewal periods, be for up to forty years; if the lessee is a non-profit corporation, the lease may be for such length of time as the board deems to be in the best interests of the county. Further, the board of county commissioners has the authority under R.C.

307.09 to lease county land at a nominal price to a non-profit corporation for a public park. See 1957 Op. No. 318. Cf. 1957 Op. Att'y Gen. No. 1185, p. 599 (pursuant to R.C. 307.10, a lease of real estate used or to be used for the purpose of airports, landing fields, or air navigational facilities must be competitively bid).

In response to your first question, I conclude that, if the county owns real property which is not needed for use by the county, then the board of county commissioners may, pursuant to R.C. 307.09, lease such property for a nominal sum to a non-profit corporation for the purpose of establishing a park.

I turn now to your second question, whether a board of county commissioners may donate money to a non-profit corporation which plans to establish a park. A board of county commissioners does not have the express authority to contribute money to a non-profit corporation which plans to establish a park. Cf. R.C. 307.281 (a board of county commissioners "may make contributions of moneys, supplies, equipment, office facilities, and other personal property or services to any board of park commissioners established pursuant to Chapter 1545. of the Revised Code for the expenses of park planning, acquisition, management, and improvement"); R.C. 307.78 (a board of county commissioners "may make contributions of moneys, supplies, equipment, office facilities, and other personal property or services to any community improvement corporation organized pursuant to Chapter 1724. of the Revised Code to defray the administrative expenses of the corporation").

I believe, however, that a board of county commissioners has the implied authority to make the contemplated expenditure. R.C. 301.26 provides:

The board of county commissioners of any county may acquire, construct, improve, maintain, operate, and protect parks, parkways, and forests, and provide an agency for their administration. For such purposes the board may acquire real estate in fee or a lesser interest, and may receive and execute the terms of gifts and bequests of money, lands, or other properties.

This section does not authorize a county to appropriate any property acquired by a park district pursuant to section 1545.11 of the Revised Code. The board may make contributions to a park district pursuant to section 307.281 of the Revised Code.

A board of county commissioners may, pursuant to its authority to "improve, maintain, operate, and protect parks," donate money to a non-profit corporation for those purposes. See 1975 Op. Att'y Gen. No. 75-004 (a board of township trustees may, pursuant to its statutory authority to expend funds for park purposes, expend funds to improve land which is leased by the state to a non-profit corporation for use as a public park; such park need not be owned by or leased to the township in order for the township to spend money for its improvement). The county must, however, impose limitations as to the use of any money which is given to the non-profit corporation to ensure that the money is actually spent to improve, maintain, operate, and protect a park or parks, and the county should impose standards for the enforcement of these restrictions. See 1971 Op. Att'y Gen. No. 71-044.

Having determined that a board of county commissioners may donate money to a non-profit corporation for park purposes, I note that the board may make any reasonable arrangement for the donation. See *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (in the absence of specific directions, a public officer has the implied authority to exercise discretion in performing his statutory duties). Thus, the board may arrange to have the current lessee of the land make his rental payments directly to the non-profit corporation, rather than to the county.

I note that, in my opinion, Ohio Const. art. VIII, §6 does not prohibit a county from leasing real estate for a nominal sum to a non-profit corporation which plans to use the property for park purposes or from donating money to a non-profit corporation for such purposes. Article VIII, §6 states in part: "[n]o laws shall be passed authorizing any county, city, town or township. . .to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association. . . ."

The courts of this state have held that art. VIII, §6 does not prohibit counties and other political subdivisions from giving their aid and credit to a private non-profit corporation which will use the aid and credit for a public purpose. See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); State ex rel. Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955); State ex rel. Kauer v. Defenbacher, 153 Ohio St. 268, 91 N.E.2d 512 (1950); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922); State ex rel. Taft v. Campanella, 51 Ohio App. 2d 237, 368 N.E.2d 76 (Cuyahoga County 1977), aff'd, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977); 1977 Op. Att'y Gen. No. 77-049. See also 1978 Op. Att'y Gen. No. 78-040 at 2-96 ("[t]he public purpose exception depends upon the nature of the recipient or partner as well as the purpose for which the funds are spent or the venture is undertaken").

Legislative authorities have broad discretion in determining what constitutes a public purpose, and such determination will be judicially overturned only in cases where the determination is manifestly arbitrary or unreasonable. See State ex rel. Taft v. Campanella, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977); Bazell v. City of Cincinnati; State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951). Generally, however, it may be stated that:

a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents. . . . The modern trend of decision is to expand and liberally construe the term 'public use' in considering state and municipal activities sought to be brought within its meaning. . . . The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.

State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 325, 98 N.E. 2d 835, 838 (1951) (quoting 37 American Jurisprudence, 734, 735, Section 120). A county's aid to a non-profit corporation in establishing, improving and maintaining a park clearly serves a public purpose. See R.C. 301.26; R.C. 307.281. See also Muskingum Watershed Conservancy District v. Walton 21 Ohio St. 2d 240, 257 N.E. 2d 392 (1970). Thus, a county may lend its aid and credit to a non-profit corporation for purposes of establishing a park without running afoul of Ohio Const. art. VIII, §6.

In conclusion, it is my opinion, and you are advised, that:

1. If a county owns real property which is not needed for use by the county, then the board of county commissioners may, pursuant to R.C. 307.09, lease such property, for a nominal sum, to a non-profit corporation for the purpose of establishing a park.
2. Pursuant to R.C. 301.26, a board of county commissioners may give money to a non-profit corporation for the improvement, maintenance, operation and protection of a park, and, toward that end, direct the current lessee to make his rental payments to the non-profit corporation which plans to establish the park.