

Finding said leases in proper legal form, I hereby approve them as to form, and return them herewith.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4337.

DISAPPROVAL, BONDS OF MACEDONIA VILLAGE SCHOOL DISTRICT,
 SUMMIT, COUNTY, OHIO, \$7,200.00.

COLUMBUS, OHIO, June 13, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—

RE: Bonds of Macedonia Village School Dist., Summit County, Ohio,
 \$7,200.00.

I acknowledge receipt of transcript of the proceedings relating to the above bond issue.

These bonds are sought to be issued in pursuance of the provisions of Section 2293-43 of the General Code, the amount of said bond issue being \$7,200.00. This amount is within the limitation in said section of 70% of the net amount of unpledged delinquent taxes. However, said act provides that said amount of bonds shall not exceed the aggregate amount of outstanding accounts and notes payable as provided in paragraph 2 of subsection c of said act. This amount, as shown by the statement of the fiscal officer of the district, is \$3139.23. I am of the view that this act is not broad enough to include bonded indebtedness. The legislature has provided other means for the refunding of bonded indebtedness.

It is my advice therefore that you do not purchase these bonds.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4338.

OLD AGE PENSION—PROBATE COURT AUTHORIZED TO INSTRUCT
 GUARDIAN OF APPLICANT FOR OLD AGE PENSION TO TRANSFER
 REAL ESTATE IN TRUST TO DIVISION OF AID FOR AGED.

SYLLABUS:

In the event the Probate Court has appointed a guardian for an applicant for an Old Age Pension, and if by virtue of Section 1359-6 the Division of Aid for the Aged requires as a condition precedent to the granting of an Old Age Pension to such applicant a transfer of his real estate, the Probate Judge has authority to authorize the guar-

dian of such applicant to transfer real estate in trust to the Division of Aid for the Aged.

COLUMBUS, OHIO, June 15, 1935.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Please give us your informal written opinion on the question as to the authority of probate judges to authorize guardians to transfer real estate to the Division of Aid for the Aged in trust.

This matter was discussed informally with you by Mr. R. L. Steltenkamp, of this department; and we feel that we should have your informal written opinion on the question, for our guidance in future cases.”

Section 1359-6, General Code, provides in part:

“If an applicant for or recipient of aid, or his or her spouse, is the owner of any interest in real or personal property, excepting household goods, clothing and other personal effects, *it may be required, as a condition precedent to the payment of aid or further aid, that he convey and transfer such property to the Division of Aid for the Aged (hereinafter created), in trust*, subject to permission to the recipient of aid and his or her spouse to use or reside upon such property for life; and upon death of either, leaving wife or husband who is entitled to aid, the survivor likewise to be permitted to use or reside upon the said property for life; * * *.” (Italics the writer’s)

It should be noted from a reading of the statute quoted in part supra that the Division of Aid for the Aged “may” as a condition precedent to the granting of an Old Age Pension, require the transfer of real property of the applicant for an Old Age Pension, but that the imposing of such condition before the granting of the Old Age Pension is not mandatory.

Section 1359-7, General Code, provides in part:

“Upon the death of a person, the total amount of aid paid to him under this act and to his or her spouse, with interest thereon at four per centum per annum, shall be a debt of the estate of such deceased person; and it shall be the duty of the Division to present claims to the administrator or executor, if any, to bring suits and to take any other proper action to secure reimbursement from the estate and property of such deceased person. * * *.”

The above section provides a method of reimbursement to the state for the aid paid as against the estate of the pensioner after the pensioner’s death. Consequently even though the real estate is not conveyed in trust to the Division of Aid for the Aged before the pension is granted there would be this method of obtaining reimbursement after the death of the pensioner.

Section 10507-16, General Code, relative to the duties of guardians, provides in part:

“* * * Provided, however, that no part of the ward’s estate shall be used

for the support, maintenance or education of a ward unless ordered and approved by the court."

I call your attention to my Opinion No. 3607, rendered December 10, 1934, to be found in Opinions of the Attorney General for 1934, Vol. III, page 1725, which held as disclosed by the third branch of the syllabus:

"3. Under a so called 'trust' deed given by an applicant for aid for the aged, who is the owner of real estate or an interest therein, to the Division of Aid for the Aged, in the Department of Public Welfare of the State of Ohio, in pursuance of Section 1359-6, General Code, a vested interest in the real estate therein described, remains in the grantor, and such instrument as to the rights of third persons, is a mortgage, and is required to be recorded as such. *National Bank of Columbus vs. Tennessee Iron & R. Company*, 62 O. S. 564."

With reference to mortgages by guardians, I call your attention to the following sections of the Probate Code, which provide as follows:

Sec. 10506-59.

"When it appears to be for the best interests of the trust, a fiduciary other than an executor or administrator shall have authority with the approval of the probate court to borrow money and mortgage real estate belonging to the trust, whether such real estate was acquired by purchase or by descent and distribution."

Sec. 10506-60.

"The fiduciary proposing so to borrow money must file in the probate court which appointed him, a petition describing all of the real estate in the trust, and stating the nature and amount of the incumbrances thereon, when they became or will become due, and the rate of interest thereon. The petition shall also contain a statement of the personal property in the trust, and of the income therefrom, and from the real estate. Such petition if filed by a guardian, shall state the names, ages and residence of the ward and next of kin known to be resident in the State of Ohio, including the spouse, if any, of such ward, and all persons holding liens on such real estate, all of whom must be made defendants, and be notified of the pendency and prayer of the petition in such manner as the court directs; also a statement of the nature of the imbecility or insanity, if any, of such ward, whether temporary or confirmed, and its duration. Except as herein otherwise provided, the defendants and notice thereto shall be the same as though the real estate proposed to be mortgaged were being sold by the fiduciary. The petition shall set forth the purpose of the loan, the amount required therefor, and such other facts as may be pertinent to the question whether such money should be borrowed, and shall contain a prayer that the fiduciary be authorized to mortgage so much of the ward's lands as may be necessary to secure such loan."

Sec. 10506-63.

"If on the final hearing it appears to be for the best interests of the trust that the prayer of the petition be granted, the court shall fix the amount necessary to be borrowed, direct what lands shall be encumbered by mortgage to secure it, and issue an order to such fiduciary directing him to ascertain and report to the court the rate of interest and time for which he can borrow such amount."

Sections 10510-6 ,10510-16, 10510-37 and 10510-39, General Code, contain wide authority for the Probate Court to authorize the sale of real estate of a ward held by a guardian.

In my opinion to be found in Opinions of the Attorney General for 1934, Vol. III, page 1725, the third branch of the syllabus of which I quoted supra, it was held that a so-called trust deed to the Division of Aid for the Aged was an instrument in the nature of a mortgage. Sections 10506-59, 10506-60 and 10506-63, General Code, quoted supra, contain express authority for the Probate Court to authorize the encumbrance by mortgage of the real estate of a ward held by a guardian. It would seem to follow that this power vested in the Probate Court to authorize a guardian to mortgage the real estate of his ward would impliedly give authority to execute a so-called trust deed to the Division of Aid for the Aged, as this would in effect be, the borrowing of money within the contemplation of Sections 10506-59 and 10506-60, General Code, quoted supra.

Consequently in specific answer to your inquiry it is my opinion that in the event the Probate Court has appointed a guardian for an applicant for an Old Age Pension, and if by virtue of Section 1359-6 the Division of Aid for the Aged requires as a condition precedent to the granting of an Old Age Pension to such applicant a transfer of his real estate, the Probate Judge, has authority to authorize the guardian of such applicant to transfer real estate in trust to the Division of Aid for the Aged.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4339.

TOWNSHIP TRUSTEES—AUTHORIZED TO PURCHASE LAND CONTAINING GRAVEL FOR USE ON TOWNSHIP ROADS ONLY PURSUANT TO AUTHORITY OF ELECTORS.

SYLLABUS:

1. *A board of township trustees may purchase land containing gravel for use on the township roads, and machinery to operate such land, only pursuant to authority of the electors, notwithstanding the fact that sufficient available funds may be on hand for such purpose.*

2. *Township trustees are without authority to acquire such land by lease for a period of years at a yearly rental.*

COLUMBUS, OHIO, June 15, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Following is a statement of facts and we respectfully request your opinion on the questions thereafter presented:

The township trustees of Lake Township in Stark County, Ohio, do not now own or operate a sand and gravel bank nor do they own any machinery for operating such bank. Said trustees have sufficient money in their general