

pledged for their payment, to enable it to pay for the lands appropriated, under section 663, as amended February 1, 1873. 70 Ohio L. 21.

The purpose of the council from the beginning, was that the costs of the appropriation should be paid by assessment, and there is nothing to indicate that it ever elected to pay the cost thereof from the general fund of the city. The bonds were issued in anticipation of the assessment, which the city is now seeking to collect. Owing to delays in making and collecting the assessment, the city, in the meantime, has been compelled to pay some of the bonds, while the assessments are not all collected yet.

Under such circumstances, the city may lawfully collect proper assessments to pay for the land appropriated." (Italics the writer's.)

I am not unmindful of the fact that Section 3911, General Code, provides that proceedings with respect to improvements shall be liberally construed and that merely formal objections shall be disregarded. The section, however, also provides that "the proceedings shall be strictly construed in favor of the owner of the property assessed."

In view of the foregoing and in specific answer to your question, it is my opinion that a municipality may not legally levy special assessments for the purpose of paying an obligation incurred for the lighting of streets at a time prior to the completion of the proceedings provided in Sections 3812, et seq., General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

178.

INSTALLMENT CONTRACT—COUNTY COMMISSIONERS MAY NOT PURCHASE LAND FOR CHILDREN'S HOME AND AGREE TO FORFEIT INSTALLMENTS ALREADY PAID IN CASE OF DEFAULT.

SYLLABUS:

While Section 2433, General Code, authorizes the board of county commissioners to purchase lands adjoining a children's home for the purpose of such institution, such section does not authorize the board to enter into a contract to purchase lands under a land contract and to agree to pay therefor over a period of nine years, and thereupon receive a deed to the property, the installments of the purchase price to be forfeited in the event of a default in the terms of payment as stipulated in the contract.

COLUMBUS, OHIO, March 1, 1933.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

"I am enclosing herewith copy of Resolution adopted by the Board of County Commissioners of Meigs County, and copy of form of contract entered into under and by virtue thereof. I believe the resolution complies with Section 2414, G. C., and that the purchase is authorized

by the provisions of Section 2433, G. C. As to notice of the intended purchase, Section 2444, G. C., as you know, has been held not to apply to the purchase of land for a children's home. *State vs. Auditor*, 43 O. S. 312.

However, there has been some question raised as to the legality of the purchase of this property and the contract entered into for the same, and before the county pays out any money under the terms of the contract, I would like to have your opinion in reference thereto."

You do not specifically inquire, and I therefore express no opinion as to whether the indebtedness purporting to be created by the enclosed contract is beyond the limit of indebtedness of a county within the provisions of Section 2293-16, General Code. The opinion herein expressed is based upon the assumption that the indebtedness so purported to be created is within such limitation.

As stated by Matthias, J., in *Elder vs. Smith, Auditor*, 103 O. S. 369, 370:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and *only* such as are conferred by statute."

See also *Jones vs. Commissioners of Lucas County*, 57 O. S. 189; *Peter vs. Parkinson*, 83 O. S. 36.

In Section 2433, General Code, the statutory authority is conferred upon the board of county commissioners to purchase lands for a children's home. Such section, in so far as is material, reads:

"The taxing authority of any county in addition to other powers conferred by law shall have the power to purchase, appropriate * * and furnish * * a county children's home and other necessary buildings and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress."

However, is the power granted by this section to purchase under land contract, where the title remains in the vendor, for a period of nine years, until the entire purchase price has been paid in annual installments, with a condition that the payments made shall be forfeited in the event that a default in payment shall be made and continue to exist for a period of three months, the deferred installments bearing interest at the rate of six percent per annum?

The language specifically gives to the board of county commissioners the authority to "purchase" and to "appropriate" sites for children's homes.

Your inquiry is as to the meaning of these terms.

The rule as to the interpretation of words in a statute is laid down by Hough, J., in *Keifer vs. State*, 106 O. S. 285, 289:

"The legislature must be presumed to have used the term it used in its clear, unambiguous, and generally accepted meaning unless there appears something in the text or surrounding circumstances clearly justifying a different use or meaning."

See also *Smith vs. Buck*, 119 O. S. 101, 105.

In a sale or purchase of property, in the absence of an agreement to the contrary, it is always presumed that the delivery of the article purchased and the payment of the purchase price are concurrent acts. It is likewise settled that the payment of the purchase price is not necessarily concurrent with the vesting of the title in the purchaser, especially when there is a definite agreement to pay at a later date. However, in the contract presented by you, the title to the article purchased (the land) does not pass to the purchaser, until nine years after the initial payment, or until the purchase has been fully paid.

The thing being purchased is the title to the land, not the use of the land. An analysis of the documents accompanying your request clearly shows that there is no agreement of present purchase but rather an agreement to purchase to be made and completed during the ensuing nine years, and unless the payments are made at the times agreed upon, no interest in the property is to be acquired by the county. The commonly accepted connotation of the word "purchase", as applied to real property, is the acquisition of the title to real property for a "valuable consideration." See *Delaney vs. Salina*, 34 Kans. 532; 539 *Treadwell vs. Beebe*, 107 Kans. 31; Former Section 8574, General Code.

In the case of *State ex rel. Manix vs. Auditor*, 43 O. S. 312, cited in your inquiry, the purchase was outright, that is, the commissioners received the deed and entered into possession. Such action was to compel the payment of the purchase price. That case is not authority on the question as to whether the county commissioners may enter into a contract binding the county to the payment of a sum of money to be applied over a nine year period on the purchase price of a parcel of real estate to be then conveyed.

On October 1, 1928, one of my predecessors in office rendered an opinion concerning the right of a city to purchase a building at a price of \$100,000, \$20,000 of which was payable at the time of the execution of the contract and \$80,000 in two years thereafter. Such opinion is found in Opinions of the Attorney General, 1928, Vol. 2, page 2235. The second and third paragraphs of the syllabus read:

"1. A city may not, by contract for the purchase of a building incur an obligation to pay a balance in two years from date with interest thereon at 6% per annum.

2. A city may not by contract for the purchase of a building legally assume a note and mortgage on said building for the balance of the purchase price payable in two years from date."

In such opinion my predecessor reasoned that such type of contract was not a "continuing contract", as such term is used in Section 5625-33, General Code.

In Opinions of the Attorney General for 1927, pages 1220 and 1222, a former Attorney General in discussing the section of the statute in question but with reference to the purchase of land for a court house stated:

"In the event that there are available sufficient funds to acquire the real estate in question without the necessity of issuing bonds, the county commissioners may proceed under the authority of Section 2433 (G. C.) without submitting the matter to the vote of the electors."

In Opinion 4663, rendered under date of September 30, 1932, my immediate predecessor in office held as stated in the syllabus of such opinion, that:

“A municipality, in the absence of express authority in its charter if it be a charter municipality, may not legally place its funds, representing the purchase price of real estate proposed to be purchased by it, in escrow pending the preparation and examination of the necessary legal papers and clearing of title to such property.”

In such opinion my predecessor reasoned that since the moneys of the municipality were required by law to be held in the city treasury or the city depository there was no authority to deposit such funds in escrow pending the completion of the conveyance of the title. Such opinion would apply with equal weight to county funds.

If the opinions of my predecessors are correct, it would follow that a county could not buy the property in question by receiving legal title to the premises and giving a mortgage back for the balance of the purchase price, nor could the deed and money be permitted to remain in escrow until the contract is completed. I am of the opinion that the reasoning and conclusions in such opinions are sound. The transaction set forth in your inquiry requires the deed to remain in escrow but permits the contracting vendor to obtain the title to the county funds without vesting the title to the real estate in question, or any part thereof in the county. The conclusion, therefore, follows that the contract in question is beyond the power of the board of county commissioners.

The contract in question is but carrying the attempted powers of the county commissioners one step beyond those which my immediate predecessor held not to exist. (See Opinion of the Attorney General for 1932, No. 4663, supra.) I therefore must answer your inquiry in the negative.

Being of this opinion, it is unnecessary for me to decide whether the county has the authority to contract the indebtedness in question, and agree to pay interest thereon.

Specifically answering your inquiry it is my opinion that, while Section 2433, General Code, authorizes the board of county commissioners to purchase lands adjoining a children's home, for the purposes of such institution, such section does not authorize the board to enter into a contract to purchase lands under a land contract and to agree to pay therefor over a period of nine years, and thereupon receive a deed to the property, the installments of the purchase price to be forfeited in the event of a default in the terms of payment as stipulated in the contract

Respectfully,

JOHN W. BRICKER,
Attorney General.

179.

MAYOR—DIRECTOR OF PUBLIC SAFETY—MAY NOT HAVE AN INTEREST IN CONCERN SELLING SUPPLIES TO THEIR CITY.

SYLLABUS:

A mayor or director of public safety who is an employe of a concern selling supplies to the city of which he is such official, has an interest in such expenditures within the meaning of section 3808, General Code, and within the meaning of a charter provision which prohibits an officer or employe of the city from having any