

1600.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS AUTHORIZED TO PURCHASE SITE WITH BUILDING FOR STORING OF MACHINERY, TOOLS, ETC., OWNED BY COUNTY.

1. Section 7200 G. C. (107 O. L. 115), by necessary implication, confers on county commissioners authority to purchase a site, with building, for the purpose of housing and storing machinery, tools, equipment and conveyances owned by the county. Such authority is subject to restrictions upon expenditures, such as are imposed by sections 5660 et seq., 5638 and 2444 G. C.

2. For the purpose of making such purchase, the commissioners may appropriate from the county fund.

COLUMBUS, OHIO, September 30, 1920.

HON. C. A. WELDON, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—You have recently made inquiry of this department whether

“under section 7200 G. C. county commissioners are authorized to purchase site with buildings thereon to house tools.”

In response to a request for additional information you have advised that your commissioners, if they have the power to make the purchase in question, propose to pay for the site and building out of the county fund.

Said section 7200 reads in part as follows:

“The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, which shall be paid for out of the road funds of the county. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor. All such machinery, tools, equipment and conveyances owned by the county shall be plainly and conspicuously marked as the property of the county. * * * The county commissioners shall provide suitable places for housing and storing machinery, tools, equipment and conveyances owned by the county.”

Neither in said section, nor elsewhere in the General Code so far as has been found, is there a direct grant of authority for the purchase of a site for housing and storing the county's machinery, etc. Therefore, the pertinent rule of statutory construction would seem to be that followed by the supreme court in the case of Markley vs. Village, 58 O. S. 430, wherein the court said at page 439 of the opinion:

“And we suppose it to be settled that our municipalities have such capacities and powers, and such only, as are expressly granted, and such as may be implied as essential to carry into effect those which are expressly granted, and that doubtful claims to power are resolved against the corporation.”

Applying this rule to the situation above stated with respect to section 7200,

it is to be observed that said statute casts upon the commissioners the positive duty of providing suitable places for housing and storing the county's machinery, etc., and that such mandate would be of little practical value were it accepted otherwise than as inherently vesting in the commissioners authority to take such action as is reasonably necessary to afford compliance with its terms. Clearly, then, we are to conclude that the county commissioners have authority to purchase a site, with building, for the purpose in question, provided that, in the exercise of a sound discretion, they find such purchase necessary. It is no answer to the conclusion just stated to say that the legislature might have had in mind that counties would have on hand a site that might be utilized, such as court house grounds, jail yard, infirmary lands, etc.; for it is to be borne in mind that real estate holdings of the county are to be used primarily for the purposes for which such holdings were originally acquired and may be entirely unsuited for the purpose mentioned in your inquiry. Furthermore, the language of the statute is not that the commissioners shall erect storage houses, but that "they shall provide suitable places for housing and storing machinery, etc."

For the purpose of making the purchase they have in mind, may your commissioners appropriate from the county fund? The general nature of that fund may be determined by reference to section 5627 G. C. which reads:

"The county commissioners, at their March or June session, annually, shall determine the amount to be raised for ordinary county purposes, public buildings, the support of the poor, interest and principal of the public debt, and for road and bridge purposes. They shall specifically set forth in the record of their proceedings the amount to be raised for each of such purposes."

Since the upkeep of roads is one of the commonest of the county's activities and requires machinery, tools, etc., it follows that provision for the housing and storing of such machinery and tools is an ordinary county purpose, to which the general county fund may be devoted so far as not otherwise appropriated. It is not out of place to suggest, however, that before the general county fund is resorted to for the purpose in question, use should be made of unappropriated moneys, if any, in the public building fund.

It should be added that the expenditure proposed by your commissioners is subject to restrictive statutes, such as sections 5660 et seq, 5638 and 2444 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.