

datory, and that the legislature intended that, upon compliance with the terms and conditions of said sections, the county should pay and that "the fair organization" in the one case (Section 9880-2) and the "dean of the college of agriculture" and the "president of each farmers' institute society in the county" in the other case (Section 9918), should receive the money directed to be paid by the respective sections. To hold that the commissioners can arbitrarily refuse to appropriate funds to enable the county auditor to make the certificate required to be filed by Section 5660, General Code, and to draw his warrant for the sums and to the persons prescribed by the sections under consideration, would give to the county commissioners power utterly to defeat the plainly expressed intention of the legislature to extend financial aid and support to the projects in question. I am of the opinion, therefore, that it is the mandatory duty of the county commissioners to appropriate funds to care for the expenditures specifically directed to be paid by Sections 9880-2 and 9918, supra, in so far as the county funds will permit, having due regard for other expenditures made mandatory by statute.

In connection with the legality of these expenditures, your attention is directed to the case of *State, ex rel. Leaverton, et al. vs. Kerns, County Auditor, et al.*, 104 O. S. 550, the second syllabus of which reads as follows:

"The aid provided by Section 9880-1, General Code, is not for the purpose of furnishing financial assistance to a private enterprise, nor for lending the credit of the state thereto, but, on the contrary, is in aid of a public institution designed for public instruction, the advancement of learning, and the cause of agriculture, and is not in violation of Sections 4 and 6, Article VIII of the Ohio Constitution."

Specifically answering your question, it is my opinion that the provisions of Sections 9880-2 and 9918 of the General Code are mandatory, and that in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, it is the duty of the county commissioners to appropriate sufficient funds to enable the county auditor to file the certificate required by Section 5660, General Code, and to draw his warrant for the amounts and to the persons respectively named in Sections 9880-2 and 9918, upon compliance by the organizations described in such sections with the terms and conditions thereof.

Respectfully,

EDWARD C. TURNER,
Attorney General.

363.

ADJUTANT GENERAL—AUTHORITY TO ACCEPT GIFTS OR DONATION
OF LAND FOR MILITARY PURPOSES—FORM OF PROPOSED DEED
FROM CITY OF CLEVELAND TO STATE OF OHIO APPROVED.

SYLLABUS:

1. *Form of proposed deed from the city of Cleveland to the state of Ohio of land for the erection of hangars and other buildings necessary for the housing and training of the 37th Division Air Service approved.*

2. *The Adjutant General of Ohio may accept gifts or donations of land, money or other property for the purpose of aiding in the acquisition of grounds or the purchase, building, furnishing or maintaining of an armory or other building for military purposes.*

There is no requirement of law that the title of the state to such lands must be a fee simple.

COLUMBUS, OHIO, April 21, 1927.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request under date of April 18, 1927, for my opinion upon the following:

“I am submitting hereto attached form for a proposed deed by which the city of Cleveland deeds to the State of Ohio six acres of land, being a part of the Brook Park Air Field upon which the State of Ohio desires to erect hangars and other buildings necessary for the housing and training of the 37th Division Air Service.

A form instead of a deed is submitted as the officials of the city of Cleveland desire to know whether the form is acceptable before signing and recording it.

The following paragraph of the proposed deed should be noted:

‘Said premises are conveyed to the State of Ohio for military purposes and whenever said above described premises shall cease to be used for military purposes then the title to said premises shall immediately revert to the grantor herein, and all rights of the grantee herein shall thereupon cease and determine.’

It is realized that this is practically a reversionary clause but under the circumstances, it is not objected to by my department. All of the land of Brook Park Airport of which this proposed six acres is a part, was acquired by the city of Cleveland for air development purposes exclusively. It would, therefore, seem that the city of Cleveland is justified in insisting that the land on which it relinquishes ownership should be forever used for military purposes since were it ever to fall into private hands, it might in some manner be made to obstruct the purposes for which Brook Park Airport was created.”

Accompanying the above request is a form of proposed deed from the city of Cleveland to the state of Ohio covering six acres of land located in Riveredge township, formerly Brook Park village, county of Cuyahoga and state of Ohio, and known as being part of Lot No. 6, Section 20 of the original Middleburg township.

I have examined the form of proposed deed, and I am of the opinion that a deed drawn in accordance therewith will be in proper form to convey to the state of Ohio a fee simple title to the premises therein described, limited only by the reversion reserved to the city of Cleveland in the event said premises shall cease to be used for military purposes.

You have informed me that the above real estate is being deeded as a gift to the state by the city of Cleveland, and that the state is paying no consideration therefor. This is in accord with Section 5239, General Code, which provides:

“He (the adjutant general) may receive gifts or donations of land, money or other property for the purpose of aiding in the acquisition of grounds or the purchase, building, furnishing or maintaining of an armory or other building for military purposes. All lands so acquired shall be deeded to the state of Ohio, and all property received under the provisions of this section from any source, shall become the property of the state.” (Matter in parenthesis is mine.)

You have also informed me that in the past it has always been customary to insist that deeds to the state for property to be used as an armory site, or for military pur-

poses, must convey a fee simple title without any limitations or conditions attached thereto. The section of the Code above quoted does not require that the title to be conveyed to the state for military purposes be a fee simple, and there are no other sections of the statutes which make any such provision. It is my opinion, therefore that under the circumstances as outlined in your letter, the city of Cleveland is justified in insisting that the land which it proposes to convey to the state of Ohio shall revert to said city whenever the premises shall cease to be used for military purposes.

It lies, of course, within the discretion of the Adjutant General as to whether or not it is deemed advisable to accept a deed containing a clause such as the one above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

364.

COUNTY COMMISSIONERS—AUTHORITY TO EMPLOY LEGAL COUNSEL
TO ASSIST PROSECUTING ATTORNEY DISCUSSED—SECTION 2412,
GENERAL CODE, CONSTRUED.

SYLLABUS:

In the employment of legal counsel to assist the prosecuting attorney under authority of Section 2412 of the General Code, it is necessary to secure the authority of the common pleas court upon application of the prosecuting attorney and the board of county commissioners in office at the time such counsel is to be employed.

COLUMBUS, OHIO, April 21, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge your recent communication in which you ask in substance the following question:

May an outgoing prosecuting attorney and the board of county commissioners apply to the common pleas court and secure authority to employ such prosecutor as a special counsel to assist the incoming prosecutor in certain special legal matters, the action of the court and the county commissioners, pursuant to the court order, being taken prior to the expiration of the outgoing prosecutor's term?

The proceedings to which you allude were doubtless under the supposed authority of Section 2412 of the General Code, which is as follows:

“If it deems it for the best interests of the county, the common pleas court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners to employ legal counsel temporarily to assist the prosecuting attorney, the board of county commissioners or any other county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity.”