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1. COUNTY COMMISSIONERS — MAY CONSTRUCT COURT HOUSE FROM PROCEEDS OF TAX LEVY EXTENDING OVER NUMBER OF YEARS — SECTION 2433 G.C.
2. COURT HOUSE MAY BE CONSTRUCTED OUT OF ANY AVAILABLE FUNDS—IF NECESSARY TO ISSUE BONDS TO EXCEED \$25,000.00, PROVISIONS OF SECTION 2333 G.C. MUST BE FOLLOWED.
3. NO AUTHORITY FOR COUNTY TO JOIN WITH CITY TO ACQUIRE AND OWN A BUILDING TO HOUSE COUNTY AND CITY OFFICES—UNDER SECTION 2450-1 ET SEQ. G.C. COUNTY MAY CONTRACT WITH CITY FOR COUNTY TO ERECT A BUILDING TO HOUSE CITY AND COUNTY OFFICES — CITY MAY TURN OVER TO COUNTY REAL OR PERSONAL PROPERTY INCLUDING PROCEEDS OF MUNICIPAL BONDS.
4. CONTRACT MAY BE FOR AGREED TERM OR AN INDEFINITE TERM — AGREED RENTAL BASIS — COSTS OF MAINTENANCE.

SYLLABUS:

1. The county commissioners of a county may, under the provisions of Section 2433, General Code, construct a court house from the proceeds of a tax levy extending over a number of years.
2. County commissioners may construct a court house pursuant to Section 2433, General Code, out of any available funds, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$25,000.00, the provisions of Section 2333 must be followed.
3. A county is without authority in law to join with a city in the joint acquisition and ownership of a building for the housing of county and city offices, but may pursuant to the provisions of Section 2450-1 et seq., General Code, contract with a city for the erection by the county of a building to house all such offices; and pursuant to such contract such city may turn over to the county property real or personal useful for such purpose, including the proceeds of bonds issued by the municipality.
4. Such contract may be for such term as the county and city may agree upon for an indefinite term, and may provide for an agreed rental basis and costs of maintenance.

Columbus, Ohio, June 30, 1952

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio.

Dear Sir:

I have before me your communication, requesting my opinion and reading as follows:

"1. Is Section 2333 of the General Code mandatory and exclusive as to procedure in regard to the construction of a new court house at a cost exceeding \$25,000.00; or, by virtue of Section 2433, can the county commissioners arrange for the construction of a new court house by another means than submitting a bond issue to the electors?

"In other words, should the commissioners in determining to construct a new court house, be permitted to submit to the electors a question of a tax levy over a period of years to raise a fund for the construction of a court house from the fund when acquired without a bond issue, or must the commissioners in all cases where it is determined to construct a court house, propose a bond issue for the purpose?

"2. Is it possible for a municipality in the county to join together in the construction of a building which is to house both county and city offices by raising funds either by separate bond issues or elections on tax levies for the purpose?

"3. Can the county commissioners and the city council execute long term contracts in regard to the leasing or costs of maintenance of a building housing both city and county offices?"

1. Your first question suggests the possibility of erecting a court house either under the provisions of Section 2333, of the General Code, or under Section 2433 of the General Code. Section 2433 reads as follows:

"The taxing authority of any county in addition to other powers conferred by law *shall have power* to purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, *construct*, enlarge, improve, rebuild, equip and furnish *a court house*, county offices, jail, county home, juvenile court building, detention home, public market houses, 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; also, such copies of any public records of such county made or reproduced by miniature photography or microfilm, as such taxing authority may deem necessary for the protection and preservation of public records of such county.” (Emphasis added.)

Section 2433, *supra*, contains no provision prescribing or limiting the means of financing the construction of a county building. The predecessor of the section, to wit, Section 870, Revised Statutes, as carried into the General Codification of 1910, only authorized the purchase of a site for a court house or other county building, and was accompanied by Section 2434, General Code, which authorized the issuance of bonds for that purpose, and also for erecting such buildings. In the later enactment of the Uniform Bond Law, 112 O. L., page 364, Section 2434 was repealed and Section 2433, *supra*, was amended to include the power to construct a court house or other county building. It would appear, therefore, that in case the building of a court house under the authority of Section 2433, *supra*, necessitated the issuance of bonds, such bonds would be issued under the Uniform Bond Law.

Your letter suggests the possibility of a tax levy extending over a number of years, whereby funds would be accumulated for the ultimate erection of a court house. I am of the opinion that that procedure would be permissible, if practicable, under the provisions of the section under consideration. It is obvious, however, that it would not solve your immediate problem which, as you suggest, is urgent. This section was under consideration by one of my predecessors in Opinion No. 2491, Opinions of the Attorney General for 1938, page 1078, where it was held :

“Under the provisions of Section 2433, General Code, the county commissioners are expressly authorized to purchase by installment payments a building deemed necessary for any of the purposes mentioned in said section.”

This opinion, as will be noted, did not relate to the construction of a building, but to the purchase of a building already constructed.

The same section was again under consideration in Opinion No. 5148, Opinions of the Attorney General for 1942, page 383, where a like holding was made.

It is apparent that this statute, while not excluding the issuance of bonds, contemplates that the erection of a county building is to be financed without the issuance of any considerable amount of bonds. If the cost of building a court house is substantial, then resort must be had to Section 2333, General Code, which reads as follows:

“When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners may apply to the judge of a court of common pleas of the county who may appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party.”

The opening words of this section might seem to indicate that compliance with the procedure therein set forth is mandatory whenever the county commissioners determine to erect a court house or other county building, at a cost exceeding \$25,000.00. However, in view of the procedure set out in Section 2433, *supra*, it would appear that effect must be given to both statutes, and that they must be considered as in harmony with each other if possible. Read together, it would appear to me that if the building in question can be financed either without a bond issue or with a bond issue not in excess of \$25,000.00, the erection of a court house might proceed under the provisions of Section 2433, General Code. If, however, the cost is to exceed that sum, then a bond issue is presumably necessary, and the procedure set out in Section 2333 must be followed, and the question of issuing bonds of the county is to be submitted to the vote of the electors. In the event that this procedure is followed and approved by the electors, a building commission is to be appointed to erect the building. In case the building is erected under the authority of Section 2433, there is no provision for any building commission, and presumably it would be erected under the direct supervision of the county commissioners.

In the 1942 Opinion, to which I have referred, the then Attorney General had under consideration both Sections 2333 and 2433, *supra*, and, speaking of Section 2333, said:

“This statute, according to its terms, applies only when the county commissioners have determined to ‘erect’ a court house or other county building, and then only when a bond issue is contemplated. It has no application to the purchase of a court house or other building already constructed, or to the alteration or extension of any such existing building.”

2. Answering your question as to the possibility of the municipality and the county joining in the construction of a building which is to house both county and city offices, I am unable to find any provision of the General Code, which undertakes directly to grant such authority either to the municipality or to the county. So far as the municipality is concerned, we may find it within the general powers of local self-government conferred upon it by Section 3, of Article XVIII of the Constitution of Ohio. Manifestly, the provision of that section granting to municipalities the right to exercise “all powers of local self-government,” would include whatever steps it might deem necessary and appropriate for providing proper space for the various city offices and departments. It would not look to the statutes for its authority.

I do not, however, consider it necessary for the purposes of this opinion to determine whether a municipality would have the authority to join with the county in the erection of a building designed to take care of both the county and city offices, and to be owned by the city and county jointly, for the reason that there seems to be an entire absence of any such authority granted by the legislature to counties. It must be borne in mind that counties are mere agencies of the state, and that the county commissioners have only such powers as the General Assembly has seen fit to give them. 11 Ohio Jurisprudence, page 244.

I call your attention, however, to the provisions of Sections 2450-1 to 2450-6, inclusive, of the General Code. These sections were enacted in 1935, and are found in 116 Ohio Laws, page 102. The title of the Act is as follows:

“AN ACT

Authorizing agreements between boards of county commissioners and the legislative authorities of other subdivisions, for the rendering by the county of services for the other subdivisions, in their behalf, and providing for the conditions thereof.”

If the title were controlling, as determining the scope and purpose of the Act, it would appear that it was limited to the performance of

services by a county, under a contract with a political subdivision, and nothing else. But it is well settled that while the title of an act may be looked to as an aid in removing ambiguity, it is not controlling, and it can never be invoked to vary the plain terms of the act. 37 Ohio Jurisprudence, page 685.

Accordingly, we may examine these statutes with a view of determining to what extent they may afford an answer to your problem. Section 2450-2, General Code, reads as follows:

“The board of county commissioners of any county may enter into an agreement or agreements with the legislative authority of any city, village, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of county commissioners of any other county as legislative authority thereof, and such legislative authorities shall have power to enter into such agreements with the board of county commissioners, whereby such board undertakes, and is authorized by the contracting subdivisions, *to exercise any power or powers, to perform any function or functions, or to render any service or services*, in behalf of the contracting subdivision or of its legislative authority which such contracting subdivision or its legislative authority is authorized to exercise, perform or render. Upon the execution of such agreement and within the limitations prescribed by it, the board of county commissioners shall have and *may exercise the same powers* as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which by such agreement they undertake to perform or render, and all powers necessary or incidental thereto, as amply as such powers may be possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board of county commissioners in accordance with such agreement shall be exercised or performed, the board of county commissioners shall from time to time determine and assign the same. Nothing in this act nor in any agreement by it authorized shall be construed to suspend the possession by a contracting subdivision of any power or function exercised or performed by the board of county commissioners in pursuance of such agreement. Nor shall the county commissioners by virtue of any agreement entered into under the authority of this section be deemed to have acquired any power to levy taxes within and in behalf of a contracting subdivision *unless otherwise provided for by law.*” (Emphasis added.)

Section 2450-4, General Code, relates to the duration of the agreement and the process by which it may be rescinded. It provides:

“In the absence from an agreement entered into under the authority of this act of a specification of its own duration, such agreement shall continue in effect until it is rescinded. Every such agreement, *whether for a definite term or of indefinite duration*, may provide for its own rescission, and the method thereof. In the absence of any such provision, any such agreement may at any time be rescinded by the agreement of both parties thereto, and an agreement of indefinite duration may at any time be rescinded by resolution of either party thereto, effective at the end of the fiscal year not sooner than six months after such rescinding resolution shall have been certified and delivered to the clerk or secretary of the other party.” (Emphasis added.)

Section 2450-5, General Code, reads as follows:

“Any agreement entered into under the authority of this act may provide for the *transfer to the board of county commissioners of any property, real or personal, used or useful in the performance of functions* or the rendering of services under such agreement. Such transfer may *include the proceeds of bonds issued or to be issued by the contracting subdivision, appropriate to the powers, functions, or services under the agreement*, such proceeds to be expended by the board of county commissioners subject to the same conditions as would govern the contracting subdivision. Such transfer may convey the absolute title to such property, subject in the case of the disposal or incumbrance of such real property by the board of county commissioners to the consent of the legislative authority of the contracting subdivisions; or may convey its use only, or any estate or title less than absolute; may limit the power of the board of county commissioners to dispose thereof; and may provide for its return, disposition, division, or distribution, in the event of the rescission or expiration of the agreement.” (Emphasis added.)

It will readily be seen that while the agreement contemplated by Section 2450-2, *supra*, does include the rendition of service by the county to the contracting subdivision, it is by no means limited to that purpose, since the provision is that the county and the various subdivisions have power to enter into such agreements with the board of county commissioners, “whereby such board undertakes, and is authorized by the contracting subdivision, to exercise *any power or powers*, to perform *any function or functions* or to render any service or services, in behalf of

the contracting subdivision or of its legislative authority, which such contracting subdivision or its legislative authority is authorized to exercise, perform or render.” (Emphasis added.)

Applied to the situation which you present, it is clear that one of the powers of a municipality would be to provide suitable quarters for its officers and various departments, either by constructing a municipal office building or by leasing quarters. Among its powers, would be the power to issue bonds for the purpose of acquiring or constructing a municipal office building. It would appear from a literal interpretation of the language just quoted, that the city might even grant to the county its legislative power to pass the resolution necessary to the issuance of bonds and the submission of a proposition therefor to the electors. I do not consider it necessary to go that far in construing the powers conferred by this statute, especially since the *procedure* for the issuance of bonds is specifically set forth by the legislature in the Uniform Bond Act. However, if we may assume that the county and the city have each taken the proper steps for the issuance of bonds for the purpose of providing their respective office buildings, it seems clear that the municipality is authorized by these statutes to turn over the proceeds of those bonds to the county for the purpose of permitting the county to construct desired quarters for the municipal offices. Turning to Section 2450-5, *supra*, we find that the agreement in question may provide, “for the transfer to the board of county commissioners of any property, real or personal, used or useful in the performance of functions or the rendering of services under such agreement.” And note the following provision: “*Such transfer may include the proceeds of bonds issued or to be issued by the contracting subdivision, appropriate to the powers, functions, or services under the agreement.*” This section goes on to provide, “such proceeds to be expended by the board of county commissioners subject to the same conditions as would govern the contracting subdivision.” It is further provided that the transfer may convey the absolute title to such property, or any lesser estate, and may limit the power of the county commissioners to dispose thereof.

It would be difficult to find language which would give a subdivision more complete authority to turn over to a county the performance of certain of its powers or functions, or which could give the county commissioners more complete authority to exercise such powers and functions on behalf of the subdivision.

I can see no reason why, under a properly drawn instrument, the funds provided by the municipality could not be turned over to the county commissioners, to be used in connection with funds derived by the county from the bond issue in constructing a building in which the municipality should have definitely allocated quarters together with the joint use of entrance and corridors, and covering all questions of maintenance and operation.

So far as the duration of the agreement is concerned, there is broad latitude for determining that. The statute leaves it to the parties to make the agreement either for a definite term or for indefinite duration, and there is no limit placed on the length of term, which might be at least as great as the probable life of the building, with provisions for renewal.

The above discussion appears to afford sufficient answer to your third inquiry.

In specific answer to your questions it is my opinion:

1. The county commissioners of a county may, under the provisions of Section 2433, General Code, construct a court house from the proceeds of a tax levy extending over a number of years.

2. County commissioners may construct a court house, pursuant to Section 2433, General Code, out of any available funds, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$25,000.00, the provisions of Section 2333 must be followed.

3. A county is without authority in law to join with a city in the joint acquisition and ownership of a building for the housing of county and city offices, but may pursuant to the provisions of Section 2450-1 et seq., General Code, contract with a city for the erection by the county of a building to house all such offices; and pursuant to such contract, such city may turn over to the county property real or personal, useful for such purpose, including the proceeds of bonds issued by the municipality.

4. Such contract may be for such term as the county and city may agree upon or for an indefinite term, and may provide for an agreed rental basis and costs of maintenance.

Respectfully.

C. WILLIAM O'NEILL

Attorney General