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COUNTY COMMISSIONERS—MAY EXERCISE DISCRETION AND DETERMINE SALE IS ADVISABLE OF PORTION OF REAL ESTATE BELONGING TO COUNTY CHILDREN'S HOME FARM, NOT NEEDED FOR PUBLIC USE—AUTHORITY TO SELL PROPERTY, SECTION 2447 G. C.—PROCEDURE, SECTION 2447-1 G. C. — IN EXERCISE OF COMMISSIONERS' SOUND JUDGMENT UNDER THESE SECTIONS, COURT WILL NOT INTERFERE.

SYLLABUS:

When county commissioners have exercised their discretion and determined that a sale of a portion of real estate belonging to the county children's home farm not needed for public use is advisable, their authority to sell same is contained in Section 2447, General Code, and their procedure is outlined in Section 2447-1, General Code, and in proceeding under said sections a court will not interfere in the exercise of their sound judgment.

Columbus, Ohio, December 20, 1950

Hon. James F. Shumaker, Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The county commissioners of this county have adopted a resolution declaring certain lands owned by the county as being surplus property and not needed for public use. A portion of these lands comprise the farm and territory contiguous to the children's home of this county. The building used for the purposes of a children's home has been condemned. It is the proposed program to use the revenues received from the sale of this property to construct adequate facilities for the housing of the children presently located in the condemned building.

The county commissioners have forwarded to me the plat and description of the land, requesting that I take the necessary legal action to dispose of the property, apparently contemplating a judicial decree directing the sale of the property. It is my opinion that the contemplated sale should be made pursuant to General Code Section 2447 et seq. and that no action in the courts is necessary.

Would you please give me an opinion as to whether this is the proper section of the law under which to proceed and, if it

is not, direct me in the manner in which this matter should be handled.”

An additional fact is that there has been no abandonment of the county children’s home, which will continue to be used, and that the lands which are proposed to be sold are a part of the farm belonging to the home. I make this reference in order to eliminate any necessity of considering Section 3070-30, General Code, pertaining to the sale of a county children’s home when abandoned.

So much of Section 2447, General Code, as is pertinent to your question reads as follows:

“If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county and not needed for public use, * * * and in case of the sale of such real estate not used for county purposes, * * * all or such part of the proceeds thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance or repair of the county buildings and for the acquisition of sites therefor.”

Section 2447-1, General Code, provides for the procedure to be followed by the county commissioners for the sale of such lands contemplated here, and reads so far as pertinent as follows:

“No sale of such real estate shall be made unless authorized by a resolution adopted by a majority of such commissioners. When such sale is so authorized a deed therefor shall be made by such board of county commissioners and only to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. Such board of county commissioners may reject any or all bids and readvertise until all such real estate is sold.”

See Volume II, Ohio Jurisprudence, §220, page 485, which reads in part as follows:

“* * * They (meaning county commissioners) are also expressly authorized to sell any real estate belonging to the county and not needed for public use, if, in their opinion, the interests of the county so require. Such sale must be authorized by a resolution adopted by a majority of such commissioners, and must be made to the highest responsible bidder after advertising once a week, for five consecutive weeks, in a newspaper in general circulation in the county. It is to be observed that it

is only when the commissioners find that county real estate is 'not needed for public use' that they are authorized, under the present statute, to sell it. The provision authorizing the commissioners to sell is of long standing, but the requirement of a sale to the highest bidder was not enacted until 1915. * * *

(Words in parenthesis added.)

Although there are other questions involved in the case of *Chester A. Seran, a Taxpayer v. Jacob F. Biddle, et al.*, Stark County Commissioners, 39 O. O., 295, and the question of limitations on the general powers of the county commissioners under the provisions of Section 2447, supra, were involved in connection with the sale of part of a county home, such question of limitation is not present under the facts presented here. The first branch of the syllabus in that case reads as follows:

"When the county commissioners have exercised their discretion and determined that a sale of portions of the county home farm not needed for public use is advisable, a court will not interfere in the exercise of their sound judgment."

In the body of the opinion in the *Seran* case at page 296 it is stated:

"The general power of the commissioners to sell lands held for county purposes is derived from Section 2447 General Code.

Under that section if, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use.

The Court of Appeals affirmed the trial court in the *Seran* case and the Supreme Court overruled a motion to certify on May 4, 1949.

Therefore in answer to your question it is my opinion that, when the county commissioners have exercised their discretion and determined that a sale of a portion of real estate belonging to the county children's home farm not needed for public use is advisable, their authority to sell same is contained in Section 2447, General Code, and their procedure is outlined in Section 2447-1, General Code, and in proceeding under said sections a court will not interfere in the exercise of their sound judgment.

Respectfully,

HERBERT S. DUFFY,
Attorney General.