

4275

GIFTS, LANDS IN FEE, SUBJECT TO RESERVATION — COUNTY COMMISSIONERS MAY ACCEPT — RENT TO DONORS, DURATION, THEIR LIVES, LIMITED BY AND ISSUE OUT OF PROCEEDS OF DONATION — TRANSACTIONS SHALL BE REASONABLE — SECTION 18 GENERAL CODE.

## SYLLABUS:

*County commissioners, under authority of Section 18, General Code, may accept a gift of land in fee subject to a reservation of rent for the duration of the lives of the donors provided the rent is limited by and issues out of the proceeds of the land donated as a part of its actual or possible profits and is deemed reasonable.*

Columbus, Ohio, October 6, 1941.

Hon. W. Thurman Todd, Prosecuting Attorney,  
Mount Vernon, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Trustees of the Knox County Children’s Home have

had a proposition made to them by certain parties who wish to turn their property over for the use and benefit of the Children's Home.

Part of this property consists of a small farm in Morgan Township, Knox County, Ohio. These parties wish to turn the farm over to the use of the Knox County Children's Home but wish to retain an income from said farm so long as they may live. The parties are sixty-six and sixty-three years old respectively. These parties have informed us that they are also willing that their other property which consists of some real estate and personal property, shall go to the Knox County Children's Home at their death.

The question which we wish to have answered is: Can the Trustees or proper county authorities become trustees of the said farm during the above time of the grantors, paying to them a reasonable rental with the provision that at their death the farm or its proceeds is to become the absolute property of the Trustees of the home or of the county for the use and benefit of the Knox County Children's Home."

County commissioners and their appointees, the trustees of the children's home, are authorized by statute to accept property for certain uses and purposes. This capacity, however, is not unlimited and is measured in its extent by the statutory enactments creating the authority.

The trustees of the children's home are, in the main, ministerial officers and have a very limited authority with respect to the acceptance of property. Section 3083, General Code, authorizes the trustees to accept bequests of any property for the use and benefit of the children's home. This authority, however, has been construed by a predecessor in office as referring only to personal property and is, therefore, omitted from this discussion. See Opinion No. 3806, Opinions of the Attorney General for the year 1934, Vol. III, page 1960.

In general, the authority of the county commissioners to receive land or other properties by gift or devise is set forth in Section 18, General Code, which reads as follows:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest,

moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

It will be noted from the foregoing section that the gifts referred to therein may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.

The gift contemplated in your inquiry is properly described as a gift in fee with a reservation of rent for the duration of the lives of the donors. Such a reservation, issuing out of the land granted as part of its actual or possible profits, is permitted by the terms of the section under consideration so long as it is deemed reasonable. Whether such reservation is reasonable or not is to be determined in the first instance by the county commissioners. The general rule in this regard is well stated in the second branch of the syllabus of an opinion recorded in Opinions of the Attorney General for 1931, Vol. I, page 286, which reads as follows:

"County commissioners may accept gifts of land for county purposes with reasonable conditions and reservations attached thereto; however, the commissioners may not accept gifts, the conditions of which impose burdens upon the county in excess of the benefits received. Whether or not the conditions are unreasonable, must be determined in the first instance by the county commissioners, and their finding will not be disturbed in the absence of circumstances which clearly constitute an abuse of discretion."

From the foregoing, it is concluded that the county commissioners may, under the authority of Section 18, General Code, accept a gift of land in fee subject to a reservation of rent for the duration of the lives of the donors provided the rent is limited by and issues out of the proceeds of the land donated as a part of its actual or possible profits and is deemed reasonable.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.