

**Note from the Attorney General's Office:**

1966 Op. Att'y Gen. No. 66-140 was overruled by  
1969 Op. Att'y Gen. No. 69-130.

## OPINION NO. 66-140

**Syllabus:**

A municipality which has not adopted a charter limiting its powers by adopting the provisions of the statutes relative to the sale of its property, has authority under the power of home rule provided by Section 3 of Article XVIII of the Constitution, acting in good faith, to dispose of property belonging to it in such manner and for such consideration as it deems proper, without compliance with any of the provisions of Chapter 721, of the Revised Code.

Opinion No. 787, Opinions of the Attorney General for 1957, approved and followed.

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**To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio**  
**By: William B. Saxbe, Attorney General, August 23, 1966**

I have your request for my opinion relative to the legality of a conveyance of real estate owned by the non-charter City of Coshocton to the board of county commissioners of Coshocton County for the purpose of constructing thereon a county dog pound, for a nominal consideration, notwithstanding the requirements of Section 721.03, Revised Code, which reads as follows:

"No contract, except as provided in section 721.28 of the Revised Code, for the sale or lease of real estate belonging to a municipal corporation shall be made unless authorized by an ordinance, approved by a two-thirds vote of the members of the legislative authority of such municipal corporation, and by the board or officer having supervision or management of such real estate. When the contract is so authorized, it shall be made in writing by such board or officer, and, except as provided in Section 721.27 of the Revised Code, only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the municipal corporation. Such board or officer may reject any bids and readvertise until all such real estate is sold or leased."

(Emphasis added for the purpose of indicating additional material amended to the section, effective September 11, 1961.)

My opinion, No. 787, Opinions of the Attorney General for 1957, page 290, is a proper statement of the law governing the posed situation, irrespective of the recent amendment to the statute in question. The syllabus of said opinion reads as follows:

"A municipality which has not adopted a charter limiting its powers by adopting the provisions of the statutes relative to the sale of its property, has authority under the power of home rule provided by Section 3 of Article XVIII of the Constitution, acting in good faith, to dispose of property belonging to it in such manner and for such consideration as it deems proper, without compliance with any of the provisions of Chapter 721, of the Revised Code."

(Emphasis added.)

In said opinion, No. 787, supra, the case of Hugger v. Ironton, 83 Ohio App. 21, was cited in part with the following comment:

"The court discusses at length the effect of the adoption of home rule, particularly Section 3, Article XVIII of the Constitution, and pointed out that municipalities had by that amendment been freed from the domination of the legislature and were free to deal with their own property in such manner as they saw fit, presuming of course, good faith in the matter. This case was taken to the Supreme Court and the appeal dismissed, 148 Ohio St. 670."

Referring to the Hugger case, the Supreme Court in Babin v. Ashland, 160 Ohio St. 329 at page 337, said:

"Ordinarily, a city has the power to convey property held by it for municipal purposes and no longer needed for such purposes. Such power is included within the powers of local self-government conferred by Article XVIII of the Constitution. \* \* \*"

It is, therefore, necessary to conclude that the 1961 amendment to Section 721.03, Revised Code, cannot be interpreted to effect a change in the law governing the disposal of real estate by the City of Coshocton.

Opinion No. 787, Opinions of the Attorney General for 1957, is considered as completely dispositive of your question.