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LAND—BEQUEATHED TO COUNTY—HELD AND OCCUPIED BY COUNTY FOR COUNTY EXPERIMENT FARM—UNDER MANAGEMENT AND CONTROL OF COUNTY COMMISSIONERS—COMMISSIONERS NOT AUTHORIZED BY SECTION 903.21 RC TO CONVEY LAND TO STATE OF OHIO.

SYLLABUS:

Where land has been given by will to a county "to be managed and controlled by the county commissioners of said county, and to be held and occupied by the county as and for a county experiment farm," and it is being so used, the county commissioners are not authorized by Section 903.21, Revised Code, or any other provision of law, to convey such land to the state of Ohio.

Columbus, Ohio, February 29, 1956

Hon. Forrest E. Sidener, Jr., Prosecuting Attorney
Madison County, London, Ohio

Dear Sir:

I have before me your communication requesting my opinion as to the right of the county commissioners of your county to convey to the state certain lands bequeathed to the county for the purpose as stated in the will:

"Said lands to be managed and controlled by the County Commissioners of said county, and to be held and occupied by the county as and for a County Experiment Farm, such as is contemplated in Sections 1165-1 and 1165-2 of the General Code of Ohio."

The will contains no provision as to reverter in any case, but does stipulate that the commissioners must, within three years from its probate, adopt a resolution accepting "the premises so devised for the use and purpose above stated and hereby assume the obligation of establishing thereon such experiment farm and equipping the same for such purpose."

The will further provides that in case the county commissioners fail to so accept the devise, the property is to be sold for the benefit of residuary legatees. I understand from your letter that the county com-

missioners did duly accept the above devise and have equipped and maintained such experimental farm, and that it is being used as such.

As your letter does not indicate the date of the execution or probate of the will in question, I am not able to resort to Sections 1165-1 and 1165-2 of the General Code for any light on the purposes of the testator, but I find that at different periods they seem to have had some relation to an experimental farm.

It appears to me, however, that the effect of this devise was to create a trust in the hands of the county commissioners, and that it is in the nature of a "charitable trust." The word "charitable," used in connection with public trusts, carries a meaning not wholly like our ordinary understanding of its significance. In 10 American Jurisprudence, 585, it is said:

"In legal parlance the word 'charity' has a much wider significance than in common speech."

The author then makes this statement:

"* * * Another definition capable of being easily understood and applied is that given by Lord Camden as follows: 'A gift to a general public use, which extends to the poor as well as the rich.' The theory of this is that the immediate persons benefited may be of a particular class, and yet if the use is public in the sense that it promotes the general welfare in some way, it has the essentials of a charity."

In 7 Ohio Jurisprudence, page 112, we find the following:

"Charity is not alone aid to the needy; it embraces and includes all which aids man and betters his condition."

With this broad definition in mind, I find no difficulty in applying it to the uses and purposes of an experimental farm as indicated by the statutes relating thereto. Section 903.09, Revised Code, authorizes the board of county commissioners of any county to establish "an experimental farm within the county," and sections which follow provide for purchase by the county of all equipment and supplies, and for financing such farm by tax levies and bond issues.

In addition to the power to purchase lands for the purpose, we find in Section 9.20, Revised Code, express authority conferred on a county to receive gifts or bequests of land "and apply the same according to the terms of the gift, devise or bequest."

Section 903.17, Revised Code, provides that the management of such county experiment farm shall be vested in the director of the Ohio agricultural experiment station "to serve the agricultural interests of the county."

The general uses for such experiment farms are set forth in Section 903.18, Revised Code, reading in part as follows:

"The county experiment farm shall be used for:

"(A) The comparison of varieties and methods of culture of field crops, fruits, and garden vegetables;

"(B) The exemplification of methods for controlling insect pests, weeds, and plant diseases;

"(C) Experiments in the feeding of domestic animals and in the control of animal diseases; * * *"

Whether these uses, evidently designed to increase the quantity and quality of food for the citizens of the county, make of this devise in question a charitable trust, is perhaps not the vital question. There is no doubt that the county takes the gift and holds it as a public trust. The question then arises whether the county as trustee has authority, in the absence of any enabling statute, to convey the land to the state, thereby substituting the state as trustee.

I believe it is well settled as a general proposition that a trustee has no authority in the absence of a specific provision in the instrument creating the trust to sell the corpus of the trust. It is said in 40 Ohio Jurisprudence, page 418:

"Hence, in the absence of a provision in the trust instrument conferring this power of sale upon him (the trustee), or facts justifying the implication of the power, the exercise of it would constitute a breach of trust."

I do not overlook the fact that the legislature, having complete control over the powers and procedure of a board of county commissioners, might limit or augment its powers when acting as trustee of a public trust; but the legislature certainly has not given a county any authority to dispose of an experimental farm no matter how acquired, excepting as provided in Section 903.21, Revised Code, to the effect that if the Ohio agricultural experiment station ceases to use such experiment farm for the purposes specified in Section 903.18, supra, the commissioners shall sell the same and deposit the proceeds to the credit of the school funds of the county.

This special provision would appear to me to exclude any sale of such lands under any other circumstances.

It is also settled that a trustee may not delegate his powers and duties to another. 40 Ohio Jurisprudence, p. 350. In the early case of *Taylor v. Galloway*, 1 Ohio, 232, the court, discussing the powers and duty of a trustee appointed by a will, said :

“The trust delegated by the will is personal, and cannot be transferred. As Williams voluntarily took upon himself the office of trustee, it was his duty to execute the trust in person, and to do everything that might be necessary to enable him to do so. He certainly had no right to give away any part of the land, to procure a third person to perform services that he was bound to perform himself.”

It might be plausibly urged that since the law gives the director of the Ohio experiment station the right to manage a county experiment farm, there could be no harm in allowing the county the privilege of conveying the title of such farm to the state. Admitting this proposition as a generality, it seems obvious that the legislature did not see fit so to provide, and we have no more right than a court would have to substitute our judgment for that of the legislature, or to give a statute a construction which departs from its plain and unambiguous terms. *Slingluff v. Weaver*, 66 Ohio St., 621.

Finally, it may be pointed out that Section 903.21, Revised Code, must be read in *pari materia* with Sections 903.09 et seq., Revised Code, and when so read would appear to have application only to lands acquired by purchase as provided in such related sections. However this may be, in view of the fact that your letter expresses the desire of the commissioners to convey the land to the state and that it may “continue to be used for experimental farm purposes,” I feel justified in concluding that the state agricultural experiment station has not “ceased to use” the farm for the purposes specified in the laws, and it would follow, *a fortiori*, that in these circumstances you could not invoke the provisions of Section 903.21, *supra*.

Accordingly, it is my opinion that where land has been given by will to a county “to be managed and controlled by the county commissioners

of said county, and to be held and occupied by the county as and for a county experiment farm," and it is being so used, the county commissioners are not authorized by Section 903.21, Revised Code, or any other provision of law, to convey such land to the State of Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General