

1248.

APPROVAL, BONDS OF JACKSONVILLE VILLAGE SCHOOL DISTRICT,
ATHENS COUNTY, \$16,593.24, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, March 6, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1249.

APPROVAL, FINAL RESOLUTION, ROAD IMPROVEMENT IN MAHON-
ING COUNTY.

COLUMBUS, OHIO, March 6, 1924.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

1250.

COUNTY COMMISSIONERS—AUTHORITY TO SELL OR LEASE UNUSED
LANDS OR BUILDINGS OF THE COUNTY.

SYLLABUS:

1. *It is in the discretion of the county commissioners as to what use shall be made of an abandoned children's home, so long as it is a proper county use.*
2. *The county commissioners may lease any unused lands or buildings of the county. Such a lease should be made in accordance with section 2747-1, which relates to a sale.*
3. *If in the opinion of the county commissioners a county home is no longer needed, the same may be disposed of by sale or lease in the manner provided in section 2747-1.*

COLUMBUS, OHIO, March 8, 1924.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon a state of facts presented to you by Bell Greve, which are as follows:

“Yesterday two Monroe County Commissioners, Mr. J. Wittenbrook and Mr. Frank Keevert, were directed to this office by Governor Donahey after their conference with him. They wished to discuss matters relating to the county children's home and the county home or infirmary.

At the present time the children's home has a population of four children and it is costing over \$4,000.00 a year to maintain this home. The county home or infirmary has a population of ten and it is costing between \$6,000.00

and \$7,000.00 a year for running expenses. The Commissioners came to seek advice regarding the abandonment of both of these institutions and what could be done with the buildings and land after such abandonment.

I am personally familiar with the situation in Monroe County in respect to the children's home and our division has felt for some time that the county was spending too much money for the number of children for whom it was caring. We believe that a scheme similar to the one in Ross and Hancock Counties could be worked out for Monroe County relative to the care of the children.

At the present time the Child Conservation League there is making a study for us regarding the condition of all children in the county. I have asked the League to send their report in to this office by March 1, if possible, after which time I will go to Monroe County and have a meeting with the judge, county commissioners, trustees of the children's home, auditor, and board of county visitors. At this meeting I wish to be in a position to make definite statements regarding the institutions and in order to do so, it will be necessary for me to have legal advice.

I would like an answer from the Attorney-General on the following questions:

1. Section 3092-1 provides that county commissioners may abandon a county children's home after complying with certain formalities or 'may proceed to use them (site and buildings) for other necessary and proper purposes.'

(a) Is it left to the discretion of the county commissioners to decide how to use this building, for example, as a tuberculosis hospital, hospital for cancerous persons, etc.

(b) Are the county commissioners permitted to lease this land (without buildings) to private individuals?

(c) Are the county commissioners permitted to rent the buildings and the land to private individuals or a company which will carry on some private business not connected with the welfare of the county?

2. (a) Is there a law which provides for the abandonment of a county home (or infirmary)? If not, is there any way in which the county home (or infirmary) may be discontinued as such?

(b) May the county commissioners rent the land or buildings of the county home (or infirmary), separately or jointly, to private individuals or companies?

(c) Are the county commissioners permitted to use the county home (or infirmary) for any purposes other than that for which it was built?

We are asking for this advice in order that we may not be ignorant of the law when we are in conference. We appreciate that county commissioners could advise with their county prosecutor but we felt that we should not be in that position."

As suggested in the communication, section 3092-1 provides that the county commissioners with the approval of the Board of State Charities may abandon a county children's home after having published an announcement of the proposed abandonment as required by said statute. Said section further provides that when the home has been abandoned as provided therein

"the commissioners may then proceed with the sale of the site and buildings of such children's home in the manner most advantageous to the county, or may proceed to use them for other necessary and proper purposes."

From the expressed provisions of the language it would seem that it is within the discretion of the county commissioners as to the use to be made of said premises, so long, of course, as such use is a proper use.

The second branch of the first question as to the authority of the commissioners to lease land to private individuals presents considerable difficulty. Nowhere in the statutes is there found any express authority for the leasing of land by county commissioners. However, in a number of cases it has been held that the title of real estate of the county is vested in the county commissioners and they may dispose of the same as a private individual. This was a common law doctrine and no statutory inhibition against the exercise of this right has been found.

In the case of *Reynolds vs. Commissioners*, 5 Ohio 204, it was held:

“Where real estate is vested absolutely in the county commissioners for public purposes, they may dispose of it in the same manner as individuals could.”

This case specifically recognized the authority of commissioners to lease county lands, and was cited in an opinion of the Attorney-General found in the Reports of 1921, page 183, as authority to authorize the sale of lands used for agricultural fairs when title was in the county on account of the abandoning of the lands for fair purposes. It is further pointed out in said opinion that such lands could be sold under the provisions of section 2447 or held for the public benefit.

It will be evident that the leasing of the land is granting less power than the sale of such land. It would be inconsistent with the holding of land for public benefit if it were permitted to lie idle when proper business management would require the same to produce an income for the public use.

Therefore, it is my opinion that the common law powers coupled with the selling authority provided in section 2447 G. C. authorizes such commissioners to lease unused lands. Such a lease it is believed should be made after following the advertising provisions in section 2447-1 G. C. In an opinion of the Attorney-General for the year 1913 at page 1335, the power of the commissioners to lease was recognized, but it was pointed out that such power should not interfere with the public use.

In considering your second question I have been unable to find any provisions of the statute which expressly authorize the abandonment of a county home. However, this inquiry brings us again to a consideration of the provisions of section 2447, which provides:

“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 and not used for county purposes, the proceeds of such sale or such parts thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for the construction, equipment, maintenance or repair of other county buildings, and the provisions of section 5638 of the General Code shall not apply to appropriations or expenditures of said fund.”

It is believed that if in the opinion of the county commissioners the county home is not needed for public use on account of the fact that there are not sufficient inmates to justify the expense to maintain the same, it is possible that the commissioners could proceed under the provisions of section 2447 G. C. to dispose of such property. (See Opinion Attorney-General 1912, page 1426.)

Also, as heretofore indicated, it would seem that the power to lease such prem-

ises would be included within the power to sell, and in the event the commissioners should conclude to lease such premises the same could be done.

In view of the foregoing it would seem unnecessary to specifically answer the inquiries.

Respectfully,
C. C. CRABBE,
Attorney General.

1251.

APPROVAL, BONDS OF JOHNSONVILLE-NEW LEBANON RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, \$40,613.16, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, March 8, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1252.

APPROVAL, BONDS OF SHELBY COUNTY, \$23,400.00, TO IMPROVE VER-SAILLES-SIDNEY I. C. H. NO. 217, SECTION "A-2."

COLUMBUS, OHIO, March 10, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1253.

APPROVAL, BONDS OF ALLEN COUNTY, \$118,000.00, TO IMPROVE SECTION "E-2" OF I. C. H. NO. 130, BY CONSTRUCTING BRIDGES AND CULVERTS.

COLUMBUS, OHIO, March 10, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1254.

APPROVAL, BONDS OF KIRKWOOD TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, \$1,830.76, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, March 10, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.