GENERAL ASSEMBLY: Right to limit appropriations to period of one year.

Appropriations: Right to limit appropriations to one year.

January 15, 1943.

Honorable E. I. Higgs,
Joint Senator,
Fayette, Rush and Shelby Counties,
State House,
Indianapolis, Indiana.

Dear Senator:

I have before me your request for an opinion as to whether there are any constitutional limitations which would prevent the General Assembly from limiting its appropriations for the State Government to one year. There is no such constitutional limitation. To do so, however, would, in and of itself, create the necessity for a special session to be called by the Governor, since under the Constitution no money can be drawn from the Treasury except in pursuance of appropriations made by law.

BOARD OF ACCOUNTS: Whether the Board of Trustees of a county-owned hospital may lease its X-ray and clinical laboratory facilities for private use.

County Officers: Limitation of powers of such officers.

January 15, 1943.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request upon the Attorney General for an official opinion. Your question reads as follows:
“May the Board of Trustees of a county-owned hospital make a 5-year lease, leasing the X-Ray and clinical laboratory facilities and hospital space they occupy to a private physician, with the provision that the physician is to pay a fixed monthly rental for the use of the equipment, plus a fixed percentage of gross receipts in excess of a certain amount?”

We have examined the attached proposed lease and note that it coincides with the facts stated in your inquiry.

When your question is reduced to a point of law, we believe that it involves mainly a question of power by the Board of Trustees of the hospital to enter into a valid lease of all or a part of a county-owned hospital to be used in part for private gain. Therefore, it becomes necessary to determine the source and scope of the powers of County Officers and Agents.

The rule is, that Counties are integral parts of the State and that all the powers of Counties and of those authorized to act for Counties, come solely, either from the Constitution or from the Legislature. We note that the Constitution of the State of Indiana at Article 6, Section 10, has provided that, “The General Assembly may confer upon the boards doing county business in the several counties, powers of a local administrative character.”

The general rule has been stated in 15 Corpus Juris., Sec. 103, page 457, as follows:

“b. Statutory Limitation. Provided it violates no constitutional provisions, the legislature may, after conferring powers, on a county board, limit, enlarge, or curtail them, as it sees fit; and it may even take away the statutory powers of the board, although the board exists by virtue of a constitutional provision. It is well settled that a county board possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. It must necessarily possess an authority commensurate with its public
trusts and duties. Therefore it possesses inherent authority to perform acts to preserve or to benefit the corporate property of the county intrusted to it. However, where there is doubt as to the existence of its authority, it should not be assumed. Acts done outside its statutory authority are void and not binding on the county.”

And more specifically at Sec. 221, page 537, as follows:

“2. Renting or Leasing—a. Of County Property. In accordance with the general rule heretofore stated, that county boards or county courts have no powers other than those conferred expressly or by necessary implication, such courts or boards have no power to rent or to lease property or franchises owned by the county, in the absence of statutory authority so to do; and where they do possess statutory authority, it must be strictly pursued, or the lease will not be binding. Under a code provision conferring on the several counties of the state all the rights of private parties in matters of litigation, a board of county supervisors may distrain for rent due the county from a lessee or his assignee.”

The source and extent of such power has been declared by the Supreme Court and Appellate Court of Indiana, as shown by the quotations from the following named cases.

State ex rel. Board of Commissioners of Hendricks County v. Board of Commissioners of Marion County, 170 Ind. 595.

“* * * A county is an involuntary corporation organized as a political subdivision of the State by the legislature, the sovereign power, solely for governmental purposes. Such subdivisions are instrumentalities of government, exercising the powers delegated by the State and acting for the State. As the State is not liable for the acts or omissions of its officers, a county is not liable for the acts or omissions of its officers in relation to such functions, because they belong to the State. * * *”
Applegate v. State ex rel. Pettijohn, 205 Ind. 122.

"* * * Counties are but subdivisions of the state, and county officers, including county councils, are but agents of the state. Their authority is limited to that expressly conferred on them by the Legislature. * * *"

Board of County Commissioners of Vanderburgh County v. Sanders. Ind. 1940, 30 N. E. (2d) 713.

"* * * (5) Appellee says that the board of county commissioners have and can exercise the powers only as are expressly conferred on it by the Constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. We think the above is a fair statement of the law. We must therefore look to the statute under which appellant acted to determine whether authority to pass the ordinance in question can be found. * * *".

Williams v. Willett, 102 Ind. App. 193.

"* * * That a board of commissioners of any county has no powers other than those expressly granted by the legislature, or necessarily implied from the powers granted, is well established. * * *"

We quote at some length from the opinion of the Supreme Court of Indiana wherein the power of a board of County Commissioners to lease for private use a part of a court house was denied. Attention is called to the following language from the Case of State ex rel. Scott v. Hart, et al. 144 Ind. 107.

"Monks, J.—This was an action by information against the Board of Commissioners of La Porte County, calling in question the power of said board of commissioners to lease rooms in the court house to be used for private purposes. * * *

"Counties are involuntary political or civil divisions of the State created by general laws to aid in the administration of the State government. Their pow-
ers are created and defined by statute. The powers of
the board of commissioners are limited and for any
act done by them not within the scope of their powers,
the county is not liable. * * *

"A county court house with the real estate upon
which it stands is public property held by the county,
but in trust for the public use. * * *

"The board of commissioners is authorized to pur-
chase and own the real estate upon which the court
house is erected, for that purpose, which is a public
purpose, and has no power to use or lease the same
or any part thereof to be used for any private purpose,
unless there is a statute giving such power. The
court house is erected for the public use, to furnish a
place to hold the courts, and for offices for the clerk,
sheriff, treasurer and auditor, and for such other
public purposes as may be necessary.

"The increase in the business of the court may from
time to time require additional rooms in which to
hold court, as well as for juries and grand juries, and
for the county officers named, and the board of com-
missioners cannot, by contract, prevent themselves
or their successors from using or setting apart for
the court, or the county officers, or for other public
purposes, rooms in the court house not before used
for such public purpose.

"The contract in controversy here, if valid, would
prevent the board of commissioners for ten years,
from May 1, 1894, from using the rooms mentioned
in the lease, for any public purposes, no matter how
urgent the necessity. During this time the board is
required to furnish heat, light and water in the rooms
to the lessees, and a janitor to take care of the rooms,
or respond in damages for a failure so to do. Such a
use of the property is a private and not a public use.
* * *

"We think it clear, both upon principle and author-
ity, that the boards of commissioners in this State
have no power to rent the court house, or any part of
it, for private use, and that the relation of landlord
and tenant cannot exist between the county and any
private person as to the court house, or any part thereof, under the laws now in force.

"There is no statute in this State authorizing the boards of commissioners to rent the court house, or any part thereof, for private use. * * *"

The General Assembly has given County Commissioners the power to appoint trustees to do certain stated acts concerning county-owned hospitals as shown by Burns' Statutes, Sec. 22-3217. It does not appear that the Legislature has given County Commissioners, much less Boards of Trustees of County-owned Hospitals, the specific power to lease county property for private uses. Members of the Board of Trustees of the hospital are appointed by the Board of County Commissioners. The Board of Trustees of the hospital are proposing to enter into a lease contract, rather than the Board of County Commissioners. It does not appear that County Commissioners have been granted such power to lease, therefore the Trustees of the hospital do not have such power.

It is therefore concluded that the proposed lease is unauthorized and would be invalid.

STATE BOARD OF ACCOUNTS: Remedy in case of defaulted ditch bonds.

Ditch Bonds: Remedy in case of default.

January 18, 1943.

Hon. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of January 16, 1943, requesting my opinion upon the following questions, to wit:

"1. Does the statute of limitation cease to run on the lien of a ditch assessment when the real estate