

FROM THE OFFICE OF  
**KENNETH W. OSWALT**

PROSECUTING ATTORNEY  
OF  
LICKING COUNTY

20 SOUTH SECOND STREET  
NEWARK, OHIO 43055

FELONY AND CIVIL  
DIVISIONS  
(740) 670-5255

JUVENILE COURT  
DIVISION  
(740) 670-5264

TAX FORECLOSURES  
(740) 670-5021

FAX  
(740) 670-5241

January 14, 2008

The Honorable Marc Dann  
Ohio Attorney General  
Opinions Section  
30 East Broad Street, 15th Floor  
Columbus, Ohio 43215

**Re: Request for *follow-up* opinion dealing with public contract between a Township Trustee and the Township he/she serves.**

Sir:

By this letter I am seeking a follow-up to my earlier request for an opinion, which you responded to by issuing Opinion No. 2007-044. First, let me thank you for your timely response to that request.

In response to that opinion, I have taken steps that, in my opinion, sufficiently serve to “divest” the newly elected Trustee (Abraham) of his interest in any contract directly with Granville Township. However, out of an abundance of caution, I thought it made sense to seek an opinion from your office. I am formulating my question to you as follows:

If a Township Trustee owns a garage that he leases to a third party, and that third party then subleases the garage to the Township, *provided* the lease and/or sublease serve to eliminate any contractual relationship directly between the Township and the Trustee (and indeed provide for the Trustee being denied many of the typical rights of a landlord), does the Trustee continue to have sufficient “interest” in a contract with the board such that this arrangement violates R.C. 511.13?

The factual background necessitating this opinion is detailed in the letter seeking the initial opinion from your office. Since the receipt of that opinion, at my request, the Township has undertaken the following steps. First, the pre-existing lease directly between the Township and the Trustee was, by agreement of both sides, voided. Second, a lease was executed between Trustee Abraham and a third-

party, Guy Manos. (Copy enclosed as exhibit "A"). Mr. Manos is not a Township employee or officer. Nor, as far as I am aware, is he a business associate of the Trustee beyond the lease at issue herein.

Third, a lease (actually a sublease) was entered into by this third-party and the Township. (Copy enclosed as exhibit "B"). You will notice that the respective lease/sublease serve to deny Trustee Abraham many of the normal rights of a landlord. For example, the Trustee/landlord has no right to "enter and inspect". (Exhibit "A", ¶ 8.) Furthermore, the Trustee/landlord has no right of review or approval as it relates to the terms of any sublease, and in fact he affirmatively waived any right to seek any form of remedy from the Township/sublessee in the event of any claimed violations. (Exhibit "A", ¶ 26, and Exhibit "B", ¶ 22.)

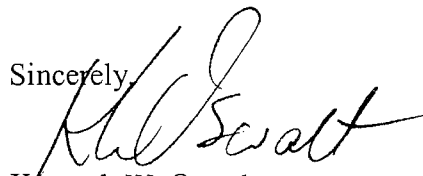
Although I fully understand that your office does not have jurisdiction to interpret Chapter 2921, it is my opinion that this arrangement, while perhaps not ideal, nonetheless meets the exception noted in R.C. 2921.42 (C)(1) through (4). Thus, based upon the information known to me, I believe that Chapter 2921 of the Revised Code has been complied with. As an additional point, the Township has been advised that Trustee Abraham should abstain from any actions the board may need to make as it relates to the sublease between the Township and Mr. Manos.

The reality of the situation is that the Township has no other readily available garage space of the size and functionality of the garage at issue. With that said, however, the Township hopes to end the current sublease altogether by building a new township-owned garage facility within 18 months (hence the sublease being for an 18-month period). Obviously, at that point, this issue will disappear.

Simply stated: Do you agree with me that this arrangement, while not perfect, does serve to technically "divest" the Trustee of his interest in any contract that exists with the Township such that it complies with R.C. 511.13? In fact, in my opinion, he currently has no contract with the Township, and has no legally recognizable "interest" in the contract the Township has with Mr. Manos.

Thank you in advance for your attention to this matter. Should you need anything further from me, please do not hesitate to call.

Sincerely,



Kenneth W. Oswalt  
Licking County Prosecuting Attorney

cc: Granville Township

# Commercial Lease

---

**This lease** is made between Fred L Abraham, 460 S. Main St Granville, OH 43023, herein called Lessor, and Guy Manos, 19 Kenbrook Ave Newark, OH 43055, herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in the Village of Granville, County of Licking, State of Ohio, described as 462 S. Main St Granville, OH 43023 upon the following TERMS and CONDITIONS:

**1. Term and Rent.** Lessor demises the above premises for a term of two (2) years, commencing January 1<sup>st</sup>, 2008, and terminating on December 31<sup>st</sup>, 2009, or sooner as provided herein at the monthly rental rate of Two Thousand Two Hundred Dollars (\$2,200.00) payable in equal installments. All rental payments shall be made to Lessor, at the address specified above. At the request of the Lessee the Lessor agrees to enter into a side agreement that may provide for deferral of payment of monthly rent.

**2. Use.** Lessee shall use and occupy the premises for a period of two (2) years. Permitted use is for garage/maintenance, storage or similar facility. The building also includes an office, lunch and restroom facilities.

**3. Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and other building related items, which shall be maintained by Lessor. Lessee shall also maintain in good condition such portions adjacent to the premises, such as sidewalks, driveways, lawns and shrubbery, which would otherwise be required to be maintained by Lessor.

**4. Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

**5. Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

**6. Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only unless Lessee has sublet in which case the utilities may be in the name of the sublessee, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services. In the event that any utility or service provided to the premises is not separately metered, Lessor shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges. Tenant shall pay such amounts within fifteen (15) days of invoice. Lessee acknowledges that the leased premises are designed to provide standard office use electrical facilities and standard



office lighting. Lessee shall not use any equipment or devices that utilize excessive electrical energy or that may, in Lessor's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

**7. Application for Utilities.** If sublet, it is agreed that the utilities may be in the name of the subleasee.

**8. Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter. The right of entry and inspection shall not be effective in the event of a sublease.

**9. Parking.** During the term of this lease, Lessee shall have the nonexclusive use in common with Lessor, other tenants of the building, their guests and invitees, of the nonreserved common automobile parking areas, driveways, and foot ways, subject to rules and regulations for the use thereof as prescribed from time to time by Lessor. Lessor reserves the right to designate parking areas within the building or in a reasonable proximity thereto, for Lessee and Lessee's agents and employees.

**10. Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or void able, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 30 days of the commencement of the term hereof.

**11. Indemnification of Lessor.** To the extent of the law, Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof. Lessee agrees to indemnify and hold Lessor harmless from any claims for damages which arise in connection with any such occurrence. Said indemnification shall include indemnity from any costs or fee which Lessor may incur in defending said claim.

**12. Insurance.** Lessee, at his expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

If the leased premises or any other part of the building is damaged by fire or other casualty resulting from any act of negligence of Lessee or any of Lessee's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

**13. Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

**14. Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease

**15. Lessor's Remedies on Default.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 30 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, without extinguishing Lessee's liability. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

**16. Security Deposit.** Lessee shall deposit with Lessor on the signing of this lease the sum of no Dollars (\$0.00) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

**17. Not used**

**18. Not used**

**19. Attorney's Fees.** In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

**20. Waiver.** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

**21. Notices.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address specified above, or at such other places as may be designated by the parties from time to time.

**22. Heirs, Assigns, Successors.** This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

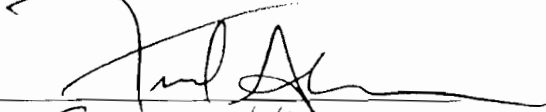
**23. Option to Renew.** Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional term commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the monthly rent shall be increased based on the consumer price index. (amount to be determined). The option shall be exercised by written notice given to Lessor not less than 30 days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

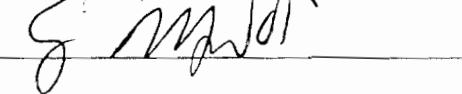
**24. Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

**25. Radon Gas Disclosure.** As required by law, (Lessor) makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Licking county. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**26. Ability to Sublease.** Lessor agrees that lessee may sublease these premises without the written consent or authorization of the Lessor. Lessor agrees to permit lessee to enter into a sublease agreement under such terms and conditions as lessee determines to be appropriate without right of review or approval by Lessor. Lessee agrees that the Insurance provided under Lessee's agreement shall be satisfactory to meet the requirements of paragraph 12 above. As to any sublease the terms of any sublease shall prevail over any conflicting provisions of this lease, if any, and sublessee is intended to be a third party beneficiary of this provision. Lessee will still be responsible for all terms and conditions of this lease. The Lessor will hold the Lessee responsible for any violations of the lease, and not seek remedies from any sublessee of the premises.

Signed this 31<sup>st</sup> day of December, 2007, at Granville Ohio.

Lessor: 

Lessee: 

# Commercial Lease

---

**This lease** is made between Guy D. Manos, 19 Kenbrook Ave Newark, Ohio 43055, herein called "Lessor", and The Board of Granville Township Trustees, Box 315 Granville, Ohio 43023, herein called "Lessee". Lessee hereby offers to lease from Lessor the premises situated in the Village of Granville, County of Licking, State of Ohio, described as 462 S. Main St Granville, Ohio 43023 upon the following TERMS and CONDITIONS:

**1. Term, Rent and Cancellation.** Lessor demises the above premises for a term of eighteen (18) months, commencing January 1st, 2008, and terminating on June 30, 2009, or sooner as provided herein, at the monthly rental rate of Two Thousand Three Hundred Dollars (\$2300.00) per month. The rent is payable in equal installments in advance on the first day of each month for that month's rental, during the term of this lease. All rental payments shall be made to Lessor, at the address specified above. If requested by Lessee the Lessor agrees to enter into an escrow agreement for payment of monthly rent. Lessee may cancel this lease at anytime with ninety (90) day advance written notice to the Lessor.

**2. Use.** Lessee intends to occupy this premise for a maximum of eighteen (18) months and may seek to leave sooner following the notification requirements listed above. The premises may be used as a township garage/maintenance facility which also includes office, lunchroom and restroom areas.

**3. Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and other building related items, which shall be maintained by Lessor. Lessee shall also maintain in good condition such portions adjacent to the premises, such as sidewalks, driveways, lawns and shrubbery, which would otherwise be required to be maintained by Lessor.

**4. Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

**5. Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

**6. Assignment and Subletting.** Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.



**7. Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services. In the event that any utility or service provided to the premises is not separately metered, Lessor shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges, plus a handling charge of \$5.00 per invoice. Lessee shall pay such amounts within fifteen (15) days of invoice. Lessee acknowledges that the leased premises are designed to provide standard office use electrical facilities and standard office lighting. Lessee shall not use any equipment or devices that utilize excessive electrical energy or that may, in Lessor's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

**8. Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.

**9. Parking.** During the term of this lease, Lessee shall have the nonexclusive use in common with Lessor, tenants of other the buildings in the area, their guests and invitees, of the nonreserved common automobile parking areas, driveways, and foot ways, subject to rules and regulations for the use thereof as prescribed from time to time by Lessor. Lessor reserves the right to designate parking areas within the building or in a reasonable proximity thereto, for Lessee and Lessee's agents and employees.

**10. Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or void able, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 30 days of the commencement of the term hereof.

**11. Indemnification of Lessor.** To the extent of the law, Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof.

**12. Insurance.** Lessee, at its expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

If the leased premises or any other part of the building is damaged by fire or other casualty resulting from any act of negligence of Lessee or any of Lessee's agents,

employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

**13. Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

**14. Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease

**15. Lessor's Remedies on Default.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 30 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, without extinguishing Lessee's liability. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

**16. Security Deposit.** Lessee shall deposit with Lessor on the signing of this lease the sum of no Dollars (\$0.00) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

**17. Attorney's Fees.** In case suit should be brought for recovery of the premises or for

any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

**18. Waiver.** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

**19. Notices.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address specified above, or at such other places as may be designated by the parties from time to time.

**20. Heirs, Assigns, Successors.** This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

**21. Option to Renew.** Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional period, on terms negotiated at that time.

**22. Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property. Lessor and Lessee agree that lessee has no contractual obligations to any others that may have an interest in the premise being leased, and Lessor shall hold Lessee harmless as to any claims such other person may otherwise have or make against the leasee.

**23. Radon Gas Disclosure.** As required by law, (Lessor) makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Licking County. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**24. Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

Signed this 31<sup>st</sup> day of December, 2007, at Granville Ohio.

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

*The Note's  
original  
has been  
reprinted*