

2395

BOARD OF TOWNSHIP TRUSTEES CAN SELL REAL ESTATE BELONGING TO TOWNSHIP AND CAN REJECT ALL BIDS IF SUCH INFORMATION IS MADE AVAILABLE TO BIDDERS—§505.10, R.C.

SYLLABUS:

A board of township trustees under the provisions of Section 505.10, Revised Code, has the right to sell real estate belonging to the township, at public auction, without approval of the voters when by resolution it finds that it does not need the same; and the board has the right to reject all bids for the same if notice to that effect is stated in the required advertisement or other information made available to bidders.

Columbus, Ohio, July 27, 1961

Hon. Kenneth Koch, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“I have been contacted by the Board of Trustees of Ridge Township.

“Ridge Township owns and operates a large stone quarry. The probable value of the quarry and equipment is \$75,000.00.

“The Trustees desire to sell this quarry and, of course, have consulted with me concerning this.

“The only law I have been able to find is R.S. 505.10.

“Do you have an opinion that the Trustees have the authority to sell this real estate under the provision of R.S. 505.10?

“Since R.S. 5549.24 forbids the purchase of real estate without the consent of the voters, one might wonder that the sale must also be approved by the voters.

“If R.S. 505.10 is controlling, do the Trustees have the right to reject any or all bids since the sale must be by public auction?”

The questions involved in your request are (1) does the board of township trustees have the authority to sell real estate, (2) does the sale of such real estate have to be approved by the voters; and (3) if the board has authority to sell real estate, may it reject any or all bids when the sale is by public auction?

The first paragraph of Section 505.10, Revised Code, reads as follows :

“The board of township trustees may accept, on behalf of the township, the donation by request, devise, deed of (or) gift, or otherwise, of any property, real or personal, for any township use. When the township has property which the board, by resolution, finds it does not need, the board may sell and convey such property. Such sale must be by public auction and upon notice thereof being published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of such publications to be at least five days before date of sale.

“* * *

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Referring to said Section 505.10, it is stated in Opinion No. 2341, Opinions of the Attorney General for 1958, page 422, at page 424 :

“This section is broad in its terms. It may sell *any properties* which it declares by resolution it does not need. Since water lines for fire-fighting purposes are purchased under the same statutory authority by which it may purchase fire equipment, I can see no reason why it does not have as much right, under the statute last above quoted, to sell its water line as it has to sell any other part of its fire-fighting equipment.

“But it must be kept in mind that any property proposed to be sold must be sold by public auction, as provided in the statute.”

It appears clear that such a sale need not be passed on by the voters. Section 5549.24, Revised Code, referred to in your request states that no tax shall be levied on bonds issued by the board of township trustees to purchase real property containning suitable stone or gravel for road materials unless such tax is approved by a vote of the people in the manner provided by law. Since no tax, bonds or purchase of real estate is involved in your request, said Section 5549.24 would appear to have no application.

Your third question concerns the right of the board of township trustees to reject any or all bids at a sale by public auction. Here, I wish to invite your attention to the case of the *State, ex rel. Amber v. Board of Education, et al.*, 155 Ohio St., 94. At page 96, the court stated:

“This court agrees that the relator has mistaken his remedy. The controversy between the parties is due chiefly to the fact that in the ‘instructions to bidders’ as well as in the ‘auction sale agreement’ is a specific, unambiguous provision that ‘the board of education reserves the right to reject any or all bids.’ It is the contention of the relator that the respondent board is without statutory authority to reject bids and that hence the reservation of the right to reject them is of no validity whatsoever. A careful study of the pertinent statutes discloses no prohibition whatsoever against reserving the right to reject bids; and there is no affirmative provision that the receiving of bids at a public auction must inevitably result in a sale. With reference to this very property it is conceded that no sale resulted in 1947, when it was first offered for sale at a public auction and the bids were rejected. In this respect there clearly is no duty specially enjoined by law.
* * *”

A “public auction” is a sale to the highest bidder (Ballentine’s Law Dictionary, Second Edition, page 125). Thus, I believe that if a sale is to be made, it must be to the highest bidder. In line with *State, ex rel. Amber, supra*, however, I am of the opinion that the board of township trustees has the right to reject all bids if such procedure is stated in the advertisement and other information made available to bidders. That is, the board might want to insist on a minimum price, and such minimum price could be protected by reserving the right to reject all bids.

Accordingly, it is my opinion and you are advised that a board of township trustees under the provisions of Section 505.10, Revised Code, has the right to sell real estate belonging to the township, at public auction, without approval of the voters when by resolution it finds that it does not need the same; and the board has the right to reject all bids for the same if notice to that effect is stated in the required advertisement or other information made available to bidders.

Respectfully,
MARK McELROY
Attorney General