

to be specified in an advertisement for the purchase of an automobile by competitive bidding. Without undertaking to set forth the specifications that were used therein, the court concluded that such specifications were so drawn "that no known make of automobile, except the Hudson, came within the city requirements," and that therefore every other machine was disqualified. In that case, however, there was much more latitude given than in the case you present.

In the case of *Mog vs. The City of Cleveland, et al.*, 18 O. N. P. (N. S.) 49, decided by the Court of Common Pleas of Cuyahoga County, June 11, 1915, it was held, as disclosed by the third branch of the headnote:

"Where it is shown by the testimony of the officers having the matter in hand that in their opinion the desired equipment can not be secured through competition, but must be purchased from a particular manufacturer, and it is frankly admitted that the specifications were so drawn as to make it impractical for any other manufacturer to submit a bid, injunction will lie against the acceptance of the proposal of the one manufacturer whose product corresponds with the specifications upon which bids were asked."

Without further discussion, it is my opinion that where township trustees, desiring to purchase a truck for use in connection with the maintenance of township roads, in the specifications of the equipment desired as set forth in its advertisement for bids, describe said truck by name as contradistinguished from mechanical specifications, there is a violation of the principle of competitive bidding required under the provisions of Section 3373 of the General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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739.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS IN  
DELAWARE COUNTY.

COLUMBUS, OHIO, August 14, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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740.

SCHOOL DISTRICTS—RECEIVING MONEY FROM STATE EDUCATIONAL EQUALIZATION FUND FOR PURCHASE OF EQUIPMENT—SUCH SUPPLIES NOT PURCHASABLE THROUGH STATE PURCHASING AGENT.

SYLLABUS:

1. *When a school district is permitted to participate in the state educational equalization fund, payment should be made to the school district of the amount of the*

state fund allotted to it, in money, and when allotments are made to a district for the purpose of purchasing equipment for the district, the purchases should be paid for by the school district officials from moneys in the district treasury. There is no authority for the payment of such bills by the state auditor from the state educational equalization fund.

2. The state purchasing department is limited by law to the making of purchases of supplies, material and equipment for state departments, offices and institutions with certain exceptions. There is no authority for a district board of education to purchase supplies or equipment through the state purchasing department.

COLUMBUS, OHIO, August 14, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“In making our compilations of the requests for equipment in state aid districts for the year 1929-30, we find it amounts to \$568,300. It is probable that approximately \$200,000 of this will be purchased this year.

I am writing for an opinion as to whether this equipment for these state aid districts can be legally purchased through the State Purchasing Agent and the bills paid directly by the State Auditor to the firms awarded the contracts.

We estimate that an economy of at least 20% could be effected if the purchasing could be done on a competitive basis and the concerns assured that they would receive their money on delivery of the equipment.”

The administration of the state educational equalization fund, including its distribution to what is commonly called “state aid districts,” is vested in the Director of Education.

The board of education of any school district may apply to the Director of Education for participation in the state educational equalization fund, said application to be in such form as is prescribed by the Director of Education. After the application is made and the Director of Education determines in accordance with law that participation in the fund should and may be allowed to the district applying, the distribution is to be made in accordance with Section 7596-2, General Code, which reads in part as follows:

“ \* \* \* \* \*

Distribution of \* \* \* any part of the equalization fund appropriated for rehabilitation of school districts, shall be on presentation of needs made through the controlling board by the Director of Education, and the consent of the controlling board shall be required for each item of allotment for such needs. Upon such approval, the Director of Education may draw vouchers on the Auditor of State for the respective amounts.”

There is no authority for the Director of Education to distribute any part of the state educational equalization fund in any manner other than that prescribed by the statute quoted above; that is, by the drawing of warrants on the Auditor of State for the respective items of allotment made to a district, payable to the board of education of the district. The Director of Education is not authorized to make purchases of articles of equipment necessary for the rehabilitation of a school district and turn such articles over to the district. The purchases must be made by the board of education of each district from funds in its treasury.

The Legislature in making provision for the conduct of the public school system of the state divided the state into school districts. The affairs of each district are to be administered by a board of education. Each board of education is constituted a body politic and corporate, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property.

For the proper maintenance of the schools of each district according to law, the board of education of such district is authorized and directed to make such contracts as are necessary and proper, and to purchase such equipment and supplies as may be necessary within the limits of their resources and in accordance with law.

By the terms of Section 5625-33, General Code, no subdivision or taxing unit may make any expenditure of money unless it has been properly appropriated according to law, nor except it be done by a proper warrant drawn against the appropriate fund. Nor may such subdivision or taxing unit make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in the process of collection, to the credit of an appropriate fund, free from any previous encumbrances. Any contract made without such certificate is void and no warrant may be issued in payment of the amount due thereon.

It follows that, if a school district is to be provided with necessary articles of equipment, the purchases must be made by the board of education of the district, and in making any contract for the purchase of such articles it is necessary that the money to meet the contract be in the district treasury and the fiscal officer of the district so certify.

In the making of contracts for the convenience and proper maintenance of the schools under their control, boards of education are not required to let such contracts upon competitive bidding except as provided by Section 7623, General Code. See Opinions of the Attorney General for 1928, pages 1083 and 1570.

In purchasing necessary equipment for the schools, it is of course the duty of boards of education to make the purchases in such a manner as will be for the best interests of the district and of course the purchases should be made as cheaply as possible. There is no authority, however, for the making of purchases by a board of education through the state purchasing department. The state purchasing department, the duties of which are now reposed in the department of finance, has only such powers as are conferred upon it by the statute. Its powers are limited to the purchase of supplies, materials and equipment for state departments, offices and institutions with certain exceptions. See Sections 154-37 and 196-4, et seq.

I am, therefore, of the opinion, in specific answer to your question, that when a school district is permitted to participate in the state educational equalization fund, payment should be made to the school district of the amount of the state fund allotted to it, in money, and, when allotments are made to a school district for the purpose of purchasing equipment for the district, the purchases should be paid for by the school district officials from moneys in the district treasury. There is no authority for the payment of such bills by the State Auditor from the state educational equalization fund. Neither is there any authority for a district board of education to purchase supplies or equipment through the state purchasing department.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*