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TOWNSHIP ROAD MACHINERY AND EQUIPMENT—TOWNSHIP TRUSTEES WITHOUT AUTHORITY IN LAW TO LEASE OR RENT SUCH PROPERTY TEMPORARILY TO PRIVATE INDIVIDUALS.

SYLLABUS:

Township trustees are without authority in law to lease or rent township road machinery and equipment temporarily to private individuals.

Columbus, Ohio, December 27, 1945

Hon. V. F. Rowland, Prosecuting Attorney  
Cadiz, Ohio

Dear Sir:

This will acknowledge receipt of your letter requesting my opinion on the question whether or not township trustees are authorized by Section 3373, General Code, or by any other section, to lease or rent the township's road machinery and equipment to a private individual.

Section 3373, General Code, authorizes the township trustees to proceed either by contract or force account in the maintenance and repair of township roads. After providing the procedure to be adopted in awarding contracts therefor, and for doing the work by force account, the statute also makes provision for the purchase or lease of road machinery and tools. This statute is quite lengthy, and for that reason I am only quoting the portion particularly applicable to your question, as follows:

"Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in constructing, reconstructing, maintaining and repairing roads and culverts within the township. The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. They shall have the power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, or they may authorize the purchase or employment of the same by one of their number or by the township highway superintendent at a price to be fixed by the township trustees. All payments on account of machinery, tools, material, labor and teams shall be made from the township road fund as provided by law. All purchases of materials, machinery, and tools, shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. Where, in compliance with section 3281 of the General Code, the township trustees desire to sell machinery, equipment or tools owned by the township to the person from whom they are to purchase other machinery, equipment, or tools, the trustees may offer, where the amount of the purchase alone involved does not exceed five hundred dollars, to sell said machinery, equipment, or tools and to have the same credited by the vendor against the purchase of the other machinery, equipment or tools. Where the purchase price of the other

machinery, equipment, or tools alone exceeds five hundred dollars, the township trustees may give notice to the competitive bidders of their willingness to accept offers for the purchase of the old machinery, equipment, or tools, said offers to be subtracted from the selling price of the other equipment as bid, in determining the lowest responsible bidder. Notice of willingness of trustees to accept offers for the purchase of the old machinery, equipment, or tools shall be made as a part of the advertisement for bids as hereinbefore provided. \* \* \*.”

In my opinion the purpose of this statute, so far as it relates to the leasing of road machinery and tools, is to enable the trustees to lease such property for the use of the township, and not for the purpose of enabling the trustees to lease the township's machinery and tools to others for private use. This view is confirmed by the later provision in the statute, that “All payments on account of machinery, tools, material, labor and teams shall be made from the township road fund as provided by law.”

A somewhat similar question was the subject of an opinion rendered by one of my predecessors, reported in *Opinions of the Attorney General* for 1931, page 626. While the conclusion was reached in that opinion that township trustees, by reason of the road laws which authorize township trustees and county commissioners to cooperate in the maintenance and repair of public roads, may legally lease township road machinery to the county for road purposes, it was in effect stated that the authority to lease such road machinery to private individuals does not necessarily follow. I quote from the opinion as follows:

“I find no express authority for township trustees to rent equipment owned by the township; however, in view of the fact that such township may cooperate with the county by paying part of the cost of the construction or improvement of a road, the question is presented as to whether or not the leasing of equipment to the county is within the implied power of such trustees. \* \* \* If the question were whether this equipment could be rented to a private individual, of course, another problem would be presented. However, in the case you present, the arrangement furthers a common purpose which such subdivision may jointly accomplish.

While the question is not free from doubt, I am inclined to the view that the township trustees may legally lease road machinery to the county surveyor when the county commissioners have authorized him to improve a county road by force account under the provisions of Section 7198, General Code, pro-

viding such machinery is not needed by the township during the term of the lease.”

It will be noted that Section 3281, General Code, is now referred to in that portion of Section 3373 which I have quoted above. That was not the case when the 1931 opinion of the Attorney General, just referred to, was rendered. Section 3281 is the statute which authorizes township trustees to sell and convey property which the township does not need, but does not in express terms authorize the trustees to lease township property to others. This statute reads as follows:

“The trustees may accept on behalf of the township, the donation by bequest, devise or deed of gift, or otherwise, of any property, real or personal, for any township use. When the township has property which the trustees by resolution find, it does not need, the trustees may sell and convey same. Such sale must be by public auction and upon notice thereof published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of said publications to be at least five days before date of sale. Provided, however, that where the township has machinery, equipment, or tools used for the construction, reconstruction, maintenance and repair of roads which the trustees find by resolution, it does not need, the trustees may sell said machinery, equipment, or tools to the person from whom they purchase other machinery, equipment, or tools in accordance with Section 3373 of the General Code. When a township owns and has title to real property situated within the corporate limits of a municipality in that township, the trustees of such township may by resolution duly passed, authorize the transfer and conveyance of such real property to the municipality for municipal purposes, upon such terms and conditions as are agreed to between the township trustees and the legislative body of such municipality.”

While the above section refers to personal property which the township does not need, as well as to real property, it will be noted, however, that the authority granted thereunder is limited to the sale of said property.

The law is well settled in this state that township trustees possess only such powers as are expressly conferred upon them by statute, or are implied therefrom. 39 O. Jur., page 306.

Furthermore, Section 3373, General Code, which authorizes township trustees to purchase or lease road machinery and tools, contemplates that such property is to be acquired and used for public road work within

the township. It would seem, therefore, that as long as there are roads in the township which the trustees are required to maintain and repair, such property must be kept on hand at all times to be used for that purpose as occasion may require, and that it is only in cases where such property ceases to be needed for such purposes, or is to be used as a credit when purchasing new property, that the trustees may exercise the power of sale conferred upon them by Section 3281.

It is, therefore, my opinion that township trustees are without authority in law to lease or rent township road machinery and equipment temporarily to private individuals.

Respectfully,

HUGH S. JENKINS

Attorney General