

2064.

BOARD OF TOWNSHIP TRUSTEES—MAY NOT ACQUIRE MATERIAL BY FORCE ACCOUNT TO CONSTRUCT OR RESURFACE HIGHWAYS.

SYLLABUS:

Boards of township trustees may not acquire material to be used in the construction or resurfacing of highways by force account.

Columbus, Ohio, March 23, 1940.

Hon. Ward C. Cross, Prosecuting Attorney,
Jefferson, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads:

“Under the rules prescribed by the Federal Government with reference to WPA projects, it is necessary that all projects in the County, particularly with reference to townships, must be sponsored by the County Commissioners.

In other words, all WPA projects in the townships are released through the County Commissioners, and a large number of projects are being so sponsored by our County Commissioners at the present time for various townships in the County, and practically all of these projects involve the construction of new work with reference to highway construction on a force account basis, and are being constructed on the basis of the township's furnishing the material and the Government furnishing the labor, and it is essential to the various townships that this work be carried forward on this basis; otherwise, WPA programs in our County would be at a standstill to a large extent.”

In my Opinion No. 1545, Opinions, Attorney General, 1939, page 2280, referred to in your request, I ruled, as stated in the syllabus, that:

“1. Boards of township trustees are granted no authority to construct or resurface a township highway by force account, Section 3373, General Code, grants authority only to repair or maintain a township highway as therein prescribed.

2. A board of township trustees has no authority to make a purchase of highway materials at a cost in excess of \$500.00, without competitive bidding.”

In the rendition of such opinion I cited and concurred in the opinions of two of my predecessors in office (Opinions of the Attorney General, 1919, Vol. II, 1281, and Opinions of the Attorney General, 1927, Vol. IV, 2466), wherein they had ruled that the provisions of Section 3373, General Code, which authorize boards of township trustees to perform certain tasks having to do with the maintenance and repair of township highways by force account under the circumstances specified in such statute, have no applicability to the construction, reconstruction, resurfacing or improvement of roads. The authority for the construction, reconstruction, resurfacing or improvement of such highways is specifically granted in Section 3298-1, General Code, which reads in part as follows:

“The board of trustees of any township shall have power, as hereinafter provided, to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction.”

Sections 3298-15f and 3298-15g, General Code, provide the manner in which such construction, resurfacing, etc., may be done by the board of township trustees. Such sections read:

Sec. 3298-15f.

“After the trustees have decided to proceed with said improvement, they shall advertise for bids once not later than two weeks prior to the date fixed for the letting of contracts in a newspaper published in the county and of general circulation within such township, if there be any such paper published in the county, but if there be no such paper published in the county then in a newspaper having general circulation in said township. Such notice shall state that copies of the surveys, plans, profiles, cross-sections estimates and specifications for such improvement are on file with the township trustees, and the time within which bids will be received. The township trustees may let the work as a whole or in convenient

sections as they may determine. They shall award the contract to the lowest and best bidder. The contract shall be let upon the basis of lump sum bids, unless the trustees order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis."

Sec. 3298-15g.

"No contract for any improvement shall be awarded at a greater sum than the estimated cost thereof. The bids received shall be opened at the time stated in the notice. If no bids are made within the estimate, the township trustees shall either re-advertise at the original estimate, or amend the estimate and proceed to advertise at the amended estimate. The township trustees shall have the right to reject all bids."

As I pointed out in such Opinion No. 1545, boards of township trustees are creatures of statute and, as such, have such powers and such only as have been granted to them by the language of the statutes which create their offices. If the legislature grants a power or authority to perform an act in a manner specified in the statute granting the authority or power, it may be done in no other manner. The grant of power is likewise the limitation of the power. (See cases cited in Opinion No. 1545.)

I stated in such opinion that "I am unable to find any statute granting authority to a board of township trustees acting alone, to construct, reconstruct, resurface or improve a township highway except by means of a contract entered into by competitive bidding." I have examined the provisions of statute authorizing several townships to join in the improvement of inter-township highways (Sections 3298-15a, et seq., General Code), as well as those of Section 3298-53a, General Code, which authorize the townships to join with the county commissioners in the construction of a highway. I am unable to find in those sections any authority for the acquisition of material to be used in the construction of resurfacing of roads by force account. Since my subsequent research fails to disclose any statutory provision authorizing the acquisition of road materials to be used in the construction or resurfacing of highways, I must affirm my former ruling.

Specifically answering your inquiry, it is my opinion that boards of township trustees may not acquire material to be used in the construction or resurfacing of highways by force account.

Respectfully,

THOMAS J. HERBERT,
Attorney General.