

OPINION NO. 2000-019**Syllabus:**

1. A board of township trustees must comply with competitive bidding requirements as provided in R.C. 5549.21 and R.C. 5575.01 when it purchases road work equipment, but not when it leases road work equipment.
2. A board of township trustees does not have authority to acquire road work equipment by means of a lease with option to purchase.

To: Lucien C. Young, III, Noble County Prosecuting Attorney, Caldwell, Ohio
By: Betty D. Montgomery, Attorney General, March 28, 2000

We have received your request for an opinion on the question whether competitive bidding is necessary if a board of township trustees acquires a tractor for road work purposes from a private company for a total amount in excess of thirty thousand dollars under a lease with option to purchase.¹ The contractual arrangement provides for rental payments and gives the township the option to purchase the tractor on terms set forth in the contract.² You are concerned about compliance with the competitive bidding procedures that apply to purchases of road work equipment.

In order to address your question, we must first consider the authority of a board of township trustees to acquire equipment for road work purposes. A board of township trustees is created pursuant to provisions of statute and constitution, *see* Ohio Const. art. X, §§ 1 and 2; R.C. Chapter 505, and it has only such powers as it is granted by law, either expressly or by implication. *See Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); 1996 Op. Att'y Gen. No. 96-048.

As noted in your letter, R.C. 5549.21 authorizes a board of township trustees to acquire equipment for road work purposes by purchase or lease. Subject to exceptions for emergencies (R.C. 505.08), contracts with public bodies (R.C. 505.101), and acquisitions made through the Department of Transportation (R.C. 5513.01(B)), the statute requires that "*all purchases of materials, machinery, and tools shall, where the amount involved exceeds*

¹We are informed that the township in question has not adopted the limited home rule government form of township government under R.C. Chapter 504. Accordingly, this opinion does not address the powers of a township acting under that chapter.

²The formal opinions process cannot be used to determine the validity or effect of particular contractual provisions. *See, e.g.*, 1996 Op. Att'y Gen. No. 96-051, at 2-192; 1983 Op. Att'y Gen. No. 83-087, at 2-342 (the Attorney General is "without authority to render an opinion interpreting a particular agreement or contract").

fifteen thousand dollars, be made from the lowest responsible bidder after advertisement, as provided in section 5575.01 of the Revised Code." R.C. 5549.21 (emphasis added).³

By its terms, the competitive bidding requirement of R.C. 5549.21 applies to "purchases" and not to "leases." It appears, therefore, that although R.C. 5549.21 imposes a competitive bidding requirement upon the purchase of road work equipment by a board of township trustees, it does not impose such a requirement upon the lease of road work equipment. *See generally* 1950 Op. Att'y Gen. No. 1535, p. 136, at 137 ("in the absence of a constitutional or statutory provision, competitive bidding is not an essential prerequisite to the validity of contracts ... entered into by public bodies"). Thus, a board of township trustees must comply with competitive bidding requirements as provided in R.C. 5549.21 and R.C. 5575.01 when it purchases road work equipment, but not when it leases road work equipment.

In response to your specific question, it is necessary to address the nature of a lease with option to purchase. Such an arrangement is not included within either the term "lease" or the term "purchase." Rather, it is a different type of financial transaction that commonly constitutes a form of purchase by installment payments. *See, e.g., State ex rel. Celebrezze v. Tele-Communications, Inc.*, 62 Ohio Misc. 2d 405, 415, 601 N.E.2d 234, 240 (Ct. Cl. 1990) ("[i]nclusion of an option to purchase, especially at a nominal price, will usually tip the balance of analysis toward a conclusion that the document is an installment sale"). Public bodies are not permitted to purchase property by installment payments without clear statutory authority. Because of the nature of an installment purchase, such an arrangement may raise questions concerning competitive bidding requirements, debt limitations, spending restrictions, or lending credit prohibitions. *See, e.g.,* Ohio Const. art. VIII, § 6; Ohio Const. art. XII, § 11; R.C. 5705.41; 1997 Op. Att'y Gen. No. 97-006; 1984 Op. Att'y Gen. No. 84-050; 1939 Op. Att'y Gen. No. 1267, vol. III, p. 1867.

Where the General Assembly has intended that public entities be permitted to enter into leases with option to purchase, it has expressly so stated. *See, e.g.,* R.C. 306.35(J) (authorizing regional transit authority to acquire property by lease with option to purchase); R.C. 307.02 (authorizing board of county commissioners to enter into lease with option to purchase for county facilities); R.C. 511.23(B) (authorizing board of park commissioners of township park district to acquire lands and materials by lease with option to purchase); R.C. 3313.37(B)(1) (authorizing board of education to acquire land by lease with option to purchase); R.C. 3345.11 (authorizing state universities and colleges to acquire auxiliary

³R.C. 5575.01 authorizes a board of township trustees to proceed with the maintenance and repair of roads either by contract or by force account. With respect to advertising for competitive bids, that statute states:

Except as otherwise provided in [R.C. 505.08 and 505.101], when the board proceeds by contract the contract shall, if the amount involved exceeds fifteen thousand dollars, be let by the board to the lowest responsible bidder after advertisement for bids once, not later than two weeks prior to the date fixed for the letting of such contract, in a newspaper published in the county and of general circulation within the township, but if there is no such paper published in the county, then in one having general circulation in the township. If the amount involved is fifteen thousand dollars or less the contract may be let without competitive bidding.

R.C. 5575.01; *see also* R.C. 505.10.

facilities or education facilities by lease with option to purchase). Where no express authority to enter into a lease with option to purchase is granted, such authority cannot be found in a general grant of authority to purchase or lease. *See generally* 1996 Op. Att’y Gen. No. 96-048, at 2-183 (“[u]nless a power has been unambiguously conferred upon a board of township trustees by the General Assembly, one must conclude that the board does not possess and may not exercise that power”); 1986 Op. Att’y Gen. No. 86-031; 1984 Op. Att’y Gen. No. 84-050.

It is relevant to your question that, at one time, R.C. 5549.02(C) expressly authorized boards of township trustees to “enter into leases which include an option to purchase machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads,” and set forth certain payment requirements. 1985-1986 Ohio Laws, Part II, 3672, 4148 (Sub. H.B. 428, eff. Dec. 23, 1986). That grant of authority was recently deleted by legislation that also deleted from R.C. 5549.02(A) language authorizing a township to purchase road equipment by installment payments. *See* Am. Sub. H.B. 187, 123rd Gen. A. (1999) (eff. Sept. 20, 1999).⁴

Neither R.C. 5549.21 nor any other statute of which we are aware currently grants a board of township trustees the authority to acquire road work equipment by means of a lease with option to purchase. We must conclude, accordingly, that a board of township trustees does not have authority to acquire road work equipment in that manner.

Therefore, it is my opinion, and you are advised as follows:

1. A board of township trustees must comply with competitive bidding requirements as provided in R.C. 5549.21 and R.C. 5575.01 when it purchases road work equipment, but not when it leases road work equipment.
2. A board of township trustees does not have authority to acquire road work equipment by means of a lease with option to purchase.

⁴The deletions were accompanied by the enactment of R.C. 5549.021, which authorizes a board of township trustees to issue bonds under R.C. Chapter 133 to finance the purchase of machinery, tools, trucks, and other equipment for road work purposes, and by the amendment of R.C. 505.262, which authorizes a township to issue securities to finance “the purchase of equipment, buildings, and sites, or ... the construction of buildings, for any lawful township purpose.” Am. Sub. H.B. 187, 123rd Gen. A. (1999) (eff. Sept. 20, 1999).