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1. MUNICIPALITY—LEGAL FOR CHARTER OR NON-CHARTER MUNICIPALITY TO SELL ITS REAL ESTATE IN A MANNER OTHER THAN PROVIDED IN SECTION 3699 G. C.
2. VILLAGE COUNCIL—MAY ACCEPT LOWEST OF THREE BIDS TO BUY REAL ESTATE IF NOT CONTRARY TO VILLAGE ORDINANCES.
3. WHERE VILLAGE ORDINANCE PROVIDES ITS REAL ESTATE MAY BE SOLD TO HIGHEST BIDDER—VILLAGE MAY NOT AUTHORIZE SALE TO LOWEST BIDDER.
4. BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—SHALL MAKE FINDINGS AND FILE REPORTS UNDER SECTION 286 G. C.

SYLLABUS:

1. It is legal for either a charter or noncharter municipality to sell its real estate in a manner other than that provided in Section 3699, General Code.
2. A village council may accept the lowest of three bids to buy its real estate if it is not contrary to the village ordinances.
3. Where the ordinance of a village provides that its real estate may be sold to the highest bidder, village may not authorize sale of the same to the lowest bidder.
4. The Bureau of Inspection and Supervision of Public Offices shall make its findings and file its reports according to Section 286, General Code.

Columbus, Ohio, February 13, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The current examination of the village of Fairfield, a non-charter village, disclosed the sale of Lots No. 81, 82, 83 and 84 to the lowest bidder after having advertised the same for sale under authority of Section 3699, General Code.

“The following information submitted by our examiner was secured from the records of Council pertaining to said transaction:

“SALE OF LOTS No. 83 and 84 TO FAIRFIELD FIRE DEPARTMENT Section 3699, General Code provides as follows: “Sec. 3699 (Lease or sale of real estate). No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all the members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having supervision or management and only with the highest bidder after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and re-advertise until such real estate is sold or leased.”

“Ordinance No. 356 was adopted by the Council of Fairfield, Ohio, on June 9, 1948 authorizing the sale of the South 12 feet of Lot No. 81, all of Lot No. 82, all of lots Nos. 83 and 84 not needed for municipal purposes. Section II of the above ordinance provides as follows: “That the President of Council, Mayor and Clerk be and hereby are authorized to sell the said real estate to the highest bidder according to law upon the following terms, to-wit: Cash on the delivery of a warranty deed and the Mayor, Clerk and President of Council are hereby authorized to convey said real estate by deed to the highest bidder therefor according to law.”

LEGAL NOTICE OF SALE

The notice of sale of lots was published in The Osborn-Fairfield Herald, a newspaper of general circulation in the village of Fairfield, Ohio for five consecutive weeks on and after July 3, 1948.

“The notice of sale provides that each bidder shall accompany his bid with a certified check or cash for ten percent of the bid and the deposit of the bidder will be returned within ten days from the date of the bid.

“The notice of sale provides that bids will be opened and considered by the Council in open session on August 11, 1948.

“Bids were opened on August 6, 1948 and were as follows:

Fairfield Fire Co., Inc., for Lots Nos. 83 and 84 \$200.00
—Cash Deposit \$20.00

Landers Sales and Service Co., for Lots Nos. 83 and 84
\$600.00—Cash Deposit \$60.00

King Inc., for Lots No. 83 and 84, \$300.00—Cash Deposit \$30.00

King Inc., for Lots—12 ft. of Lot No. 81 and all of Lot No. 82, \$200.00—Cash Deposit \$20.00.’

“The Council met in regular session on August 11, 1948 for the consideration of bids for the sale of lots and other business. The minutes of the meeting of August 11, 1948 shows the following action on the part of Council :

“ ‘Moved by Austin Lipp, seconded by Daniel Hoak that the Council accept the bid of the Fairfield Fire Co., Inc., for Lots Nos. 83 and 84 and the bid of King Inc., for the south 12 feet of Lot No. 81 and all of Lot No. 82 as received by the council at 12 o’clock noon August 6, 1948. Roll call Yea, Daniel Hoak, T. K. King, Austin Lipp and Harry A. Thurber. Motion carried.’

“A communication attached to the minutes of the Council, dated August 12, 1948 is as follows :

“ ‘Village Clerk
Fairfield, Ohio

Madam :

This is to notify the Village of Fairfield that King Inc., is withdrawing their bid on the following lots :

All of Lot No. 83 and all of Lot No. 84—\$300.00

This bid is being withdrawn in favor of the Fairfield Fire Co.

Yours truly,
King Inc.,
J. W. King, Sec.’

(Note)

“This bid was withdrawn after the bids had been opened and the contract of sale had been awarded by the council on August 11, 1948.

“Attached to the bid of the Landers Sales and Service is a note by the Village Clerk and signed by her as follows :

“ ‘August 12, 1948, Beulah T. Sanders came and demanded her bid bond of \$60.00 on Lots Nos. 83 and 84 which accompanied her bid received on August 6th, 1948 at 12 Noon by the Council.

Signed F. O. M. Clerk.’

“The bids for the above mentioned lots were opened on August 6, 1948 and the Council, in regular session on August

11, 1948, by motion and second as shown by the Council minutes, accepted the bid of the Fairfield Fire Company, Inc., and a contract of sale was awarded to said Fire Company and a warranty deed was delivered to the Fairfield Fire Company, Inc.

“It will be noted that after the bids had been opened and the bid of the Fairfield Fire Company, Inc. had been accepted, King Inc. withdrew its bid and the Landers Sales and Service demanded and received its bid bond.

“RECONSIDERATION OF BIDS FOR SALE OF LOTS TO FAIRFIELD FIRE COMPANY INC. CALLED MEETING OF COUNCIL BY MAYOR D. S. LYNN FOR AUGUST 13, 1948: Meeting of August 13, 1948: The following is taken from the minutes:

“‘Moved by T. K. King, seconded by Daniel Hoak that council at the suggestion of the Mayor, reconsider bids on lots 83 and 84 which were received on August 6, 1948.’

“‘Moved by Austin Lipp, seconded by W. E. Sipe that same be tabled and no action taken on the bids until the Village Solicitor gives his opinion. Carried: Yea, Daniel Hoak, T. K. King, Austin Lipp, W. E. Sipe and Harry A. Thurber.’

“Meeting of August 25, 1948: The following was taken from the minutes:

“‘The Mayor presented a communication and opinion from Mr. J. A. Finney, Village Solicitor, in regard to bids on Lots No. 83 and 84 received by the Village Council at 12 o'clock Noon August 6, 1948. Moved by Harry A. Thurber, seconded by W. E. Sipe that action on these bids be tabled until next meeting. Carried.’

“Meeting of September 8, 1948: The following was taken from the minutes:

“‘Moved by W. E. Sipe, seconded by T. K. King that the bids on Lots 83 and 84 be removed from table for reconsideration by council. Carried.’

“‘It was moved by W. E. Sipe, seconded by Harry A. Thurber that whereas, the award of the sale of Lots numbers eighty-three and eighty-four has been by resolution voted a reconsideration of the action of council awarding the sale, and whereas, since said action, the two highest bidders have withdrawn their bids and there is now before council but one bid, that of the Fairfield Fire Company, Inc., in the sum of \$200.00 and the same being the highest bid, it is therefore moved that the same be and the same is hereby accepted, and that sale of said lots Numbers eighty-three and

eighty-four (83 and 84) be and hereby is awarded to said Fairfield Fire Company, Inc.

Roll Call, Yea, Daniel Hoak, T. K. King, Austin Lipp, W. E. Sipe, and Harry Thurber. Motion Carried.'

"The Village Solicitor was requested to advise the council on the proper procedure to be followed in making said sale. A copy of the solicitor's opinion is enclosed for your information.

"We are unable to find any authority for the procedure followed in the aforesaid case by the village of Fairfield in selling real estate to the lowest bidder contrary to provisions of Section 3699, G. C. The correct answer to the questions involved is necessary in order to complete the examination of village records.

"Therefore, we respectfully request that you examine the foregoing, and the enclosed correspondence, and give us your formal opinion in answer to the following questions:

"1. Is it legal for either a charter or non-charter municipality to sell real estate in any other manner than that provided in Section 3699 of the General Code?

"2. Where a non-charter village has advertised real estate for sale and receives three bids to purchase the same, may such village council legally authorize the sale of such real estate to the lowest bidder?

"3. Under the circumstances described herein, was the sale of real estate by the village of Fairfield to the Fairfield Fire Company, Inc., legal?

"4. If the answer to question number three is in the negative, how shall findings be made by the Bureau of Inspection and Supervision of Public Offices to recover said real estate for the village and adjust the matter legally?

"Your early consideration of and reply to the foregoing questions will be appreciated."

Section 3699, General Code, states as follows:

"No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or

officer may reject any or all bids and readvertise until all such real estate is sold or leased.”

Section 3 of Article XVIII of the Constitution of Ohio reads as follows :

“Section 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

It seems quite clear that the sale of real estate by a municipal corporation is an exercise of the power of local self-government.

In Opinion No. 5558, Opinions of the Attorney General for 1942, the question of a municipality's power to sell personal property without compliance with the statutes on the subject was raised. It was held there that a chartered municipality could sell its personal property without complying with the statutes because of the local self-government provision of the Constitution. The problem of a non-charter municipality's power to sell its personal property was also considered in this opinion. It held in effect that the local self-government provision applied to both charter and non-charter municipalities due to the fact that Article XVIII, Section 3, the local self-government provision, was not conditioned upon Article XVIII, Section 7, the municipal charter provision. See the case of the Village of Perrysburg et al. v. Ridgeway, 108 O. S. 245. The reasoning and result reached in the above opinion are approved and adopted in the present opinion. In the case of State ex rel. Arey v. Sherrill, City Manager, 142 O. S. 574, branch one of the syllabus states :

“1. Section 3, Article XVIII of the Constitution, which grants to municipalities authority to exercise all powers of local self-government, including the power to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws, has application to every city and village regardless of whether it has adopted a charter form of government.”

Thus, it can be seen that the local self-government provision of the Constitution applies to both cities and villages, chartered and non-chartered. The constitutional provision, Article XIII, Section 6, which allows the State to limit a municipality's power to incur debt is not involved in this question as there is no debt present. Therefore, I believe

a charter municipality can sell its real estate in a manner other than is provided by Section 3699, General Code, if not prohibited by its charter. I further believe a non-charter municipality can sell real estate in a manner other than provided in Section 3699, General Code, if not prohibited by city ordinance.

The answer to your second question must be in the affirmative unless the village had previously adopted contrary rules by ordinance.

Under Section II of Ordinance No. 356, The President of Council, Mayor and Clerk were authorized to sell real estate to the "highest bidder." Your request reveals that on August 11, 1948, the lowest bid was accepted and a contract of sale was awarded to the lowest bidder and a warranty deed was delivered to them. After this lowest bid was accepted, the other two bidders withdrew their bids. The fact remains, however, that at the time of acceptance there were two higher bids. The acceptance of the lowest bid was directly contrary to the ordinance which required sale to the highest bidder, and therefore contrary to law.

Section 284, General Code, states as follows:

"The bureau of inspection and supervision of public offices, shall examine each public office. Such examination of township, village and school district offices shall be made at least once in every two years and all other examinations shall be made at least once a year, except that the offices of justices of the peace shall be examined at such times as the bureau shall determine. On examination, inquiry shall be made into the methods, accuracy and legality of the accounts, records, files and reports of the office, whether the laws, ordinances and orders pertaining to the office have been observed, and whether the requirements of the bureau have been complied with."

Section 286, General Code, requires that the inspection officers of the Bureau shall file their reports with the Bureau of Inspection and Supervision of Public Offices. In case the report relates to disposition of public property belonging to a village, a report shall also be filed with the mayor of the village. Section 286, General Code, authorizes the mayor to employ legal counsel to institute civil action for the recovery of the property. Therefore, it is my opinion that the recovery of the real estate is in the hands of the mayor of the village.

Respectfully,

HERBERT S. DUFFY,
Attorney General.