

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3385 was overruled in part by
1963 Op. Att'y Gen. No. 63-3533.

3385

ISSUING NOTES BY TOWNSHIP TRUSTEES FOR THE PURCHASE OF FIRE FIGHTING EQUIPMENT AND THE HOUSING OF THE EQUIPMENT—§505.37, R.C.

SYLLABUS:

1. Notes issued under Section 505.37, Revised Code, by a board of township trustees, in the purchase of fire fighting equipment, buildings, and sites for buildings, must be offered for sale on the open market or given to the vender if no sale is made, and the board may not deal directly with a bank, to the exclusion of others, in the issuance of such notes.

2. A board of township trustees may not borrow money and issue a note therefor under Section 505.37 where the money is to be used to construct a building to house fire equipment, as the issuance of such notes is limited to cases where there is a "purchase" made from a "vendor"; and the construction of a building would necessarily entail some costs not involving purchases, and purchases involving more than one vendor.

Columbus, Ohio, October 30, 1962

Hon. Walter P. Davidson, Prosecuting Attorney
Washington County, Marietta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"One of our board of township trustees desires to build a building to house its fire equipment. The estimated cost will be

\$30,000.00. They will have sufficient money to pay \$12,000.00 in cash but intend to borrow the balance from a bank and issue an note for the balance. Payment of the note will be provided for by a levy inside the ten mill limitation. There will be no real estate mortgage.

“Is this permissible in view of your informal opinion No. 470 dated May 11, 1962 wherein you ruled that the notes could not be issued to a financial institution because it was not the seller.”

Authority of a board of township trustees to build a building to house its fire equipment is found in Section 505.37, Revised Code, which reads, in part, as follows:

“* * * Such board shall provide for the care and maintenance of fire equipment, and for such purposes, may purchase, lease, or construct and maintain necessary buildings * * *.

* * * * * * * *

“The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings, and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or legislative authority and attested by the signature of the township or municipal clerk, covering such deferred payments and payable at the times provided, which notes bear interest not to exceed six per cent per annum, and shall not be subject to sections 133.01 to 133.65, inclusive, of the Revised Code. The legislation authorizing the issuance of such notes shall provide for levying and collecting annually by taxation amounts sufficient to pay for the interest on and principal of such notes. One fourth of such purchase price shall be paid at time of purchase, and the remainder of the purchase price shall be covered by notes maturing in two, three, and four years respectively. *Such notes shall be offered for sale on the open market or given to the vendor if no sale is made.*

* * * * * * * *

(Emphasis added)

I assume for the purposes of this opinion that you are concerned with whether the procedure of Section 505.37, *supra*, may be utilized in the construction of the building in question, and I will therefore confine my discussion to the issuance of notes under that section.

Section 505.37, *supra*, allows a board of township trustees to issue notes of the township to cover deferred payments due on purchases allowed under the section. One fourth of the purchase price must be paid at the time of purchase, and the remainder of the purchase price is covered by notes maturing in two, three, and four years respectively. Such notes are to be offered on the open market and, if no sale is made, are to be given to the vendor.

Thus, if the township were to make a purchase costing \$30,000, the section requires a down payment of \$7,500, with notes to be issued for the \$22,500 balance. While a bank might be the best bidder on the open market for the notes, the township could not deal directly with the bank to the exclusion of others; and the bank would obviously never be the vendor.

Also to consider in the instant case is the fact that the township wishes to *construct* a building, not buy one. Section 505.37, *supra*, authorizes the construction of a building, but the provisions as to the deferred payments and issuance of notes refer to "the purchase price" and "the vendor" and do not appear to be applicable in the construction of a building. In the construction of a building, a site would be purchased, but the hiring of a contractor, or employees, could hardly be termed a "purchase"; and if the township were to purchase materials for the building such purchases would be made from various vendors, not one.

In view of the foregoing, therefore, I am of the opinion that the township in the instant case may not issue notes to the bank in question under the procedure of Section 505.37, *supra*.

My above conclusion is dispositive of your question; however, before closing, I deem it advisable to correct a statement made in Informal Opinion No. 470, referred to in your request for opinion.

Informal Opinion No. 470 was concerned, in part, with whether a township could purchase fire equipment on a time payment basis, the cost of the equipment to be borrowed from a bank with the bank holding a mortgage on the equipment. In that opinion, it was stated that such a procedure was not permissible under Section 505.37, *supra*, since the bank would not be the seller and since there is no authority for the township to mortgage the equipment which it purchases.

As discussed earlier herein, notes issued under Section 505.37 are to be first offered on the open market for sale and, if not sold, shall be given

to the vendor. Thus, the vendor is not required to take the notes unless a sale is not made on the open market, and it is possible that a bank which is not the vendor might purchase the notes. Accordingly, the statement in Informal Opinion No. 470 that the notes must be issued to the seller is not correct; although I see no reason to change the conclusion of that opinion in view of the fact that it did not contemplate a sale on the open market and it involved the bank taking a mortgage on the equipment, for which there is no authority in law.

In conclusion, it is my opinion and you are advised:

1. Notes issued under Section 505.37, Revised Code, by a board of township trustees, in the purchase of fire fighting equipment, buildings, and sites for buildings, must be offered for sale on the open market or given to the vendor if no sale is made, and the board may not deal directly with a bank, to the exclusion of others, in the issuance of such notes.

2. A board of township trustees may not borrow money and issue a note therefor under Section 505.37 where the money is to be used to construct a building to house fire equipment, as the issuance of such notes is limited to cases where there is a "purchase" made from a "vendor"; and the construction of a building would necessarily entail some costs not involving purchases, and purchases involving more than one vendor.

Respectfully,
MARK McELROY
Attorney General