

In the case of *Peter vs. Parkinson*, 83 O. S., 36, a judgment was defined as "the judicial determination or sentence of a court rendered in a cause within its jurisdiction". It clearly appears from the above that since such determination by the referee is in pursuance of law and is dispositive of the issue adjudicated, such determination is tantamount to and constitutes a judgment in the purview of Sections 6298-1 and 11582, *supra*.

Section 6298-1, *supra*, further requires that the judgment be rendered by a "court of record within this state". The United States District courts in the several states are made courts of bankruptcy by the terms of the Bankruptcy Act. Furthermore, the Bankruptcy Act provides for the reference of certain matters to referees, including the authority to liquidate negligence claims. Consequently, the determination or finding of a referee would be the determination and judgment of the court. There can be no doubt but that such courts are courts of record. In Vol. 7 C. J. at page 26, it is stated:

"The various courts of bankruptcy are courts of record
* * *."

It will be further noted that Section 6298-1, *supra*, merely requires that the judgment be rendered by a court of record "within this state". It would appear, therefore, that it is immaterial whether the judgment be rendered by a federal court or a state court so long as the situs of the court is in Ohio.

Therefore, in specific answer to your inquiry, I am of the opinion that the liquidation of a claim by a referee in bankruptcy in this state constitutes a judgment of a court of record within this state within the purview of Section 6298-1 of the General Code of Ohio.

Respectfully

THOMAS J. HERBERT,
Attorney General.

918.

TOWNSHIP TRUSTEES—CONTRACTS—PURCHASE ROAD MACHINERY OR EQUIPMENT—MUST COMPLY WITH PROVISIONS, SECTIONS 7201, 5625-33, 5625-37, 7201, G. C.—FAILURE TO FILE CERTIFICATE THAT FUNDS APPROPRIATED TO PAY COSTS OR FAILURE TO OBTAIN CONSENT COUNTY COMMISSIONERS—AGREEMENT VOID—FINDINGS FOR RECOVERY.

SYLLABUS:

Where, under authority of Section 7201, General Code, contracts for the purchase of road equipment or machinery are attempted to be

entered into by township trustees, and no compliance is made with the requirements of this section and Sections 5626-33 and 5625-37, General Code, requiring a certification by the proper fiscal officer that funds have been appropriated and are in the treasury or in the process of collection, to pay such part of the purchase price as is to be paid in cash, and the consent to and approval of such purchase and the terms thereof are not obtained from the county commissioners of the county as required by Section 7201, General Code, any such attempted agreement is void, and if township moneys be paid from the township treasury on such void contracts, findings for recovery should be made against the proper officers for all damages or loss sustained by the township in an amount equal to the full amount of such funds paid on or on account of such void agreement.

COLUMBUS, OHIO, July 22, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

DEAR SIRs: I have your letter of recent date requesting my opinion which reads as follows:

“House Bill No. 17, passed by the recent legislature, becomes effective July 18, 1939, and permits township trustees to use gasoline tax funds, distributed to them under the provisions of Section 5541-8, General Code, to purchase road machinery and equipment.

We are informed that since the passage of this bill, a certain manufacturer of road machinery has been selling such equipment to townships in anticipation of receiving payment from the gas tax fund when the law becomes effective.

In a number of cases, it has been reported, these agreements of sale provide for the payment of one-third of the purchase price in cash when the law becomes effective, the balance of such purchase price to be represented by two non-interest bearing notes, one due in one year and one due in two years, the payment of which is anticipated to be made from gas tax funds.

May we respectfully request your opinion upon the following questions:

1. May the balance of the purchase price of road equipment or machinery, if purchased in accordance with Section 7201, General Code, represented by non-interest bearing notes, be paid from the gasoline tax funds distributed under the provisions of Section 5541-8, General Code?

2. Inasmuch as such agreements are being entered into without compliance with Section 5625-33, General Code, requiring the clerk's certificate of available funds, and the consent of

the county commissioners has not been obtained, should such agreements be held to be invalid, and a finding for recovery be made for any money expended from the township treasury by reason of such agreement?"

Section 5541-8, General Code, to which you refer, was amended by the 93rd General Assembly (H. B. No. 17, Eff., 7/18/39) so as to read in part as follows, the amendments being in the third paragraph as indicated:

"When appropriated by the general assembly such highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions:

* * *

* * *

* * *

Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township.

Provided, however, that no part of said funds shall be used for any purchase except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; provided further that * * * such funds * * * *may* be used for the purchase of road machinery or equipment; and, provided further that all such improvement of roads shall be under the supervision and direction of the county *engineer* as provided in section 3298-15k of the General Code; and provided further that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county *engineer*, shall be on file in the office of the township clerk; and provided further that all contracts for material and for work done by contract shall be approved by the county *engineer* before being signed by the township trustees and all disbursements of such funds shall be upon vouchers of the township trustees approved by the county *engineer*. The trustees of any township are hereby authorized at their discretion

to pass a resolution permitting the county commissioners to expend such township's share of said funds, or any portion thereof, for the improvement of such roads within said township as may be designated in said resolution."

Prior to its amendment the proviso above quoted in which the asterisks appear read:

"* * * provided further that no portion of such funds shall be used for the purchase of road machinery or equipment; * * *"

You also refer to Section 7201, General Code, which provides as follows:

"County commissioners and township trustees, in the purchase of machinery, tools, trucks and other equipment for use in constructing, maintaining and repairing roads, shall be authorized to purchase such machinery, tools, trucks and equipment upon the following terms, to wit: not less than one-third of the purchase price thereof shall be paid in cash, and of the remainder not less than one-half shall be paid at any time within one year from the date of purchase and not less than one-half at any time within two years from the date of purchase. Such commissioners or trustees shall be authorized to issue to the purchaser the notes of the county or township, as the case may be, signed by the commissioners or trustees and attested by the signature of the county auditor or township clerk, and covering such deferred payments and payable at the time above provided, which notes may bear interest at not to exceed six per cent per annum and shall not be subject to the provisions of sections 2293-1 to 2293-44, inclusive, of the General Code. In the legislation under which such notes are authorized, the county commissioners or township trustees shall make provision for levying and collecting annually by taxation an amount sufficient to pay the interest, if any, thereon and to provide a sinking fund for the final redemption of such notes at maturity.

The provisions of section 5660 of the General Code shall apply only to such portion of the purchase price of such machinery, tools, trucks or equipment as is to be paid in cash. Notes heretofore issued by and under authority of this section, if they would be valid under the provisions of this act, and all proceedings incident thereto, are hereby ratified and confirmed.

The power herein conferred on township trustees shall be exercised by them only with the consent to and approval of such

purchase and the terms thereof by the county commissioners of the county.”

Sections 2293-1 to 2293-44, inclusive of the General Code, are a part of the Uniform Bond Act, while Section 5660 of the General Code is the outgrowth of what is historically known as the Burns Law. This section was repealed in 1927 (112 v. 391) and replaced by Sections 5625-33, 5625-36 and 5625-37, General Code.

Section 5625-36 provides in substance that no subdivision or taxing unit shall make any appropriation of money except as provided in the act creating the county budget commission; shall make any expenditure of money until it has been appropriated as provided in such act; shall make any expenditure of money except by a proper warrant drawn on the appropriate fund, which will show upon its face the appropriation, in pursuance of which such expenditure is made, or make any contract or give any order involving any expenditure of money without a proper certificate of the fiscal officer of the subdivision.

Section 5625-36 has to do with contracts running beyond the termination of the fiscal year, while Section 5625-37 provides as follows:

“Any officer, employee or other person who issues any order contrary to the provisions of section 33 of this act (G. C. § 5625-33), or who expends or authorizes the expenditure of any public funds, or who authorizes or executes any contract contrary to the provisions of this act (G. C. §§ 5625-1 to 5625-39), unless payments thereon are subsequently ordered as provided in section 33, or expends or authorizes the expenditure of any public funds on any such void contract, obligation or order, unless subsequently approved as provided in such section, or issues a certificate under the provisions thereof, which contains any false statements, shall be liable to the political subdivision for the full amount paid from the funds of such subdivision on any such order, contract or obligation. Such officer, employee or other person shall be jointly and severally liable in person and upon any official bond that he may have given to such subdivision to the extent of any payments of such void claim. The prosecuting attorney of the county or the city solicitor, or other chief law officer of the subdivision, shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the municipality, county or subdivision. In case the prosecuting attorney, city solicitor or other chief law officer of the subdivision fails upon the written request of any tax-payer to institute action for the enforcement of such liability, such taxpayer may institute suit in his own name in behalf of the subdivision.”

You will note that Section 7201, General Code, above quoted, by which township trustees are authorized to purchase machinery, tools, trucks and other equipment upon the installment plan, expressly provides that *in the legislation*, under which notes are authorized to be issued to evidence the deferred payments, "township trustees shall make provision for the levying and collecting annually by taxation an amount sufficient to pay the interest, if any, thereon and to provide a sinking fund for the final redemption of such notes at maturity." It is clear from this provision that the Legislature intended that a sinking fund for the retirement of the notes when due must be established and an annual tax must be levied and collected therefor. This is in keeping with the now well settled policy of this State that taxing subdivisions shall not incur obligations without at the same time making provision for their payment.

It is my opinion that Section 7201 must be construed both as a grant and as a limitation and that no contract can be made thereunder without legislation providing for a sinking fund and the levying and collecting of a tax as in such section provided.

The amendment of Section 5541-8, above indicated, simply authorizes the use of gas tax funds for the purchase of road machinery or equipment. The provisions of Section 7201 were not changed, and since there is no section other than Section 7201, authorizing the purchase of machinery and equipment upon the installment plan, when availing themselves of the power and authority contained in such section, the township trustees may act, and only act, in accordance with the mandate of the Legislature as contained in the section; and this relates to legislation for the levying and collecting of the prescribed tax as well as to obtaining the consent and approval of the county commissioners of the county of any purchase and the terms thereof, made under this section.

It appears that the agreements of purchase referred to in your letter provide for the payment of one-third of the purchase price in cash when the amendment to Section 5541-8 becomes effective, the balance to be paid in two installments, respectively payable in one and two years after such date, all payments, however, to be made from that portion of the gas tax funds appropriated for and divided among the several townships.

In so far as your first question is concerned, it is my opinion that the contracts referred to by you are clearly not valid obligations, because the portion of the gas tax funds to be paid in cash by the township trustees were not in the township treasury or in the process of collection at the time the alleged contracts were attempted to be entered into, and will not be until for some time after the effective date of House Bill No. 17. Obviously since the contracts in question were attempted to be entered into before the effective date of House Bill No. 17, the funds could not be in the treasury, nor in the process of collection in contemplation of law. To comply with the provisions of Sections 7201, 5625-33 and 5625-36, there must be a certificate of the fiscal officer that the funds for the first

installment have been lawfully appropriated for the purpose and are in the treasury or in the process of collection, and contemporaneous provision must be made in the legislation authorizing the purchase for the levying and collecting of taxes to secure the payment of the second and third installments.

In your first question, you ask if the deferred payments on the road machinery and equipment proposed to be purchased, "if purchased in accordance with Section 7201, General Code," may "be paid from the gasoline tax funds distributed under the provisions of Section 5541-8, General Code." From what has been said and for the reasons stated, the proposed purchases referred to in your communication were not entered into in accordance with the provisions of Section 7201 and other pertinent sections of the General Code, and are, therefore, illegal, and agreements providing for such purchases are null and void; and since the contracts in question are void and of no effect, no township funds, including moneys expected to be received by the township trustees under the provisions of Section 5541-8, General Code, as amended may be lawfully expended under such contracts.

Coming now to your second question, the provisions of Section 5625-37 have been so many times considered by the courts of this state and in the opinions of this office that it is deemed unnecessary to do more than refer to certain opinions of my predecessors.

In Opinion No. 2016, O. A. G., 1928, Vol. II, Page 1005, the fourth branch of the syllabus reads as follows:

"Public officers who expend or authorize the expenditure of public funds on void contracts, agreements, obligations or orders contrary to the provisions of Section 5625-33, General Code, are liable to the taxing district whose funds have been so expended for all damages or loss sustained by such taxing subdivision in an amount equal to the full amount of such funds paid on or on account of any such void contract, agreement, obligation or order."

In that opinion the liability of public officers in cases of this kind was discussed at length and your attention is accordingly invited thereto.

In Opinion No. 974, O. A. G., 1933, Vol. II, Page 948, after quoting Section 5625-37, *supra*, the then Attorney General said:

"With respect to matters dealt with in the above statute the responsibility and liability of public officers, employes and other persons in the administration of the law relating to the expenditure of public money, is definitely and clearly set out in language that can not be misunderstood. The responsibility and liability of public officers and employes, as fixed by the statute, is per-

sonal to the officer, employe or other person coming within its terms, and ignorance of the law or action taken upon the advice of someone else, be he the lawfully constituted legal adviser of such officer, employe or other person, or not, does not exonerate him from such responsibility or liability. It will be observed upon a reading of the above statute that the liability therein fixed upon a public officer or employe is not predicated upon knowledge or lack of knowledge of his duties. He is presumed to know his duties and the limitations thereof under the law."

From a reading of these two opinions and authorities therein referred to, I am of the opinion that findings for recovery should be made in accordance with the holding contained in Opinion No. 2016, *supra*, in which opinion I concur.

In view of the foregoing, it is my opinion that, for the reasons stated :

Where under authority of Section 7201, General Code, contracts for the purchase of road equipment or machinery are attempted to be entered into by township trustees, and no compliance is made with the requirements of this section, and Sections 5625-33 and 5625-37, General Code, requiring a certification by the proper fiscal officer that funds have been appropriated and are in the treasury to pay such part of the purchase price as is to be paid in cash, and the consent to and approval of such purchase and the terms thereof is not obtained from the county commissioners of the county as required by Section 7201, General Code, any such attempted agreement is void, and findings for recovery should be made against the proper officers for all damages or loss sustained by the township in an amount equal to the full amount of such funds paid on or on account of such void agreement.

Respectfully

THOMAS J. HERBERT,
Attorney General.

919.

TOWNSHIP—NOT LOCAL RELIEF AREA SEPARATE AND APART FROM COUNTY LOCAL RELIEF AREA—NOT INDEPENDENT—BOARD OF TOWNSHIP TRUSTEES WHEN AGENT OF COUNTY COMMISSIONERS—DUTIES—LIMITATION TO CONTRACT LIABILITIES—COMPENSATION PAID AS PROVIDED BY SECTION 3294 G. C.

SYLLABUS:

1. *A township, even though the board of trustees thereof, has been selected as an agent of the board of county commissioners under authority of House Bill No. 675 of the 93 General Assembly, may not be considered*