

cases. Thus it is concluded, and the view is thought to be supported by unquestionable authority, that a public officer in the discharge of his official duties is not entitled to receive a reward for the performance of the duties which the law imposes upon him. Viewed in the light of a contract, the promise to pay an officer a reward for the discharge of his official duty, has universally been held void and against public policy. See *Gilmore vs. Lewis*, 120, 281, 87 Mass. 352, 23 Mo., 74, 24 Iowa 79, 19 La., Ann. 275.

Relative to your second question as to whether or not the money received by the policemen in the instance is such as the law requires payable into the police pension fund, depends for answer upon whether or not the same may be considered a portion of the fund of "public money" received by the officer by "color of office" under section 286 G. C. or as a reward or funds received in the hands of the police officer under section 4623 G. C. and it is obvious that these facts must be established before specific answer may be rendered your second question.

In the latter portion of your inquiry statement is made that it is contended by the sheriff and his deputy that the payment of the \$2,500.00 was a mere gift or gratuity and was not received as a reward offered or as compensation for the services rendered, and relative thereto it is asked if this was a fact, would it modify the opinion as to the status of the money? It is thought an affirmative answer may be given this question, since it is believed that if the payment of the money in question by the owner of the property to the deputy sheriff may be shown to be a gift or gratuity, as previously pointed out, it would be difficult to construe the same as "public money" in the hands of the officer under color of office as defined in section 286 G. C.

Upon such considerations therefore, it is believed that all the questions contained in your inquiry are intimately associated and depend for answer upon the legal interpretation placed upon the circumstance of the payment of the money by the owner of the property to the deputy sheriff, and whether such payment may be considered in the light of a reward, gratuity, or such as may be considered "public money" in the hands of the officer under the term "color of office" as defined in section 286 G. C. are questions of fact thought to be determinable only from all the circumstances surrounding the transaction. In consequence whereof it obviously follows, that more specific consideration cannot be given the question submitted, until all the material facts relevant to the particular case are fully and definitely established.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3223.

ROAD MACHINERY—WHERE TOWNSHIP TRUSTEES ENTER INTO
 CONTRACT PURPORTING TO LEASE MACHINERY BUT IN REAL-
 ITY CONTRACT OF SALE—SUCH SPECIFIC CONTRACT VOID.

A contract purporting to have been entered into by a road machinery company with township trustees which is in form a lease, but which is in substance and practical operation a contract of sale, in that at the end of the third year of the lease the township trustees have the option of purchasing the machinery for a trivial sum in addition to the three years rental which they already will have paid in yearly installments under the contract, is not authorized by the terms of section

3373 G. C., or otherwise; and such purported contract because of its obvious tendency to destroy the principle of competitive bidding in the purchase of road machinery as required by said section 3373 is void as being contrary to public policy.

COLUMBUS, OHIO, June 16, 1922.

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

GENTLEMEN:—You have made request of this department for its opinion as to the legality of the document which because of its interesting nature is here quoted in full as follows (omitting names):

“This Lease made and entered into this 6th day of May, 1918, by and between The _____ Manufacturing Company, Parties of the First Part, and _____, _____ and _____, as Township Trustees of _____ Township, _____ County, Ohio, Parties of the Second Part, Witnesseth:

That Parties of the First Part hereby agree to lease to Parties of the Second Part one double cylinder road roller with scarifier and sprinkling outfit complete, also front trucks, until the 1st day of January, 1919, the same to be shipped to _____, Ohio, on or before _____, 191-, and to furnish a competent man to help unload and start said roller: For which the Parties of the Second Part agree to pay as a consideration for said lease the sum of eleven hundred ninety-two dollars (\$1,192.00).

Parties of the Second Part further agree to pay freight on said roller and at their first regular meeting in June, 1918, are to issue their warrant for the rental price, said warrant to be made payable on the 1st day of September, 1918.

It is further agreed by and between the parties to this lease, that Parties of the Second Part, are to keep said roller in good repair and upon the expiration of this lease, the same is to be returned to _____, Ohio, at the expense of the Parties of the Second Part, in as good condition as it was received by them, excepting the usual wear and tear.

Upon expiration of this lease, if Parties of the Second Part are desirous, the Parties of the First Part agree to lease the roller to Parties of the Second Part until the 1st day of September, 1919, subject to the following conditions: Parties of the Second Part agree to pay as a consideration for said lease, the sum of eleven hundred ninety-two dollars (\$1,192.00) payable on the 1st day of September, 1919, and shall be accompanied by certificate over signature of township clerk as to the proper funds.

It is further agreed by and between the parties of this lease, that Parties of the Second Part are to keep said roller in good repair and upon the expiration of this second lease, the same is to be returned to _____, Ohio, at the expense of the Parties of the Second Part, in as good condition as it was received by them, excepting the usual wear and tear.

Upon the expiration of this lease, if the Parties of the Second Part are desirous, the Parties of the First Part agree to lease the roller to Parties of the Second Part until the 1st day of April, 1920, subject to the following conditions: Parties of the Second Part agree to pay as a consideration for said lease the sum of eleven hundred dollars (\$1,100.00) payable on the 1st day of April, 1920, and shall be accompanied by certificate over the signature of the township clerk as to the proper funds.

It is further agreed by and between the parties in this lease, that Parties of the Second Part are to keep said roller in good repair and upon the expiration of this third lease, the same is to be returned to _____, Ohio, at the expense of the Parties of the Second Part, in as good condition as it was received by them, excepting the usual wear and tear.

If the Parties of the Second Part are desirous, however, they may purchase above equipment for the sum of ninety-two dollars payable on the 1st day of May, 1920.

In witness whereof we have hereunto subscribed our names this 6th day of May, 1918.

The _____ Manufacturing Co.,
By _____,
Parties of the First Part.

Township Trustees of _____ Township, _____ County,
Parties of the Second Part.

I, _____ Township Clerk of _____ Township, _____ County, Ohio, do hereby certify that there is sufficient money on hand or in process of collection to meet the lease money, payable on the 1st day of September, 1918, amounting to eleven hundred ninety-two dollars.

Township Clerk.”

Section 3373 G. C. in its present form as amended 108 O. L. 499, reads as follows:

“In the maintenance and repair of roads the township trustees may proceed either by contract or force account. When they proceed by contract the contract shall, in case the amount involved exceeds two hundred dollars, be let by the township trustees 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 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. If the amount involved is two hundred dollars or less the contract may be let without competitive bidding. Such contract shall be performed under the supervision of a member of the board of township trustees or the township highway superintendent. Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. They shall have the power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, or they may authorize the purchase or employment of the same by one of their number or by the township highway superintendent at a price to be fixed by the township trustees. All payments on account of machinery, tools, material, labor and teams shall be made from the township road fund as provided by law. All purchases of materials, machinery, and tools, shall, where the amount involved exceeds five hundred dollars,

be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. All force account work shall be done under the direction of a member of the board of township trustees or of the township highway superintendent."

In its earlier form as enacted 107 O. L. 93, said statute contained provisions relative to the purchase and lease of machinery and tools in substantially the same form as at present.

Were it not for the evident tendency of the purported contract above quoted to destroy entirely the requirement of competitive bidding as set out in said section 3373, the purported contract might be sustained as coming within the authority to lease as set out in said section. However, that question need not be here considered; for it is perfectly plain that while the purported contract is in form a lease, yet it is in substance and practical operation a contract of purchase if it is a contract at all. Quite true, the township trustees may never get to the point where they exercise the option of purchase, and they may, as provided in the instrument, return the machinery to the vendor at the end of the first, second or third year as the case may be; but the fact remains that the leasing price of the machinery is so adjusted that at the end of the third year the machinery becomes the property of the township for the payment of a very small additional sum. Thus the township is placed in the attitude of practically having to buy the machinery at the end of the third year as a plain business proposition, since it will have to pay only a trivial amount as compared with the three years rental which it has already paid.

Upon the whole then, the purported contract because of its tendency is clearly against public policy and void.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3224.

SCHOOLS—TERM OF ASSISTANT COUNTY SUPERINTENDENTS OF
 SCHOOLS FOR YEAR 1922-1923 BEGINS ON AUGUST 1st, 1922.

The term of assistant county superintendents of schools for the year 1922-1923 begins on August 1, 1922, and not on September 1, 1922.

COLUMBUS, OHIO, June 16, 1922.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

"When does the term of the assistant to the county superintendent of schools begin?"

In reply to your inquiry you are advised that apparently all the law which would have any bearing upon this question must necessarily appear in the Kumler-Gorrell Act (amended Substitute Senate Bill 200), the enactment of the General