

OPINION NO. 80-042**Syllabus:**

A board of county commissioners may acquire real property for the purpose of establishing a sanitary landfill pursuant to R.C. 343.01 by a purchase agreement which provides for the purchase price to be paid in annual installments with interest payable upon the unpaid balance.

To: William R. Swigart, Fulton County Pros. Atty., Wauseon, Ohio
By: William J. Brown, Attorney General, August 13, 1980

I have before me your request for my opinion on the following question:

May a board of county commissioners in connection with the construction of a new county sanitary landfill facility for solid waste disposal acquire the real estate by a purchase agreement which provides for the purchase price to be paid in annual installments with interest payable upon the unpaid balance?

As you note, a board of county commissioners has only such powers as have been expressly conferred by statute, and those as are necessarily implied therefrom. See, e.g., State ex rel. Shriver v. Belmont County, 148 Ohio St. 277, 74 N.E. 2d 248 (1947); State ex rel. Bushnell v. Cuyahoga County, 107 Ohio St. 465, 140 N.E. 81 (1923); Commissioners of Mahoning County v. Railway Co., 45 Ohio St. 401, 15 N.E. 468 (1887); Gallia County v. Holcomb, 7 Ohio 232 (1835).

R.C. Chapter 343, which deals with county garbage and refuse disposal, does expressly authorize a board of county commissioners to acquire real property for the purpose of establishing a sanitary landfill. The first paragraph of R.C. 343.01(A) provides in pertinent part:

The board may acquire, by purchase or lease, construct, improve, enlarge, replace, maintain, and operate such garbage and refuse collection systems within any such district and such garbage and refuse disposal, refuse recycling, or resource recovery facilities within or without any such district as are necessary for the protection of the public. The board may acquire within its respective county real property or any estate, interest, or right therein, by appropriation or any other method, for such facilities. If appropriation proceedings are considered necessary by the board, they shall be conducted in accordance with sections 163.01 to 163.22 of the Revised Code. (Emphasis added.)

Your specific question, then, turns on the phrase "by appropriation or any other method." In other words, is an installment purchase to be considered a method of acquisition under the above-emphasized provision of R.C. 343.01?

Other than "appropriation," the legislature has neither included nor excluded any specific method of acquisition from the purview of the board. Rather, the legislature expressly employed the general, inclusive language "or any other method [of acquisition]" in its grant of power to the county commissioners.

You suggest, however, that the legislature's use of "appropriation or any other method" (emphasis added) in R.C. 343.01 may express an intent to limit the authority granted to the board to general methods (i.e., appropriation, purchase, lease, gift), and not the specific terms or consideration therefor (i.e., purchase by installment payments).

At the outset, I must express the difficulty I perceive in attempting to draw a distinction between a method of acquisition and the terms under which it is executed. Is not every method of acquisition accompanied by the terms thereof? Is a purchase any less a method of acquisition if accompanied by installment payments rather than by cash? Indeed, if an installment purchase is to be excluded from the legislative grant in R.C. 343.01, what else is to be excluded therefrom and on what basis?

The legislature could not have spoken in more express or more general terms.

It has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute; that nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself; and that the court may write no limitations therein. As variously expressed, the statute may not be restricted, constricted, qualified, narrowed or abridged. Hence, general words are to have a general operation, where the manifest intention of the Legislature affords no ground for qualifying or restraining them. Under this rule, where the statute is expressed in general language, it is to be applied to all cases coming within its terms. The Legislature will be presumed to have intended to make no limitations to a statute in which it has included by general language many subjects, persons or entities, without limitation.

Wachendorf v. Shaver, 149 Ohio St. 231, 236-37, 78 N.E. 2d 370, 374 (1948). Therefore, in the absence of any basis on which to qualify or limit the terms of R.C. 343.01, I must indulge the presumption that the legislature did not intend to exclude installment purchase from the methods authorized for the acquisition of any estate, interest, or right to real property.

I am first compelled to construe the provision in question according to the rules of grammar and common usage. R.C. 1.42. If the language conveys a meaning which is clear, unequivocal and definite, no interpretation is required and the statute must be applied accordingly. R.C. 1.42; Provident Bank v. Wood, 36 Ohio St. 2d 101, 105, 304 N.E. 2d 378, 381 (1973). R.C. 1.42 also requires that "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." Indeed, it must be remembered that statutory interpretation, including inquiry into the legislative intent, is appropriate only where the enactment is ambiguous upon its face. R.C. 1.49; Carmelite Sisters, St. Rita's Home v. Board of Review, 18 Ohio St. 2d 41, 46, 247 N.E. 2d 477, 480 (1969); Sears v. Weimer, 143 Ohio St. 312, 55 N.E. 2d 413 (1944).

The meanings of the operative words in the provision at issue here ["may acquire. . . by appropriation or any other method"], according to common usage, are as follows:

acquire: to get or gain by one's own efforts or actions;

any: without limit;

method: a way of doing anything; mode; procedure; process.

Webster's New World Dictionary 12, 62, 894 (2d college ed. 1978).

"Acquire," the only one of the above terms susceptible to a technical or particular meaning, is defined in Black's Law Dictionary 41 (rev. 4th ed. 1968):

ACQUIRE. To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, practice, or purchase; receive or gain in whatever manner; come to have. (Citations omitted.)

The Supreme Court of Ohio has defined "acquire" as "purchase," "[t]o make property one's own," "[t]o gain permanently." State ex rel. Fisher v. Sherman, 135 Ohio St. 458, 463, 21 N.E. 2d 467, 470 (1939) (citing 1 Bouvier's Law Dictionary (Rawle's rev. ed.)). Although the court excluded rental from its definition in Sherman, such exclusion is clearly inapplicable here. Under the broad, inclusive language of R.C. 343.01, a board of county commissioners may acquire "real property or any estate, interest or right therein" (emphasis added).

Therefore, neither the common nor the technical usage of the words employed by the legislature in the provision of R.C. 343.01 at issue here provides any basis on which to impose a distinction between a method of acquisition and the terms thereof. Clearly, Webster's definition of "method," quoted above, is broad enough to encompass the method of purchase as well as the terms of installment payments. You question, however, whether the legislature intended to limit the definition of "method" by the language "appropriation or any other method" (emphasis added).

Inquiry into the intent of the legislature, beyond the plain meaning of the words of the statute, is appropriate only if a statute is ambiguous. R.C. 1.49. "Ambiguous" is defined as "1. having two or more possible meanings 2. not clear; indefinite; uncertain; vague." Webster's New World Dictionary 43 (2d college ed. 1978). It has been stated that ambiguous language is language which is of doubtful meaning. Forbes v. Bolton, 20 Ohio N.P. (n.s.) 449, 464 (C.P. Cuyahoga County 1918). Conceding the possibility that the language of R.C. 343.01 "by appropriation or any other method" might be susceptible to more than one or an uncertain meaning, inquiry into the legislative intent may be made.

R.C. 1.49 delineates several matters which may be considered in determining the legislative intent behind an ambiguous statute. A consideration of these matters, including the legislative history, the statutory framework, the object and circumstances of the enactment, and the consequences of a particular construction, lends further support to the conclusion that installment purchase is an authorized method of acquisition under R.C. 343.01.

Prior to the 1978 amendment, which added the provision at issue here [the last two sentences in the recitation of R.C. 343.01(A) set forth above], R.C. 343.01 contained no provision relative to the acquisition of real property for the facilities provided therein. Construing this former version of the statute in 1969, my predecessor stated that R.C. 343.01 did not "permit a board of county commissioners to lease land for use as a landfill operation in connection with a garbage and refuse disposal district." Syllabus, 1969 Op. Att'y Gen. No. 69-026.

The 1978 amendment [Act of October 25, 1978, Am. H.B. No. 435] was entitled "[a]n act to amend sections 343.01, 5511.07, 5519.01, 5523.10, and 5523.11. . . of the Revised Code relative to the appropriation of property for highways or solid waste management facilities." With the exception of R.C. 343.01, Am. H.B. No. 435 conferred only powers relative to appropriation. In contrast, the general, broad language chosen by the legislature relative to the acquisition of land in R.C. 343.01 ["may acquire. . . real property or any estate, interest, or right therein, by appropriation or any other method"] manifests an intent to confer an

authority which would remedy the obvious defect in the existing law and permit counties to lease land or obtain it by other means.

Although the General Assembly did not, in R.C. 343.01, specify acceptable methods of acquisition, other than appropriation, the legislature had, in R.C. 307.02, specifically authorized a board of county commissioners to "purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, [or] appropriate" certain facilities and sites. Since R.C. 307.02, which lists both installment purchase and appropriation as methods of acquisition, was in existence at the time of the 1978 amendment, the rules of in pari materia and ejusdem generis support a construction of R.C. 343.01 which includes installment purchase as a method of acquisition. It seems clear, then, that the general language "any other method" is sufficiently broad to encompass at least those methods of acquisition authorized by R.C. 307.02, including installment purchase.

There is no basis to conclude that the legislature intended to preclude county commissioners from acquiring real property or any estate, interest or right therein by installment purchase in its express grant of authority in R.C. 343.01. Likewise, if the statute is construed to exclude purchase by installment payments, there is no basis to determine what else the legislature intended to exclude from the scope of its language "by appropriation or any other method." Clearly, such a construction of R.C. 343.01 would produce a result which is not just, reasonable or feasible of execution, contrary to the presumptions accorded a statutory enactment pursuant to R.C. 1.47.

I conclude, therefore, that R.C. 343.01 does authorize a board of county commissioners to acquire real property by installment purchase.

While not an integral part of your question, there are constitutional consequences to my conclusion worthy of mention. It is likely that, upon entering the installment purchase contract contemplated, the county would incur bonded indebtedness within the meaning of Ohio Const. art. XII, §11 in the amount of the total contract price. See State ex rel. Kitchen v. Christman, 31 Ohio St. 2d 64, 70-74, 285 N.E. 2d 362, 367-69 (1972) (the court held that, since lease agreement in question was an installment purchase contract, the entire contract price constituted a present indebtedness of the city under Ohio Const. art. XII, §11 and was not a self-liquidating debt within the "special fund" exemption to the constitutional rule); State ex rel. Public Institutional Building Authority v. Griffith, 135 Ohio St. 604, 22 N.E. 2d 200 (1935) (bonded indebtedness is not incurred when municipality obtains a capital asset to be paid for wholly out of the income of the acquired property). In the event bonded indebtedness is created, the enabling legislation must provide for the levy of a tax for the liquidation of the debt. Ohio Const. art. XII, §11 ("[n]o bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for the levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity").

In light of the above, it is my opinion, and you are advised, that a board of county commissioners may acquire real property for the purpose of establishing a sanitary landfill pursuant to R.C. 343.01 by a purchase agreement which provides for the purchase price to be paid in annual installments with interest payable upon the unpaid balance.