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SYLLABUS:

(1) A board of education may rent, with option to buy, portable buildings located on board owned property to be used as classrooms provided, however, that no portion of the rental payments apply to the prospective purchase price of the building.

(2) The provisions of Section 3313.46, Revised Code, do not apply to an agreement providing for rental of a portable building including therein an option to buy.

Columbus, Ohio, September 5, 1963

Hon. Everett Burton  
Prosecuting Attorney  
Scioto County  
Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This office has received the following request from the Board of Education of the Wheelersburg Local School District:

“The Wheelersburg Board of Education would like a legal opinion as to the renting of portable buildings for class room purposes, with an option to purchase if desired at a later date. The Board would also like to know if they would be within their legal rights to place these buildings on board owned property.’

“Since Section 3313.37, Revised Code of Ohio has recently been amended, we feel that your opinion with respect to the problem posed in said letter should be had. Also, in view of the nature of the proposed purchase, we

are not certain whether or not Revised Code Section 3313.46 would be applicable.”

Section 3313.37, Revised Code, reads in pertinent part as follows:

“The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.

“The boards of education may acquire land by gift or devise, by purchase, or by appropriation. Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase, provided that if the purchase price is to be paid over a period of time, such payments shall not extend for a period of more than five years, and a special tax levy shall be authorized by the voters of the school district in accordance with section 5705.21 of the Revised Code to provide a special fund to meet the future time payments.

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Section 3313.37, Revised Code, was last amended effective October 12, 1961. Prior to October 12, 1961, this section consisted only of the first paragraph quoted above.

Since Section 3313.37, Revised Code, authorizes the purchase or lease of sites for schoolhouses and the renting of suitable schoolrooms, it would be unduly strict to hold that a board may not rent a portable building to be used on a site owned by the board.

I concluded, in Opinion No. 1604, Opinions of the Attorney General for 1958, page 22, that a board of education could lease a building with option to buy. Syllabus No. 2 of that opinion states:

“2. A board of education may, under the provisions of Section 3313.37, Revised Code, lease a suitable building for school purposes and make such lease agreement for a period of years, if reasonable. Such agreement may also include either an option or a firm contract to purchase such property, the former being a ‘continuing contract’ as provided in Section 5705.41, Revised Code. It is unlawful,

however, to apply all or a portion of the lease payments against the purchase price of the property.”

I believe the reasoning used in Opinion No. 1604, cited *supra*, would apply to the renting of a portable building with option to buy, providing the rental payments do not apply to the purchase price of the buildings.

Secondly you ask whether or not Section 3313.46, Revised Code, would be applicable.

Section 3313.46, Revised Code, states:

“When the board of education determines to build, repair, enlarge, or furnish a schoolhouse, or make any improvements or repairs, the cost of which will exceed in city districts, six thousand dollars, and in other districts four thousand dollars, except in cases of urgent necessity, or for the security and protection of school property, it must proceed as follows:

“(A) For the period of four weeks, the board shall advertise for bids in some newspaper of general circulation in the district and two such papers, if there are two. If no newspaper has a general circulation in the district, then the board shall post such advertisement in three public places in the district. Such advertisement shall be entered in full by the clerk of the board of education, on the record of proceedings of the board.

“(B) The sealed bids must be filed with the clerk by twelve noon of the last day stated in the advertisement.

“(C) The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board; provided that the board may by resolution provide for the public opening and reading of such bids by the clerk immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for the tabulation of such bids and a report thereof to the board at its next meeting.

“(D) Each bid must contain the name of every person interested therein, and shall be accompanied by a bid bond or by a certified check upon a solvent bank, as the board requires, payable to the order of the treasurer of the board of education, in an amount to be fixed by the board or by an officer designated for such purpose by the board, said bond or check to be in no case less than five per cent of the amount of the bid and conditioned that if

the bid is accepted, a contract will be entered into, and the performance of it properly secured.

“(E) When both labor and materials are embraced in the work bid for, the board may require that each be separately stated in the bid, with the price thereof, or may require that bids be submitted without such separation.

“(F) None but the lowest responsible bid shall be accepted. The board may reject all the bids, or accept any bid for both labor and material for such improvement or repair, which is the lowest in the aggregate.

“(G) The contract must be between the board and the bidders. The board shall pay the contract price for the work at the times and in the amounts provided by sections 3313.461 (3313.46.1) and 3313.462 (3313.46.2) of the Revised Code.

“(H) When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between such bidders.

“(I) When there is reason to believe there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected.”

Schoolhouse refers in terms to a building. *State ex rel. Woodruff v. Centanne*, Ala. 89 S. 2d 570 at page 572. In renting a building, the board would not be building, enlarging or repairing a schoolhouse. The applicability of Section 3313.46, Revised Code, to the renting of a building is, therefore, dependent upon the interpretation given the word “furnish” as used in that section. Upon reading Section 3313.46, Revised Code, in its entirety, it is my opinion that “furnish” as used therein is synonymous with equip and is intended to refer to equipment and fixtures within a schoolhouse. Therefore, Section 3313.46, Revised Code, does not apply, in my opinion, to a contract for rental of a portable building to be used for classroom purpose.

Accordingly, it is my opinion and you are advised that:

(1) A board of education may rent, with option to buy, portable buildings located on board owned property to be used as classrooms provided, however, that no portion of the rental payments apply to the prospective purchase price of the building;

(2) The provisions of Section 3313.46, Revised Code, do not apply to an agreement providing for rental of a portable building including therein an option to buy.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General

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