Note from the Attorney General's Office:

1957 Op. Att'y Gen. No. 57-898 was overruled in part by 1987 Op. Att'y Gen. No. 87-069.

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MUNICIPALITY—PURCHASE OF PROPERTY FOR MUNICIPAL PURPOSES — INSTALLMENT PLAN — COMPLIANCE WITH ART. XVIII, SEC. 3, OHIO CONSTITUTION AND §§5705.41 AND 5705.44, RC.

SYLLABUS:

A municipality, under Section 3 of Article XVIII of the Constitution and in compliance with Sections 5705.41 and 5705.44, Revised Code, has authority to purchase property for municipal purposes with payment therefor being made in installments over a period of several years.

Columbus, Ohio, August 6, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"In examining a number of municipalities in Ohio, it has been disclosed that machinery and equipment, particularly street sweeping equipment, is acquired by municipal corporations on deferred payment plans. Bids pursuant to advertising are received and contracts have been executed providing for the purchase of such equipment with equal monthly payments over a period of thirty-six months on the average. The monthly installments include interest as well as principal.

"Your opinion is requested to the following question:

"May a municipal corporation acquire property for municipal purposes with payment for such property being made in installments over a period of several years?"

Section 3 of Article XVIII of the Ohio Constitution, commonly known as the "Home Rule Amendment," adopted September 3, 1912, reads:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

It is from this self-executing amendment that municipal corporations receive their power and authority to contract. The only limitation found within this amendment on the grant of "all powers of local self-government" is not applicable here since the question you have presented does not involve "local police, sanitary and other similar regulations." Therefore, the limitation, if any, on the power of a municipal corporation to enter into a contract such as you have described must be predicated upon some other constitutional provision. Such provision is found in Section 13 of Article XVIII of the Ohio Constitution, which was also adopted September 3, 1912, and reads:

> "Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

Pursuant to the authority granted it in the above quoted constitutional amendment, the General Assembly enacted Section 133.03, Revised Code, which reads in applicable part:

> "The net indebtedness created or incurred by a municipal corporation without a vote of the electors shall never exceed one per cent of the total value of all property in such municipal corporation as listed and assessed for taxation, * * *
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> "The net indebtedness created or incurred by a municipal corporation shall never exceed five per cent of the total value of all property in such municipal corporation as listed and assessed for taxation. * * * "

The General Assembly also defined "net indebtedness" in Section 133.02, Revised Code, as:

> " * * * the difference between the par value of the outstanding and unpaid bonds *and notes* of the subdivision and the amount

held in the sinking fund and other indebtedness retirement funds for their redemption. * * * " (Emphasis added.)

Assuming that the municipal corporations to which your query relates can enter into the contracts you describe within their respective legal debt limits, it then becomes necessary to examine other applicable limitations on the authority of municipalities to so contract.

Section 5705.41, Revised Code, provides in part:

"No subdivision or taxing unit shall:

"(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * * "

The Ohio Supreme Court has held that where the statute quoted from above was not complied with "as to the appropriation of money and the attachment of a certificate showing funds avaliable, the contract of employment is void and unenforceable." The State, *ex rel.* McGraw, v. Smith, *et al.*, 129 Ohio St., 246.

The General Assembly has made provision for certification by a fiscal officer of amounts necessary to meet contractual obligations maturing in a subsequent fiscal year. This provision, in Section 5705.44, Revised Code, reads:

"When contracts or leases run beyond the termination of the fiscal year in which they are made, the fiscal officer of the taxing authority shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge. * * *"

One of my predecessors had occasion to interpret what are now Sections 5705.41 and 5705.44, Revised Code, in Opinion No. 1678, Opinions of the Attorney General for 1928, page 316, at page 317:

> "Reading the above quoted portions of Sections 5625-36 and 5625-33, General Code (Sections 5705.44 and 5705.41, Revised Code), together, it seems clear that the words 'contracts or leases running beyond the termination of the fiscal year in which they are made' refers to continuing contracts or leases which by their terms extend beyond the fiscal year in which they are made, for which payment is made out of funds raised by taxation and which require annual appropriations to meet the obligations thereof. * * *" (Parenthetical matter added.)

It is thus apparent that the General Assembly has recognized that municipal corporations have authority to enter into contracts which would not be terminated in the fiscal year in which they were executed.

Section 731.14, Revised Code, reads in part:

> "* * * When any expenditure, other than the compensation of persons employed therein, exceeds one thousand dollars, such contracts shall be in writing and made with the lowest and best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the village. * * *"

The same monetary limitation and advertising requirements are also applicable to certain contracts of cities. Section 735.05, Revised Code. The statutory requirement that municipal corporations advertise for bids is a valid exercise of the authority of the General Assembly to limit the debt-incurring power of municipalities. Phillips v. Hume, 122 Ohio St., 11.

One other statute should be considered. Section 731.48, Revised Code, provides:

> "The legislative authority of a municipal corporation shall not enter into any contract which is not to go into full operation during the term for which all the members of such legislative authority are elected."

It has been held that a contract goes "into full operation" within the meaning of Section 731.48, *supra,* upon its execution. Jones v. Middletown, 59 Ohio Law Abs., 329. The statute does not require that the contract shall be entirely completed within the term for which the members of the legislative authority are elected. Opinion No. 1896, Opinions of the Attorney General for 1928, page 753.

A former Attorney General was asked to pass on the validity of a so-called lease agreement. Opinion No. 3039, Opinions of the Attorney General for 1928, page 2873. The terms of the agreement were that a village would pay $300.00 on delivery of certain fire equipment and $100.00 per month thereafter until $5700.00, with interest, had been paid, at which time title was to be transferred to the village. The contract was found to be invalid, but only for the reason that the agreement was not, in fact, a lease but a contract of sale and no advertisement for bids had been made in complinace with what is now Section 731.14, *supra.* Significantly, the writer of the opinion did not question the authority of the village to make a contract which would necessitate making payments over a period of about four and one-half years. The tacit approval found in this opinion relative to the authority of a municipality to enter into such contract is in harmony with the general rule which is stated in McQuillin, Municipal Corporations, Section 29.100, as follows:

> "* * * it appears reasonable that a municipal contract may cover any length of time, provided it does not cede away control or embarrass the legislative or governmental powers of the municipality or render it unable in the future to control any municipal matter over which it has jurisdiction * * * ."

By reason of what has been said above, it is my opinion that a municipality, under Section 3 of Article XVIII of the Constitution and in compliance with Sections 5705.41 and 5705.44, Revised Code, has authority to purchase property for municipal purposes with payment therefor being made in installments over a period of several years.

Respectfully,
WILLIAM SAXBE
Attorney General