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BOARD OF EDUCATION MAY EXECUTE 5 YEAR IRREVOCABLE RENTAL AGREEMENT FOR OFFICE EQUIPMENT—EQUIPMENT RENTALS REGARDING “PERMANENT IMPROVEMENT” BOARD OF EDUCATION MAY EXPEND PUBLIC FUNDS FOR INSURANCE ON OFFICE EQUIPMENT LEASED—§§3313.17, 5705.41, 1133.01, 133.24, 3313.27, R.C.

SYLLABUS:

1. A board of education may execute a five-year irrevocable rental agreement for the acquisition of mechanical office equipment under the authority contained in Section 3313.37, Revised Code, to provide necessary apparatus for the operation of its schools and as such contract is a continuing contract under the provisions of Section 5705.41, Revised Code, it requires only an annual certification by the appropriate fiscal officer of the availability of funds for one year's rental payment.

2. A board of education may execute a rental agreement under Section 3313.37, Revised Code, to provide office equipment with an estimated useful life in excess of five years even though such office equipment is included within the definition of a “permanent improvement” under Section 133.01, Revised Code, and could be purchased by funds raised through the issuance and sale of bonds pursuant to Section 133.24, Revised Code.

3. A board of education may expend public funds to pay premiums on insurance to protect office equipment leased pursuant to Section 3313.27, Revised Code, when the title to the equipment remains in the lessor, as the board of education has an interest in the equipment which it is proper to protect by insurance and also because the providing of insurance protection, if reasonable in amount, could be considered additional consideration passing to the lessor of such equipment.

Columbus, Ohio, April 25, 1960

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

Dear Sir :

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

“1. May a board of education execute a five year irrevocable rental agreement on the basis of being a ‘continuing contract’ under the provisions of Section 5705.41, Revised Code? If such a rental agreement may be executed, what length of time would be considered the reasonable life of the agreement?”

“2. May a board of education execute a rental agreement covering office equipment (including mechanized bookkeeping machines) whose estimated useful life exceeds five years and for which type of capital equipment outlay the issuance and sale of bonds are authorized under the provisions of Sections 133.01-133.99, Revised Code?”

“3. May a board of education expend public funds to pay the premium on insurance purchased to protect rental equipment when title to the equipment remains in the lessor?”

In considering the general powers of a board of education it is first necessary to examine the provisions of Section 3313.37, Revised Code, in which such powers are set forth. This section reads 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.”

It may be seen that a board of education is authorized under the terms of this section to “provide the necessary apparatus” for the operation of

the schools under its control. While no particularized method for acquiring such necessary apparatus has been set forth in this section, it appears to be the obvious intent of the General Assembly to leave such methods to the discretion of the particular board of education. There is also no question but what "necessary apparatus" may be interpreted to include office equipment including mechanized bookkeeping machines. Such apparatus could then be acquired by a board of education by outright purchase or by leasing such equipment over a given period of time. Which method is more desirable is a question to be left to the local board of education for decision.

You have raised the additional question of whether a five-year irrevocable lease for office equipment acquired under the authority of Section 3313.37, Revised Code, is a continuing contract under the provisions of Section 5705.41, Revised Code, for which certification as to availability of funds by the appropriate fiscal officer is required only on a yearly basis, or whether such a five-year irrevocable lease must be considered one indivisible contract for which such certification of availability of funds would be required to cover the entire term of the lease. Section 5705.41, Revised Code, reads as follows:

"No subdivision or taxing unit shall:

"* * *

"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. * * *"

The entire question of the applicability of Section 5705.41, Revised Code, to contracts of this type was rather thoroughly examined in Opinion No. 1604, Opinions of the Attorney General for 1958, page 22. In this opinion the history of Section 5705.41, Revised Code, was traced and it was found that the original statutory reference to continuing contracts was in Section 5660, General Code, enacted in 1925. In that statute the following language was used:

"* * * In the case of contracts running beyond the termination of the fiscal year in which they are made for salaries of educational employees of boards of education, or for street lighting,

collection or disposal of garbage or other current services for which contracts may lawfully be made extending beyond the end of the fiscal year in which made, or to the making of leases the term of which runs beyond the termination of the fiscal year in which they are made, * * *”

It will be seen, as was deduced in Opinion No. 1604, Opinions of the Attorney General for 1958, that the term continuing contracts as used in Section 5705.41, Revised Code, includes the type of contracts originally covered by the analogous Section 5660 of the General Code, i. e., teachers contracts and contracts for the rendering of current services. Obviously, the supplying of office equipment is a current service furnished to a board of education and, therefore, a lease agreement for the supplying of such equipment for a period of longer than one year requires only certification by the appropriate fiscal officer as to the availability of funds for each year's rental and need not cover the entire rentals due to accrue over the life of the lease.

No statute or opinion of the Attorney General appears to cover exactly how long such a continuing contract may validly run, but it may be presumed that if the estimated useful life of the office equipment covered by the lease exceeds five years, then a lease for a term of five years would not be unreasonable.

You also asked the question, whether a board of education is empowered to provide by lease such office equipment with an estimated useful life in excess of five years in view of the provisions of Chapter 133., Revised Code, the Uniform Bond Law. Section 133.01 (E), Revised Code, defines a permanent improvement as any asset with an estimated useful life of five years or more and the equipment you mention would, therefore, fall within this definition. Section 133.24, Revised Code, reads, in part, as follows:

“The taxing authority of any subdivision may issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct.”

It may be seen from this provision that a board of education would have the authority to issue bonds for such purpose, but in view of the permissive language employed by the General Assembly it must be concluded that it is not obligatory on the board of education to provide such equipment solely through the issuance and sale of bonds. This section in

no way curtails the broad grant of power to a board of education to "provide necessary apparatus" through any method it deems desirable.

Your final question relates to the power of a board of education to expend public funds on insurance to protect leased office equipment when the title to such office equipment remains in the lessor. In Opinion No. 3764, Opinions of the Attorney General for 1934, page 1915, it was held that a board of education may lawfully pay from public funds under its control for premiums on insurance against loss of furniture and fixtures and other equipment in its school buildings which may be occasioned by burglary or robbery. In Opinion No. 4006, Opinions of the Attorney General for 1941, page 585, it was held that a board of county commissioners was authorized to enter into a five-year fire insurance contract. In this opinion it was stated that the power to insure is well established in Ohio. That opinion referred also to Opinion No. 1221, Opinions of the Attorney General for 1927, page 2160, which held that, inasmuch as the county commissioners were authorized to provide office equipment and supplies, this authority necessarily includes within it the authority to protect and preserve such physical property by insurance against loss.

While it is true that in the cases cited the property was owned by the public body purchasing the insurance, it is also true that under the terms of the lease agreement for the office equipment in question, a copy of which lease you have furnished me, it is an obligation of the board of education as lessee to keep and maintain such leased equipment in good order and to protect the lessor against loss of such equipment. Any damage to or loss the lessor. Even if there were no such liability, however, the payments of of such property could result in the liability of the board of education to insurance premiums could be considered as additional rental under the lease agreement and provided the actual rental payments plus insurance premium payments resulted in a reasonable consideration for the equipment leased, payment of such insurance premiums from public funds would be lawful.

It is therefore, my opinion and you are accordingly advised as follows :

1. A board of education may execute a five-year irrevocable rental agreement for the acquisition of mechanical office equipment under the authority contained in Section 3313.37, Revised Code, to provide necessary apparatus for the operation of its schools and as such contract is a continuing contract under the provisions of Section 5705.41, Revised Code,

it requires only an annual certification by the appropriate fiscal officer of the availability of funds for one year's rental payment.

2. A board of education may execute a rental agreement under Section 3313.37, Revised Code, to provide office equipment with an estimated useful life in excess of five years even though such office equipment is included within the definition of a "permanent improvement" under Section 133.01, Revised Code, and could be purchased by funds raised through the issuance and sale of bonds pursuant to Section 133.24, Revised Code.

3. A board of education may expend public funds to pay premiums on insurance to protect office equipment leased pursuant to Section 3313.27, Revised Code, when the title to the equipment remains in the lessor, as the board of education has an interest in the equipment which it is proper to protect by insurance and also because the providing of insurance protection, if reasonable in amount, could be considered additional consideration passing to the lessor of such equipment.

Respectfully,

MARK MCELROY
Attorney General