

county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in the manner prescribed by the ordinances of the corporation, until discharged by due course of law."

Without considering the early history of the sections to determine whether Section 4564 is a later enactment than Section 2845, it is believed sufficient to state that said Section 4564 has not been recently amended while Section 2845 was amended by the 83rd General Assembly, 108 Ohio Laws, Pt. 2, 1214, and in said amendment, the Legislature did not see fit to make any exception as to cases in which persons were held in jail pending trial before the mayor. If it had intended such exceptions, it would have been an easy matter in said amendment to have expressly made such provision. It cannot be contradicted that Section 2845, in unambiguous language, authorizes the sheriff to charge such fees for receiving prisoners and Section 4564, supra, certainly authorizes him to receive and keep the prisoner under the circumstances mentioned therein.

In view of the above, you are advised that it is my opinion that when a city is without a jail and a prisoner is received into the county jail under the provisions of Section 4564, General Code, by the sheriff pending trial in the mayor's court, the sheriff's fees for receiving and discharging a prisoner as provided for in Section 2845 of the General Code should be taxed as costs and collected from the defendant in the event of conviction, whether the same is a state or ordinance case.

Respectfully,

GILBERT BETTMAN,
Attorney General.

738.

ADVERTISEMENT—FOR PURCHASE OF TRUCK BY TOWNSHIP TRUSTEES—DESCRIPTION BY NAME RATHER THAN MECHANICAL SPECIFICATIONS VIOLATIVE OF REQUIRED COMPETITIVE BIDDING.

SYLLABUS:

Where township trustees, desiring to purchase a truck for use in connection with the maintenance of township roads, in the specifications of the equipment desired as set forth in its advertisement for bids, describe said truck by name as contradistinguished from mechanical specifications, there is a violation of the principle of competitive bidding required under the provisions of Section 3373 of the General Code.

COLUMBUS, OHIO, August 14, 1929.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication, which reads:

"I desire your opinion in regard to the following situation:

The township trustees of Canton Township, Stark County, Ohio, being desirous of purchasing a certain make of truck under authority of Section 3373 for use in connection with maintenance of township roads, have advertised as provided in that section, but instead of describing the truck for the

purchase of which they desire proposals by mechanical specification they have described the same by name in the advertisement.

Does such an advertisement comply with the terms of Section 3373?"

It is a rather difficult question to determine with exactness what the specifications should properly contain in connection with an advertisement for the purchase of a given article of machinery or equipment by a public board. However, the law of Ohio is well established that under the existing statutes the principle of competitive bidding must be applied, except in those rare instances wherein a given article is essentially and absolutely non-competitive in its nature. In the case you mention it is obvious that no specifications are given excepting the designation of the name of a certain truck, and therefore the competition is immediately limited to the dealers distributing the truck named. It may be, of course, that the purchasing board has in mind certain mechanical features of the truck named, which it desires, and has information that this particular truck is suitable for its purpose. However, it is not believed that its knowledge of the particular truck will justify its designating this particular truck in its advertisement, rather than giving general specifications, to the end that all those having such vehicles as are desired, may have the opportunity to bid. Section 3373, General Code, expressly provides that all purchases of equipment under the provisions of said section shall be made in pursuance of competitive bidding when the amount involved exceeds five hundred dollars.

In my opinion No. 408, issued under date of May 16, 1929, to Hon. Jesse K. Brumbaugh, Prosecuting Attorney, Greenville, Ohio, the question was considered as to whether or not a certain make of truck which was designed to spread gravel evenly in the process of unloading, was non-competitive in its nature. The syllabus of said opinion reads:

"Under the provisions of Section 3373 of the General Code, all purchases of trucks by township trustees, where the amount involved exceeds five hundred dollars, shall be made in pursuance to competitive bidding, in accordance with said section. The rule relative to articles being essentially and absolutely non-competitive, has no application to such purchases under this section."

In said opinion there was cited an opinion of my predecessor reported in Opinions of the Attorney General for 1928, Vol. I, page 722, wherein it was held:

"All purchases of trucks or other machinery by township trustees for use in constructing, maintaining and repairing roads must, where the amount involved exceeds \$500.00, be made from the lowest responsible bidder after advertisement, as prescribed in Section 3373, General Code."

In the case of *Fischer Auto & Service Co. vs. City of Cincinnati*, et al., 16 O. N. P. (N. S.) 369, decided by the Superior Court of Cincinnati, August 24, 1914, it was held as disclosed by the second branch of the headnotes:

"The carrying out of a contract for the purchase of an automobile for municipal use will be enjoined where the specifications are so drawn as to prevent compliance therewith except by one concern, unless compliance is attained by the purchase and assembling of automobile parts from different factories and the production in that manner of an unknown machine at a cost possibly prohibitive."

The opinion in this case contains a comprehensive discussion of what is necessary

to be specified in an advertisement for the purchase of an automobile by competitive bidding. Without undertaking to set forth the specifications that were used therein, the court concluded that such specifications were so drawn "that no known make of automobile, except the Hudson, came within the city requirements," and that therefore every other machine was disqualified. In that case, however, there was much more latitude given than in the case you present.

In the case of *Mog vs. The City of Cleveland, et al.*, 18 O. N. P. (N. S.) 49, decided by the Court of Common Pleas of Cuyahoga County, June 11, 1915, it was held, as disclosed by the third branch of the headnote:

"Where it is shown by the testimony of the officers having the matter in hand that in their opinion the desired equipment can not be secured through competition, but must be purchased from a particular manufacturer, and it is frankly admitted that the specifications were so drawn as to make it impractical for any other manufacturer to submit a bid, injunction will lie against the acceptance of the proposal of the one manufacturer whose product corresponds with the specifications upon which bids were asked."

Without further discussion, it is my opinion that where township trustees, desiring to purchase a truck for use in connection with the maintenance of township roads, in the specifications of the equipment desired as set forth in its advertisement for bids, describe said truck by name as contradistinguished from mechanical specifications, there is a violation of the principle of competitive bidding required under the provisions of Section 3373 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

739.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS IN
DELAWARE COUNTY.

COLUMBUS, OHIO, August 14, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

740.

SCHOOL DISTRICTS—RECEIVING MONEY FROM STATE EDUCATIONAL EQUALIZATION FUND FOR PURCHASE OF EQUIPMENT—SUCH SUPPLIES NOT PURCHASABLE THROUGH STATE PURCHASING AGENT.

SYLLABUS:

1. *When a school district is permitted to participate in the state educational equalization fund, payment should be made to the school district of the amount of the*