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TOWNSHIP TRUSTEES—STONE QUARRY—§ 5549.22 RC—  
BOARD HAS AUTHORITY TO PURCHASE NEW MACHINERY  
AND EQUIPMENT TO REPLACE WORN MACHINERY—IN  
THE PURCHASE OF NEW MACHINERY THE BOARD MAY  
USE THE CONTRACT PROCEDURE AS PROVIDED IN § 5549.02  
RC

## SYLLABUS:

1. A board of township trustees, owning or operating a stone quarry under authority of Section 5549.22, Revised Code, may purchase new machinery and equipment for the continued operation of such stone quarry without submitting the proposed purchase to a vote of the electors.

2. The purchase of new machinery and equipment for the operation of a stone quarry owned and operated by a board of township trustees may be made on the special installment payment plan as provided in Section 5549.02, Revised Code.

Columbus, Ohio, October 11, 1957

Hon. Sumner J. Walters, Prosecuting Attorney  
Van Wert County, Van Wert, Ohio

Dear Sir:

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

“Ridge Township, in Van Wert County, owns and operated a stone quarry in accordance with Revised Code, Section

5549.22, in which they quarry and produce crushed stone for the use of Ridge Township on the Ridge Township roads.

“They also sell some of the stone which they produce to other sub-divisions in the county and to individuals who are resident of Van Wert County, in accordance with Revised Code, Section 5549.23.

“The machinery and equipment used in the operation of this quarry has become old and obsolete and it is their desire to purchase new machinery which will replace the old machinery and equipment and/or increase the capacity of this quarry to produce more crushed stone as well as a better grade of crushed stone. However, they cannot, without dangerously depleting their funds, purchase the necessary machinery and equipment and pay cash for the same. Would you therefore please render your Opinion as to whether—

1. Ridge Township can legally purchase machinery and equipment to replace worn and obsolete machinery and equipment now operated in connection with their stone quarry and/or increase the capacity of said quarry and improve the grade of stone produced without a vote of the public authorizing such purchase.

2. Can the purchase of such machinery and equipment be legally made by authority of Revised Code, Section 5549.02, by paying one-third of the purchase price at the time of the purchase, one-third within a year of said purchase and the balance within two years from said purchase.”

Section 5549.22, Revised Code, to which you refer, provides in pertinent part:

“The board of township trustees may join with the boards of other townships of the same county or adjoining county for the purpose of purchasing real property containing suitable stone or gravel for road materials, *and the necessary machinery for operating such property*, as provided in this section and section 5549.24 of the Revised Code. \* \* \*” (Emphasis added.)

Section 5549.24, Revised Code, reads as follows:

“No tax shall be levied or bonds issued by the board of township trustees to purchase real property, containing suitable stone or gravel for road materials and the necessary machinery for operating the same, unless such tax is approved by a vote of the people in the manner provided by law.”

There is no specific authority in Sections 5549.22 and 5549.24, Revised Code, for township trustees to purchase machinery to replace worn out machinery in a stone quarry owned and controlled by said

township trustees, nor do I find such authority elsewhere in the statutes. However, both Sections 5549.22 and 5549.24, Revised Code, speak of "*necessary machinery for operating the same.*" Obviously, if the township trustees have power to purchase real estate for a stone quarry and necessary machinery for operating the same, such operation would carry with it the authority to repair broken parts and replace machinery that has been worn out in such operation.

In answer to a similar request, the discussion of Section 3298-20, General Code, now Section 5549.24, Revised Code, in Opinion No. 2045, Opinions of the Attorney General for 1928 at page 1073, reads as follows:

"In both forms of Section 3298-20, General Code, that is, before and after its amendment in The Uniform Bond Act, the inhibition against township trustees levying a tax or issuing bonds without a vote of the people is on the purchase of real estate and machinery. This section is clearly limited to the initial expenditure, that is, the original acquisition of real estate and the machinery necessary to quarry stone or gravel, and does not cover the operation of the stone quarry or gravel pit, once it has been acquired, or the repair or replacement of machinery necessary to such operation. A favorable vote of the people authorizing the purchase of real estate and machinery for operating the same establishes a definite policy, that is, it authorizes the purchase of said real estate and authorizes the trustees to purchase machinery and operate the quarry. *Once this policy has been established the authority to operate continues and carries with it the power to replace parts of machinery that have been broken and to purchase new machinery to replace that which has become worn out in the course of such operation. In my opinion, therefore, Section 3298-20, General Code, has no application to the purchase by township trustees of machinery for the operation of a stone quarry to replace worn-out machinery originally acquired for that purpose, pursuant to and in accordance with the authority contained in the statutes.*" (Emphasis added.)

We may observe that the language of Section 5549.24, Revised Code, does not purport to limit such authority to acquire the necessary machinery for operating the stone quarry only in those cases when the matter has been referred to the electorate, *but by its plain terms imposes such limitation only where it is proposed to finance the purchase by a tax levy or by a bond issue.* We may conclude, therefore, that if funds are otherwise available such popular vote is not required.

Your second point of inquiry concerns Section 5549.02, Revised Code, which reads as follows:

“Boards of county commissioners and boards of township trustees, in the purchase of machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads, may make such purchases upon the following terms: not less than one third of the purchase price shall be paid in cash, and of the remainder not less than one half shall be paid at any time within one year from the date of purchase and not less than one half at any time within two years from the date of purchase. Such boards may issue to the purchaser (sic) the notes of the county or township, as the case may be, signed by the board of county commissioners or board of township trustees attested by the signature of the county auditor or township clerk, and covering such deferred payments and payable at the times above provided. Such notes may bear interest at not to exceed six per cent per annum and shall not be subject to sections 131.23, 131.24, 133.01 to 133.65, inclusive, and 137.01 to 137.04, inclusive, of the Revised Code. *In the legislation under which such notes are authorized, the board of county commissioners or board of township trustees shall make provision for levying and collecting annually, by taxation, an amount sufficient to pay the interest and provide a sinking fund for the final redemption of such notes at maturity.*”

“Sections 5705.41 and 5705.44 of the Revised Code shall apply only to such portion of the purchase price of such machinery, tools, trucks, or equipment as is to be paid in cash.

“The power conferred on boards of township trustees by this section shall be exercised by them only with the consent and approval of such purchase and the terms thereof by the board of county commissioners.” (Emphasis added.)

The Board of Trustees of Ridge Township in order to purchase new machinery and equipment to operate a stone quarry under Section 5549.02, Revised Code, would have to comply with all the terms and provisions of such section. A part of Section 5549.02, Revised Code, provides that notes of the township issued by the board shall not be subject to the Uniform Bond Law and other related sections of the Revised Code; however, the board of township trustees “*shall make provision for levying and collecting annually, by taxation, an amount sufficient to pay the interest and provide a sinking fund for the final redemption of such notes at maturity.*”

Such levy as required by Section 5549.02, *supra*, may be levied within the ten-mill limitation as provided in Section 5705.06 (F), Revised Code. Once the initial policy determination has been made to acquire a stone quarry or an interest therein, the funds for its necessary operation may be levied inside the ten-mill limitation without a vote of

the electorate as provided in Section 5705.06 (F), Revised Code, reading in pertinent part:

“The following special levies are hereby authorized without a vote of the people:

(F) In the case of a township, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges on such roads, including the township’s proportion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges. \* \* \*

In this situation the levy inside the ten-mill limitation is made under the general authority of Section 5705.06 (F), *supra*, and not under the limitation contained in Section 5549.24, Revised Code. As stated in Opinion No. 2045, Opinions of the Attorney General for 1928, *supra*, once the policy has been adopted by the electorate, the requirement of a vote on subsequent demands of the stone quarry operation is limited to those proposals to be financed by a tax levy or a bond issue. Such a levy as is contemplated by Section 5549.24, Revised Code, would be *outside* the ten-mill limitation. In the situation at hand, the levy would be one inside the ten-mill limitation and would be levied for the purpose of satisfying the requirement of Section 5549.02, Revised Code. The use of the term “tax levy” in these two instances is responsible for the confusion which may arise and seem to disqualify the use of the method of purchase contained in Section 5549.02, Revised Code.

Therefore, in specific answer to your enumerated questions it is my opinion and you are advised that:

1. A board of township trustees, owning or operating a stone quarry under authority of Section 5549.22, Revised Code, may purchase new machinery and equipment for the continued operation of such stone quarry without submitting the proposed purchase to a vote of the electors.

2. The purchase of new machinery and equipment for the operation of a stone quarry owned and operated by a board of township trustees may be made on the special installment payment plan as provided in Section 5549.02, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General