

unauthorized expenditure of public funds, a finding may be made against the county commissioners and county auditor.”

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3528.

OHIO STATE REFORMATORY—BOARD OF EDUCATION, VILLAGE—MAY PURCHASE FROM—SCHOOL HOUSE FURNISHINGS, WHERE COST IN EXCESS OF ONE THOUSAND DOLLARS, WITHOUT ADVERTISING FOR BIDS—“OPEN MARKET” NOT CREATED—SEE SECTIONS 7623, 2228-1, G. C.

SYLLABUS:

Where a board of education of a village school district determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of one thousand dollars, the provisions of Section 7623, General Code, are not applicable, and it is not necessary for the board of education to advertise for bids. It not being necessary for the board of education of a village school district to advertise for bids when it determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of one thousand dollars, an “open market” is not created, and therefore the provisions of Section 2228-1, General Code, do not prohibit the purchase of furnishings for a school house by the board of education of a village school district from the Ohio State Reformatory.

COLUMBUS, OHIO, January 7, 1939.

HONORABLE FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

“A question of state-wide importance has arisen in this county by reason of an agreement on the part of a Board of Education of a village to purchase from the Ohio State Reformatory certain furnishings for a new high school which is now being constructed. It is our understanding that the furnishings will cost in the aggregate approximately \$6,000.00 and that

no advertising was done by the Board of Education nor were bids taken.

“The following questions arise:

“1st: Where a village Board of Education undertakes to purchase furnishings and furniture at an aggregate cost exceeding \$1,000.00, is it necessary to advertise and take bids under Section 7623 of the General Code, where the agreement is made with the Ohio State Reformatory?

“2nd: If bids are necessary is there created ‘an open market?’

“3rd: Does Section 2228-1 of the General Code as amended in 1935 apply to this situation and prohibit the sale of convict made goods where the equipment and furnishings to be purchased exceeds \$1,000.00 in the aggregate and is to be purchased by a village Board of Education from the Ohio State Reformatory?

“An early opinion is kindly requested, as our office is advised that the new school should open in September of this year.”

Section 7623, General Code, provides for competitive bidding in all contracts entered into by the board of education under a determination to furnish a schoolhouse. The part of the section pertinent to the question herein presented reads as follows:

“When a board of education determines to build, repair, enlarge or furnish a schoolhouse—the cost of which will exceed in city districts, Three thousand dollars, and in other districts one thousand dollars, except in causes of urgent necessity, or for the security, and protection of school property, it must proceed, as follows:

“1. For the period of four weeks, the board shall advertise for bids . . .”

* * * *

“4. 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 may require, payable to the order of the treasurer of the board of education, in an amount to be fixed by the board of education 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 be accepted,

a contract will be entered into, and the performance of it properly secured.”

* * * *

In the fourth branch of the syllabus of the case of *John Mueller vs. The Board of Education*, 11 O. N. P. (N. S.), 113, this part of Section 7623, *supra*, was interpreted as follows:

“Advertising for bids for public work is not merely directory as to boards of education, but is mandatory as to all public boards.”

Section 2228, General Code, provides as follows:

“The board of managers of the Ohio Penitentiary, the board of managers of the Ohio State Reformatory, or other authority, shall make no contract by which the labor or time of a prisoner in the penitentiary or reformatory, or the product or profit of his work, shall be let, farmed out, given or sold to any person, firm, association or corporation. Convicts in such institution may work for, and the products of their labor may be disposed of, to the state or a political division thereof, or for or to a public institution owned or managed and under the control of the state or a political division thereof, for the purposes and according to the provisions of this chapter.”

Section 2228-1, General Code, reads as follows:

“After January 19, 1934, no goods, wares or merchandise, manufactured or mined wholly or in part in this or any other state by convicts or prisoners, except convicts or prisoners on parole or probation, shall be sold on the open market in this state.”

It is obvious from a reading of Sections 2228 and 2228-1, *supra*, that products of the Ohio State Reformatory can only be disposed of to the state or to a political division of the state, or to a public institution; and that, by virtue of the provisions of Section 2228-1, *supra*, preventing convict goods from being sold on the open market in this state, the Ohio State Reformatory is barred from submitting bids to the State, or to a political division, or to a public institution for the sale of its Reformatory products.

There is not any statutory authority that permits the Ohio State

Reformatory to submit a bid in accordance with the provisions set forth in paragraph numbered "4" of Section 7623, supra. To hold that since the Reformatory is prohibited from submitting bids to a political division that a Board of Education of a village school district desiring to purchase furnishings in excess of a thousand dollars would be prevented from purchasing the same from the Reformatory, inasmuch as the Reformatory can not submit bids, would nullify the provision in Section 2228, supra, which permits the Reformatory to dispose of its products to a Board of Education.

Section 7623, supra, applies to all purchases for furnishings in excess of a thousand dollars by a Board of Education of a village school district. Section 2228, supra, applies only to products made in a reformatory. It would therefore appear, from a reading of these two sections that Section 7623, supra, is a general section; and that Section 2228, supra, is intended to be, and is, a special section so far as Reformatory products are concerned. It must therefore be read as an exception to the general provisions of Section 7623, supra.

"A special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms." (*State ex rel Steller et al., Trustees, vs. Zangerle, Auditor of Cuyahoga County*, 100 O. S., 414.)

Therefore, in specific answer to your first question, it is my opinion that where a board of education of a village school district determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of \$1000 the provisions of Section 7623, General Code, are not applicable, and it is not necessary for the board of education to advertise for bids. It not being necessary for the board of education of a village school district to advertise for bids, "an open market" is not created. This eliminates answering your second question.

In response to your third question, it suffices to say that since the village board of education does not have to advertise for bids, "an open market" is not created and thereby the provisions of Section 2228-1, General Code, as amended in 1935 do not prohibit the sale of the furnishings in excess of one thousand dollars by the Ohio State Reformatory to the Board of Education of the Village School District.

Respectfully,

HERBERT S. DUFFY,

Attorney General.