

3033.

ROAD MACHINERY—TOWNSHIP TRUSTEES—PURCHASE WITHOUT  
ADVERTISING FOR BIDS—SELLER'S RIGHTS—AUTHORITY OF  
TRUSTEES TO COMPROMISE, DISCUSSED.

*SYLLABUS:*

1. *Where township trustees purchase road machinery without complying with the provisions of Section 3373, General Code, and a finding is made against the seller, said seller is entitled to receive back the property so attempted to be sold and actually delivered upon return of the money or evidences of indebtedness to the township.*
2. *Authority to compromise claim of seller for damages to property discussed in view of the specific facts considered herein.*

COLUMBUS, OHIO, December 17, 1928.

HON. PHIL A. HENDERSON, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“On June 17th, 1927, the Trustees of \_\_\_\_\_ Township, \_\_\_\_\_ County, Ohio, purchased a road grader from The \_\_\_\_\_ Machinery Company for the sum of about \$2,500.00, paying one-third cash and signing two notes for the balance, due in one and two years respectively.        ;”

They failed to advertise for bids for the purchase of such road grader as required by Section 3373, General Code, of Ohio, and an inspection of their books resulted in a finding being made against said company for the full amount of the purchase price. After notifying said company of such finding one of their representatives came to Hocking County and took the road grader, promising to return their money and notes.

Thereafter The \_\_\_\_\_ Machinery Company notified the \_\_\_\_\_ Township Trustees that they should be repaid for the expense of selling such road grader and also for the damages for the use of the same.

In view of the above have the Trustees of \_\_\_\_\_ Township authority to compromise and pay said Road Machinery Company the sum of \$400.00 upon return of the balance of their money and notes?”

From the statements in your communication it seems clear that the trustees in the purchasing of the machinery referred to did not comply with the provisions of the law which require an advertisement for bids. There seems to be no doubt as to the validity of the finding to which you refer by the Bureau of Inspection and Supervision of Public Offices in view of the numerous decisions upon the question.

In an unreported decision of the Court of Appeals, which came before the Supreme Court upon a motion to certify the record in a case entitled *The J. T. Tractor Company, Plaintiff in Error, vs. The Board of Township Trustees of Mifflin Township, Franklin County, Ohio*, No. 18733, a very similar state of facts was considered. This case was decided in 1924. From the facts stated in the briefs filed with the Supreme Court, it appears that the township trustees had purchased a tractor without advertising for bids. A finding was made and suit entered thereon for recovery of the money paid. The Common Pleas Court, it

appears, sustained a demurrer on the authority of *State vs. Fronizer*, 77 O. S. 7. The Court of Appeals reversed the Common Pleas Court and the Supreme Court refused to require the case to be certified. It therefor would seem that the law is well settled in those instances wherein no attempt is made to comply with the law relative to advertisement for bids, etc., that such a contract is void.

Attention is directed to the case of *Hommel & Co. vs. Woodsfield*, 115 O. S. 675, the syllabus of which reads:

"1. Under Sections 4328 and 4361 of the General Code, the board of public affairs of a village may not make any contract or purchase of supplies or material for any work under the supervision of the board of public affairs involving more than \$500 unless such expenditure is first authorized and directed by ordinance of council, and unless after such authorization and direction the board of public affairs of the village has made a written contract with the lowest and best bidder after advertisement for not less than two or more than four consecutive weeks in a newspaper of general circulation within the village.

2. When either the requirement of authorization and direction by ordinance of council or of advertisement for bids has been omitted, such contract imposes no valid obligation upon the village."

The case last mentioned is clear authority for the proposition that under such circumstances as you present the title to the property purchased remains in the seller. It is obvious that the seller being a party to the void contract cannot recover for additional expense occasioned by being forced to take back his property and make a resale. However, in view of the conclusion in the Woodsfield case, supra, there is an intimation that the seller under such circumstances may be entitled to have his property restored to its original condition at the time it was delivered, which probably implies his right to damages for the use of same. However, this rule seems to be in conflict with a long line of decisions in Ohio, including the case of *State vs. Fronizer*, 77 O. S. 7.

In connection with the facts here presented, however, your attention is directed to Section 286, General Code, which relates to the making, certification and collection of the findings of the Bureau of Inspection and Supervision of Public Offices and which, among other things, provides:

"\* \* \* No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the attorney general shall first give his written approval thereof. \* \* \*

No judgment or final order shall be entered in any civil action commenced under the authority or direction of this section until such entry shall have been submitted to the attorney general, and the attorney general is hereby constituted an attorney of record in each such action."

From the provisions of the statute last mentioned it will be noted a finding may be compromised in the manner therein provided.

You are specifically advised that, in arriving at a compromise of the finding, there may be taken into consideration the fact that the machinery was subject to wear and tear while in the hands of the trustees and accordingly a reasonable amount for the use of such machinery, when recommended by the Auditor of State, if approved by the Attorney General, may be allowed by said trustees as a reduction from the amount of the finding by way of compromise.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3034.

APPROVAL, DEED TO MIAMI AND ERIE CANAL LAND IN THE CITY  
OF CINCINNATI—FLORA WIMMERS.

COLUMBUS, OHIO, December 17, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of December 15, 1928, transmitting to me for my approval deeds conveying Parcel No. 15 to Frederick Fritz, of Cincinnati, Ohio, for the sum of \$272.00; also deed conveying Parcel No. 139 of surplus Miami and Erie Canal Lands in the city of Cincinnati to Flora Wimmers, for the sum of \$24.00.

I have examined the deeds and am of the opinion that they are in proper form.

You are accordingly advised that the sale of the parcels above referred to meets with my approval and I have noted such approval upon the deeds which I am returning herewith.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3035.

APPROVAL, BONDS OF WREN VILLAGE SCHOOL DISTRICT, VAN  
WERT COUNTY—\$95,000.00.

COLUMBUS, OHIO, December 19, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*