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1. CONTRACTS—MUNICIPAL DEPARTMENT OF PUBLIC SAFETY OR DEPARTMENT OF PUBLIC SERVICE—PURCHASE OF SUPPLIES—EXPENDITURE EXCEEDING FIVE HUNDRED DOLLARS—LESS THAN ONE THOUSAND DOLLARS—MUST BE APPROVED BY BOARD OF CONTROL—NEED NOT BE FORMAL WRITTEN CONTRACTS—SECTION 733.22 RC.
2. PURCHASE ORDER FOR SUPPLIES—WHEN ACCEPTED BY SELLER—CONSTITUTES A “CONTRACT.”

SYLLABUS:

1. Contracts for the purchase of supplies in a municipal department of public safety or department of public service, which involve an expenditure exceeding five hundred dollars but less than one thousand dollars, must be approved by the board of control as required by Section 733.22, Revised Code; they need not be formal written contracts.
2. A purchase order for supplies, when accepted by the seller, constitutes a “contract” within the purview of Section 733.22, Revised Code.

Columbus, Ohio, October 4, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"A question has arisen in regard to the application of the provisions of Section 733.22 of the Revised Code to the award of contracts in cities.

"This section provides in part as follows:

'No *contract* in the department of public service or department of public safety, *in excess of five hundred dollars*, shall be awarded except on the approval of the board of control of the city, which board shall direct the director of the appropriate department to enter into the contract.'

"It will be noted that, under the provisions of Section 735.05 of the Revised Code, applicable to contracts entered into by the service department, and Section 737.05 of the Revised Code, applicable to contracts entered into by the safety department, the requirement of law is that when an expenditure, other than the compensation of employees, *will exceed \$1,000.00*, such expenditure must be first authorized and directed by ordinance of council, proper advertisement for competitive bids must be made, and a *written contract* must be entered into with the lowest and best bidder.

"In many cities in Ohio numerous purchases are made in amounts *in excess of five hundred dollars and less than one thousand dollars*, which purchases are not made on formal written contracts, but which are made through departmental requisitions and on purchase orders which in most cases will involve the obtaining of quotations from different suppliers, an offer by the supplier to furnish the materials needed and an acceptance of the supplier's offer by the city purchasing agent, or by the head of the department doing the purchasing.

"The questions that arise in this connection are these:

"(1) Is a 'purchase order' which involves an offer by the supplier and an acceptance by the city, considered a 'contract' within the purview of the provisions of Section 733.22 of the Revised Code?

"(2) Where materials or supplies are purchased in an amount in excess of five hundred dollars and not exceeding one

thousand dollars, in either the service or safety department of a city, upon a 'purchase order,' (*not in the form of a written contract*), which involves an offer by the supplier and an acceptance by the city, is it necessary for the award of such purchase order to be approved by the board of control, which shall direct the director of the service or safety department to enter into such purchase order?"

The department of public safety is a branch of city government which deals with the operation and maintenance of the police and fire departments, while the department of public service has for its functions the management of municipally owned public utilities, the maintenance of public buildings, and the repair and improvement of streets. The statute includes the directors of these departments among the executive officers in which the executive power of the city is vested. Section 733.01, Revised Code.

As to the power of contract of these officers, Section 733.22, Revised Code, requires that the board of control, established under the provisions of Section 733.21, Revised Code, approve the awarding of any contract in the department of public service or the department of public safety when involving an expenditure in excess of \$500.

Contracts involving expenditures in excess of one thousand dollars are subjected to additional requirements. Section 737.02, Revised Code, authorizes the director of public safety to make all contracts and expenditure of money for the purchase of engines, apparatus and all other supplies necessary for the police and fire departments and for other undertakings and departments under his supervision, but "no obligation involving an expenditure of more than one thousand dollars shall be created unless first authorized and directed by ordinance." See Section 737.03, Revised Code, which provides further that "In making such contracts the director shall be governed by Sections 735.05 to 735.09, Revised Code."

Section 735.05, which defines the power of contract on the part of the director of public service, provides:

"The director of public service may make any contract, purchase supplies or material, or provide labor for any work under the supervision of the department of public service involving not more than one thousand dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds one thousand dollars, such expenditure shall first be authorized and directed by ordinance

of the legislative body of the city. When so authorized and directed, the director shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city."

These provisions in the Revised Code are founded on Sections 4371 and 4328 of the General Code, which in 1949 were amended to change the amount of \$500 to \$1,000 as requiring competitive bidding. The effect of this amendment renders inoperative Opinion No. 219, Opinions of the Attorney General for 1929, page 321, which held that purchases in the department of safety which exceeded \$500 were subject to competitive bidding. Under the amendment only contracts exceeding one thousand dollars are now subject to competitive bidding.

Briefly, these sections require contracts exceeding one thousand dollars to be authorized by ordinance; must be in writing; must be advertised for competitive bidding; and under the provisions of Section 5705.41, Revised Code, must be accompanied by a certificate as to the availability of funds in the treasury to meet the required expenditure. *Lancaster v. Miller*, 58 Ohio St., 558. And while contracts under Sections 735.05 and 737.03 are specifically required to be in writing, Section 733.22 contains no such provision and merely provides that "the board of control shall direct the director of the appropriate department to enter into the contract."

The combined effect of present statutory provisions is to authorize the executive heads of these departments to execute contracts involving expenditures less than \$500; to require prior authorization or approval by the board of control of contracts exceeding \$500; to subject contracts exceeding \$1,000 to competitive bidding and other requirements as provided by Sections 735.05 to 735.09, Revised Code.

I perceive nothing in the 1949 amendment of former sections 4371 and 4328, General Code, which would indicate a legislative intent to effect a similar change in former Section 4403, General Code, now Section 733.22, Revised Code. That is to say that there is no indication of an intent to change the limitation therein as to contracts in excess of \$500 to one which would apply only to contracts in excess of \$1,000. Actually, there does not appear to be any necessary conflict or inconsistency between these differing figures in the several statutes here involved, and they may each be readily applied together.

Your specific question in regard to the operation of Section 733.22, Revised Code, is whether “ a purchase order which involves an offer by the supplier and an acceptance by the city, (is) considered a contract” within the meaning of such section.

It is elementary law that an offer followed by an acceptance has the effect of creating a contract between the parties. Such appears to be the legal effect of the transaction you have described in your inquiry; and if purchase orders involving expenditures in excess of \$500 have the approval of the board of control, it would appear that the requirements of Section 733.22, Revised Code, have been met.

Accordingly, in specific answer to your questions, it is my opinion :

1. Contracts for the purchase of supplies in a municipal department of public safety or department of public service, which involve an expenditure exceeding five hundred dollars but less than one thousand dollars, must be approved by the board of control as required by Section 733.22, Revised Code; they need not be formal written contracts.

2. A purchase order for supplies, when accepted by the seller, constitutes a “contract” within the purview of Section 733.22, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
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