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COUNTY COMMISSIONERS—SALE OF PERSONAL PROPERTY AT PUBLIC AUCTION TO HIGHEST BIDDER—COMMISSIONERS MUST COMPLY WITH TERMS OF SECTION 2447-2 G. C. AS TO METHOD OF SALE—NO POWER TO “TRADE-IN” ITEMS OF PERSONAL PROPERTY.

## SYLLABUS:

County commissioners who avail themselves of the terms of Section 2447-2, General Code, which section permits the sale of personal property at public auction for cash to the highest bidder, must comply with its terms as to the method of sale, and such commissioners have no power to “trade-in” items of personal property.

Columbus, Ohio, November 19, 1948

Hon. Forrest E. Sidener, Jr., Prosecuting Attorney  
Madison County, London, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At the recent examination, State Examiners called attention to Section 2447-2, General Code, which became effective September 12, 1947 and provides that the County Commissioners \* \* \* ‘may’ \* \* \* sell certain County Personal Property at public sale, and, by the use of the word \* \* \* ‘may’ \* \* \* this would indicate that ‘sale’ of such property would be ‘optional’, and not ‘mandatory’, with the Board of County Commissioners.

The following questions are, therefore, presented:

“(1) By the terms of Section 2447-2, General Code, would the County Commissioners be prohibited from ‘trading-in’ Personal Property, ‘not needed’, ‘obsolete’ or ‘unfit’, to apply on the

purchase price of 'New Personal Property', when the County Commissioners deem it advisable to do so, for the best interests of the public?

"(2) Was it not the intention of the Legislature, when Section 2447-2 General Code, was enacted into law, to show due respect to the powers given the County Commissioners by the electorate, through the use of the term 'May Sell'?"

"(3) In the event your department rules that Section 2447-2, General Code, prohibits 'trade-ins' of 'All' Personal Property, could it mean that a 'sale' should be conducted for 'minor' items such as, spot-lights, auto batteries, used tires, sirens, horns, signal lights, auto radios, small office tables and chairs, desk sets of pen and ink wells, empty oil drums and miscellaneous junk accumulating at the county highway garage?"

Your questions can best be answered by considering the history of Section 2447-2, General Code, to which you refer, so that the section can be put in its proper perspective.

On March 4, 1947, I rendered my Opinion No. 1659, which is set out in 1947 Opinions of the Attorney General, page 107. That opinion held, as indicated by the syllabus, as follows :

"County Commissioners are without statutory authority to sell automobiles and road machinery owned by the county, and purchased by them under authority of Sections 2412-1 and 7200, General Code."

The body of the opinion indicated that it was not limited to the automobiles and road machinery covered by the request, since it was based on the proposition that there was no authority in law for the commissioners to sell any personal property.

Following the rendition of this opinion the General Assembly enacted Section 2447-2, General Code, which became effective on September 12, 1947. That section provides in part as follows :

"When the county commissioners of any county find by resolution that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment and tools, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the commissioners may sell said property at public auction for cash to the highest bidder, after giving at least ten days' notice of the time and place of sale \* \* \*."

It is apparent that this statute is a grant to the commissioners of the power which previously had not existed. Since the statute is a grant of power, and represents the only power which the commissioners have as to the sale of personal property, it follows that it must be strictly complied with. The use of the word "may" indicates that the statute is permissive so far as the commissioners' availing themselves of its terms is concerned. But once they have decided to use the power, its exercise must be in the manner prescribed by the statute.

How do these principles apply to the questions which you have presented?

Your first question asks whether the commissioners may "trade-in" personal property. In my opinion a grant of the power to sell at public auction to the highest bidder is not a grant of the power to trade. Nor is the power to trade necessarily implied from the grant of power to sell at public auction, since the grant of such a power necessarily negatives any power to make a private sale.

Your second question concerning the powers of the commissioners has already been answered.

Your third question refers to miscellaneous small items of personal property which accumulate at county garages. These items are subject to the statutory provisions discussed above, and if they are to be disposed of must be sold in compliance therewith.

In view of the above it is therefore my opinion that county commissioners who avail themselves of the terms of Section 2447-2, General Code, which section permits the sale of personal property at public auction for cash to the highest bidder, must comply with its terms as to the method of sale, and such commissioners have no power to "trade-in" items of personal property.

Respectfully,

HUGH S. JENKINS,  
Attorney General.