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1. TOWNSHIP TRUSTEES—EMPOWERED TO PURCHASE BUILDING, OR BUILDING AND LOT, USE, TOWN HALL AND STORAGE FOR MACHINERY AND TOOLS, TOWNSHIP PROPERTY—IF CERTAIN FUNDS AVAILABLE, NOT NECESSARY TO SUBMIT QUESTION OF PURCHASE TO VOTE OF ELECTORS OF TOWNSHIP—SECTION 3295 G. C.
2. BONDS MAY BE ISSUED FOR SUCH PURPOSE, IN MANNER PROVIDED BY LAW AND WITHIN LIMITATIONS SECTION 2293-17 G. C.—ELECTORS OF TOWNSHIP MUST VOTE UPON AND APPROVE ISSUE—SECTION 2293-19 ET SEQ. G. C.

## SYLLABUS:

1. *By authority of Section 3295, General Code, township trustees are empowered to purchase a building or a lot upon which there is a building, to be used for a town hall and for a place to house and store machinery and tools owned by the township, without submitting to the electors of the township the question of whether or not the same should be purchased, regardless of the cost of such property, provided that certain funds are available.*

2. *Bonds may be issued by township trustees for the purpose of purchasing a building or property to be used for a town hall and for storing therein machinery and tools belonging to the township, provided they are issued in the manner prescribed by law and within the limitations provided for in Section 2293-17, General Code, but only after the question of issuing such bonds has been submitted to the electors of the township and their approval secured in the manner provided for by Section 2293-19, et seq. of the General Code.*

Columbus, Ohio, October 21, 1940.

Hon. Harold K. Bostwick, Prosecuting Attorney,  
Chardon, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

"The Bainbridge Township School Board of our county has certain property on which is a school and gymnasium that they no longer need for school purposes and are building a new school and gym.

The Bainbridge Township Trustees want to buy this property for township purposes, to-wit: To house road machinery for a community hall and a larger town hall.

My question for your opinion is:

1. Can they buy this property for any of these purposes?
2. If so, can they issue bonds for the purchase price?
3. If they can issue bonds, must they have a vote of the people?

With respect to the issuance of bonds, it is provided in Section 2293-2, General Code enacted by the Legislature of Ohio in 1927 as a part of an Act which is commonly referred to as the "Uniform Bond Act," that:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

Under the provisions of Section 2293-1, General Code, a township constitutes a "subdivision," the township trustees being the "taxing authority" thereof as the terms "subdivision" and "taxing authority" appear in the said Uniform Bond Act. As a part of this same act, there was enacted Section 3295, General Code, which reads as follows:

"The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges, and viaducts over streets, streams, railroads or other places where an overhead roadway or foot way is necessary, and sites for any of the same."

The authority of a board of township trustees to provide places for the housing or storage of machinery and tools is found in Section 3373, General Code, which provides inter alia:

"The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township."

I find no express authority for township trustees to procure by purchase or otherwise, a building or property to be used for a "community hall," in the strict sense of the term. Township halls or town halls which were at one time called "township houses" (see *Trustees v. Miner*, 26 O. S. 452-459),

have always been used more or less for community meeting places, and I assume for the purposes of this opinion that where you speak of a "community hall" in your request for opinion you had in mind a building for use as a township hall or town hall.

As there can be no question but that a township hall, as well as a place to house machinery and tools, are permanent improvements, it clearly follows, from the statutory provisions referred to above, that bonds may be issued by township trustees within the limitations of law, to purchase a town hall or to provide a suitable place to house or store road machinery and tools belonging to the township. The authority extended by the terms of Section 3373, General Code, supra, to "provide" a place for storing machinery not being limited in any way, is sufficiently broad in my opinion, to authorize the purchasing of such a place already built, as well as the building or construction thereof.

The power of a board of trustees to issue bonds, as extended by Section 2293-2, supra, is limited by Section 2293-17, General Code, which reads as follows:

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in G. C. Section 2293-13, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

Section 2293-13, General Code, referred to in Section 2293-17, supra, provides the manner in which the net indebtedness of a subdivision shall be calculated, and provides that certain bonds shall not be considered in calculating such net indebtedness. The only bonds not to be considered as mentioned in Section 2293-13, General Code, which a township is authorized to issue are special assessment bonds. It follows therefore, that it is necessary under the provisions of Section 2293-19, General Code, for township trustees to submit the question of issuing bonds to the electors of the township when it is desired to incur indebtedness by the issuance of bonds for the purpose of purchasing a building for a town hall or for a place to house and store machinery and tools.

Practically the same question as is here involved, so far as the purchase of a building for town hall purposes is concerned, was the subject of an

opinion of a former Attorney General. In that opinion the question presented was whether or not a board of township trustees had the power under Section 3295 or Section 3395, General Code, or any other provision of law, to purchase from the Odd Fellows lodge a hall to be used as a town hall.

In that opinion consideration was given to Section 3395 et seq. of the General Code, which had been in force for many years, and until the enactment of Section 3295, General Code, constituted the only authority extended to township trustees to acquire a township hall. These sections have not been repealed and, under some circumstances, are controlling when a township hall is to be built, removed, improved or enlarged. In substance, it is provided therein that when it is desired to build, remove, improve or enlarge a town hall at a greater cost than is otherwise authorized by law (which has been construed to mean, at a greater cost than \$2,000.00 as limited by Section 3260, General Code—Opinions, Attorney General for 1929, p. 517, and for 1934, p. 974) the question of the advisability or policy of so building, removing, improving or enlarging a town hall shall be submitted to a vote of the electors of the township. Without quoting these sections, or commenting further thereon, it is sufficient for our present purpose to note that no authority is extended therein to acquire a township hall by purchase. This fact is mentioned by the then Attorney General in the 1929 opinion referred to above, when he says, after referring to and quoting the provisions of Section 3392 et seq. General Code:

“There is nothing, however, in these sections which provides for the purchase of a building already constructed. Your attention is directed to more recent legislation relative to this subject.”

After quoting from the Uniform Bond Act with respect to the authority extended to township trustees to issue bonds, and noting that in the same Act Section 3295, General Code, supra, was enacted, the Attorney General stated further:

“It seems unnecessary to look further for authority of township trustees to acquire by purchase a township hall already constructed.”

In that opinion it was held as stated in the syllabus:

“1. Township trustees have authority by virtues of Section 3295, General Code, to purchase a township hall already constructed.

2. If funds are not available for such purpose, the question of issuing bonds therefor should be submitted to the electors in accordance with the provisions of the Uniform Bond Act."

(See Opinions of the Attorney General for 1929, page 1406).

Inasmuch as the provisions of Section 3295 et seq. General Code, relating to the submission to the electors of the question of policy, when it is proposed to build, remove, improve or enlarge a town hall at a greater cost than \$2,000.00 make no reference to the purchase of a building for town hall purposes, it is my opinion that these particular sections have no application in the present inquiry, especially in view of the fact that Section 3295, General Code, is of later enactment than Section 3395, et seq., and expressly authorizes township trustees to purchase a town hall without limitation as to cost or restrictions on the authority extended. It follows, in my opinion, that a building for town hall purposes may be purchased by a board of township trustees, even though it cost more than \$2,000.00, without submitting the question of policy or advisability of so doing to the electors of the township for their approval, provided, of course, that sufficient funds are available.

A board of education in the sale of property must observe the provisions of Section 4756, General Code, which read as follows:

"When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. The president and clerk of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

No reason exists why a board of township trustees may not be a bidder at a sale conducted by a board of education in pursuance of Section 4756, General Code, supra, the same as any other bidder, and if the board should be

the high bidder it may be awarded the sale, and, of course, if after two attempts to sell the property at public auction in the manner prescribed by law, the property does not sell, it may be sold to the trustees, at private sale.

In specific answer to your questions I am of the opinion:

1. The Board of Township Trustees of Bainbridge Township is empowered by law to purchase the property in question, for a township hall or for a place to house and store machinery and tools owned by the township, without submitting to the electors of the township the question of whether or not the same should be purchased, regardless of the cost of such property, provided that sufficient funds are available.

2. The Township Trustees of Bainbridge Township may issue the bonds of the township for the purpose of acquiring the property in question, provided they are issued in the manner prescribed by law and within the limitations fixed by Section 2293-17, General Code.

3. If it is desired to incur indebtedness by the issuance of bonds of Bainbridge Township for the purpose of acquiring the property in question for the purposes mentioned, it will be necessary, in view of the provisions of Section 2293-17, General Code, to submit the question of issuing such bonds to the electors of the township, and secure their approval, in the manner provided for by Section 2293-19 et seq., General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.