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COUNTY COMMISSIONERS — WITHOUT AUTHORITY TO MAKE GIFT OF ROAD MACHINERY TO TOWNSHIP — IF ROAD MACHINERY NO LONGER NEEDED, COMMISSIONERS MUST PROCEED WITH PUBLIC AUCTION.

SYLLABUS:

County commissioners are without authority to make a gift of road machinery to a township but must proceed with a public auction sale if the road machinery is no longer needed.

Columbus, Ohio, October 6, 1949

Hon. Harold Lutz, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

I have completed review of your request for opinion on the following question:

“Is it permissible for the county to make a gift of road machinery to a township within the county or is it mandatory that such machinery be sold at public sale to the highest bidder?”

Under Section 7200 of the General Code, county commissioners are authorized to purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highways, bridges and culverts under their jurisdiction as is deemed necessary. You will note that the purposes for which road machinery may be acquired are definitely defined.

The right of disposal of road machinery by county commissioners is limited by Section 2447-2 of the General Code 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use of county officers and departments, and road machinery, equipment and tools, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the commissioners may sell said property at public auction for cash to the highest bidder, after giving at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 by posting a typewritten or printed notice in the offices of the county auditor and county commissioners, and in case the fair market value of the property to be sold is, in the opinion of the commissioners, in excess of two hundred dollars, notice of the time and place of the sale shall also be published in a newspaper of general circulation in the county at least ten days prior thereto.”

A county commissioner is a public officer with limited powers. In 32 O. Jur. page 933, it is stated that:

“As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute. It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of the power granted.”

With respect to county commissioners, we note the following from 11 O. Jur. page 333:

“Statutes which confer authority upon county commissioners are delegations of power by the state, which reserves to itself all power not thus delegated, and are, therefore, to be strictly construed in favor of the state and against the board. Moreover, in the exercise of their powers, county commissioners must follow the terms of the law and proceed in the manner prescribed thereby. When acting under a special power, they must act strictly on the conditions under which it is given. If no power is given by statute to act except in a certain manner, and that manner is not followed, the act of the board is illegal and void.”

In the particular instance cited in your request for opinion, the county acquired road machinery under authority of Section 7200 of the General Code. If such machinery is no longer required for the purpose for which it was originally acquired, by reason of being unfit or obsolete, or is not needed for public use, it may be sold at public auction to the highest bidder after ten days’ previous notice of the time and place of sale. The phrase

“for public use” in Section 2447-2 of the General Code is limited in its meaning to the use for which the machinery was acquired under Section 7200 of the General Code, namely, to projects under the jurisdiction of the county commissioners.

Based on the foregoing, I am of the opinion that county commissioners are without authority to make a gift of road machinery to a township but must proceed with a public auction sale if the road machinery is no longer needed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.