

272

TOWNSHIP TRUSTEES—MAY FIND BY RESOLUTION THEY DO NOT NEED CERTAIN ROAD EQUIPMENT—WHEN ENTIRE PURCHASE PRICE DOES NOT EXCEED ONE THOUSAND DOLLARS—EQUIPMENT MAY BE TRADED IN WITHOUT ADVERTISING SUCH EQUIPMENT FOR SALE.

SYLLABUS:

When township trustees find, by resolution, that they do not need certain road equipment, they may, when the entire purchase price alone does not exceed \$1000, trade in such equipment without advertising such equipment for sale.

Columbus, Ohio, March 22, 1949

Hon. Reeder C. Hutchinson, Prosecuting Attorney
Defiance County, Defiance, Ohio

Dear Sir:

Your request for an opinion dated January 18, 1949, is as follows:

“As Prosecuting Attorney of Defiance County, Ohio, I wish to propound a question which has come up in connection with a township of this county, as follows: Do the township trustees have authority to trade in road equipment which they do not need, on the purchase of new equipment, the entire purchase price of which does not exceed \$1000.00, without advertising such equipment for sale?

“My examination of General Code 3281 and General Code, 3373 leads me to believe that no advertisement is necessary. I note that in section 3281, after the procedure of sale, at public auction is described the statute says ‘providing, however, that where the township has machinery, equipment, or tools, used for the construction, re-construction, maintenance or repair of roads which the township finds by resolution it does not need, the trustees may sell such machinery, equipment or tools, to the person from which they purchase other machinery, equipment or tools in accordance with section 3373 of the General Code.’ It would seem to me that this creates an exception to the method of sale by advertisement and auction which precedes this language in the statute. General Code 3373 states, after providing for advertisement in case of purchase over \$1000.00, that where the amount of the purchase alone involved does not exceed \$1000.00, to sell the machinery and to have the same credited by the vendor against the purchase price and it further provides that where the purchase exceeds \$1000.00 that the trustees may give notice to the competitive bidders of their willingness to accept offers for the purchase of the old machinery. It would appear that General Code 3373 makes a distinction as to the method of the sale of the old equipment when the purchase price of the new equipment exceeds \$1000.00 and when it does not exceed \$1000.00. It is my conclusion that the township trustees have authority to trade in the old equipment without advertisement of the same for sale and without sale at auction, when the new equipment purchased does not exceed \$1000.00. I believe that my predecessor in this office has advised the township trustees that they have this authority.

“At a recent meeting of the township trustees of this county, Mr. H. A. Parrish, State Examiner, states that he believed the

law to be otherwise and that regardless of the purchase price of the new equipment, the old equipment must be sold after advertisement and at auction. However he has referred the trustees to my office for further advice.

"I am unable to discover any reference to an Attorney General's Opinion on this, and I believe that it must be one of general interest throughout the state. Will you please clarify it for me?"

Section 3281, General Code, reads in part:

"* * * When the township has property which the trustees by resolution find, it does not need, the trustees may sell and convey same. Such sale must be by public auction and upon notice whereof published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of said publications to be at least five days before date of sale. Provided, however, that where the township has machinery, equipment, or tools used for the construction, reconstruction, maintenance and repair of roads which the trustees find by resolution, it does not need, the trustees may sell said machinery, equipment, or tools to the person from whom they purchase other machinery, equipment, or tools in accordance with section 3373 of the General Code. * * *"

Section 3373, General Code, reads in part:

"* * * All purchases of materials, machinery, and tools, shall, where the amount involved exceeds one thousand dollars, be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. Where, in compliance with section 3281 of the General Code, the township trustees desire to sell machinery, equipment, or tools owned by the township to the person from whom they are to purchase other machinery, equipment, or tools, the trustees may offer, where the amount of the purchase alone involved does not exceed one thousand dollars, to sell said machinery, equipment, or tools and to have the same credited by the vendor against the purchase of the other machinery, equipment or tools. Where the purchase price of the other machinery, equipment, or tools alone exceeds one thousand dollars, the township trustees may give notice to the competitive bidders of their willingness to accept offers for the purchase of the old machinery, equipment, or tools, said offers to be subtracted from the selling price of the other equipment as bid, in determining the lowest responsible bidder. Notice of willingness of trustees to accept offers for the purchase of the old machinery, equipment, or tools shall be made as a part of the advertisement for bids as hereinbefore provided. All force account work

shall be done under the direction of a member of the board of township trustees or of the township highway superintendent.”

By the terms of Section 3281, General Code, when the trustees by resolution find they do not need certain machinery, equipment or tools used for the construction, reconstruction and repair of roads, they may sell the same to the persons from whom they purchase other machinery, equipment or tools, as provided in Section 3373, General Code.

Section 3373, General Code, sets forth the various ways such equipment may be purchased and sold. The pertinent part as quoted above states that where, in compliance with Section 3281, General Code, the trustees desire to sell machinery, equipment or tools owned by the township to the person from whom they are to purchase other machinery, equipment or tools, they may offer, where the purchase price alone involved does not exceed \$1000, to sell said machinery and equipment or tools and have the same credited by the vendor against the purchase of other machinery, equipment or tools.

It is my opinion that Section 3373, General Code, makes a distinction as to the method of sale of old equipment when the purchase price of the new equipment exceeds \$1000 and when it does not exceed \$1000. I know of no court opinion on the matter, but I believe that the language of the statute is clear and unambiguous.

The statute expressly requires that all purchases of materials where the amount exceeds \$1000, shall be made after advertisement for bids. The next sentence relates to purchases of less than \$1000 and no requirement of advertisement is mentioned. However, in the next sentence concerning purchases exceeding \$1000, specific mention of bidding and the lowest responsible bidder is made. All of these sentences are exclusive and deal with the value of the equipment involved. By stating that where the value exceeds \$1000 there must be competitive bidding, it thereby excludes, by implication at least, the requirement in equipment valued under \$1000. This is made more express in Section 3281, General Code, wherein requirements for advertising and bidding are set forth, but with the proviso that Section 3373, General Code, is separate from this requirement, and said sale or purchase is to be according to the method provided therein.

Since Section 3373, General Code, requires only bidding for equipment valued over \$1000, and since the sentence relating to equipment

valued under \$1000 in Section 3373, General Code, specifically mentions Section 3281, General Code, and makes no requirement for bidding or advertising, I am of the opinion that the legislature intended no bidding or advertising necessary on this type of sale or purchase.

Therefore, I have reached the conclusion and it is my opinion that when township trustees find, by resolution, that they do not need certain road equipment, they may, when the entire purchase price alone does not exceed \$1000, trade in such equipment without advertising such equipment for sale.

Respectfully,

HERBERT S. DUFFY,
Attorney General.