

tion adopted by the county commissioners would necessarily be regarded as valid and binding unless and until the same had been held by some court of proper jurisdiction to be an abuse of their discretion.

Based upon the foregoing, it is my opinion that the county commissioners, under the provisions of Section 2523 of the General Code, may provide a regulation to the effect that the superintendent of the county home may not employ any member of his family to work at such home without the consent of the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.

408.

TOWNSHIP TRUSTEES—PURCHASE OF TRUCKS—COMPETITIVE BIDDING—SECTION 3373, GENERAL CODE, CONSTRUED.

SYLLABUS:

Under the provisions of Section 3373 of the General Code, all purchases of trucks by township trustees, where the amount involved exceeds five hundred dollars, shall be made in pursuance to competitive bidding, in accordance with said section. The rule relative to articles being essentially and absolutely non-competitive, has no application to such purchases under this section.

COLUMBUS, OHIO, May 16, 1929.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads as follows:

“I have been requested by several of the township boards of trustees of Darke County, Ohio, for an interpretation of Section 3373 of the General Code of the State of Ohio relative to its application for the necessity of advertising for bids when they desire to purchase Omort trucks, a product of the American Aggregates Corporation, formerly known as the Greenville Gravel Corporation. The Omort truck manufactured by the American Aggregates Corporation is equipped with a Hopper body with a device for controlling the material from the body from the driver's seat, which is a patented feature, and it is claimed that no other piece of equipment on the market has a similar device. In this connection, on November 30, 1923, former Attorney General Crabbe, in his opinion No. 943, passes upon the question of whether or not advertising for bids was necessary under Sections 4063 and 4328 of the General Code of Ohio, when the article to be purchased was wholly non-competitive. The syllabus of the opinion above referred to is as follows:

‘The Ohio courts recognize the rule that in purchases in which competition is essentially and absolutely non-competitive, the awarding authorities need not attempt competition in letting the contract. However, the statutes requiring competition bidding cannot be disregarded in those cases in which the construction is only imperfectly competitive, and in all cases every effort must be made to follow such statutes. It is a question of fact as to whether a given construction is non-competitive or otherwise to be determined in the first instance by the awarding authorities.’

I am advised that during the year 1926 the American Aggregates Corporation, then known as the Greenville Gravel Corporation, petitioned Mr. A. B. Peckinpaugh, Deputy of the Bureau of Inspection and Supervision of Public Offices of the State of Ohio, for a ruling as to whether the opinion of Attorney General Crabbe, above referred to also applied to Section 3373 of the General Code of Ohio. Mr. Peckinpaugh submitted the question to the Attorney General's office, and on April 29, 1926, he directed a letter to Mr. J. L. Williams, of the Greenville Gravel Corporation, containing the following extract from a letter received from him by the then Attorney General on the 23rd day of April, 1926. Said extract is as follows:

'Acknowledgment is made of your communication enclosing letter of J. L. Williams, sales manager of the Greenville Mfg. Works, with the other data showing the construction of the Omort truck which is manufactured by said company, and inquiring whether said truck is an article which may be sold to the township trustees without advertising under the provisions of Section 3373.

You also enclose copy of my communication in response to an inquiry of the prosecuting attorney of Darke County, dated March 1, 1926. In this communication the same question was considered and opinion No. 943 for the year 1923 was cited wherein it was held that where a commodity is essentially and absolutely non-competitive, the requirements as to advertising do not apply. It was further indicated that it is a question of fact as to whether or not such a condition exists.

It is believed that this department cannot undertake to pass upon the facts. This is a question to be determined in the first instance by the board of trustees. It may be stated that if all of the claims of said company are true in reference to the character of the truck, it would appeal to this department as tending to establish it as non-competitive. However, this is a question of fact, depending upon technical engineering evidence, which is not before us, and this department cannot undertake to do more than to outline the law as the guide in determining the question of fact.'

and that thereafter it was understood that the Greenville Gravel Corporation might sell its Omort road patrols and maintainers to township trustees within the State of Ohio without the necessity of having said trustees advertise for bids, and that this procedure was followed for approximately three years and had the approval of the Bureau of Inspection and Supervision of Public Offices.

Subsequently, on the 21st day of March, 1928, Attorney General Turner delivered an opinion to Honorable W. S. Paxson, Prosecuting Attorney, of Washington C. H., Ohio, wherein he interpreted Section 3373 of the General Code, the syllabus of which said opinion states:

'All purchases of trucks or other machinery by township trustees for use in constructing, maintaining and repairing roads must, where the amount involved exceeds \$500.00, be made from the lowest responsible bidder after advertisement, as prescribed in Section 3373, General Code.'

At this point same advised that the Bureau of Inspection and Supervision of Public Offices had advised prospective purchasers of Omort Road Patrols and Maintainers that they must advertise for bids in compliance with the above section, thus reversing the former ruling.

After investigating the opinion of Attorney General Turner, I do not find that the question of non-competitiveness was there considered, nor do I find that any reference was made to the opinion of former Attorney General Crabbe, delivered in 1923. I am therefore desirous of learning your opinion in

regard to the matter as to whether or not the opinion of the Attorney General delivered March 21, 1928, was intended to reverse the position taken by the former Attorney General Crabbe in the opinion above referred to."

As suggested in your communication, the question of an article being non-competitive was not discussed in the 1928 opinion, the syllabus of which you quote. It therefore cannot be said that the Attorney General in said opinion specifically overruled said former opinion. The 1923 opinion, to which you refer, did not have under consideration the purchase of machinery under section 3373 of the General Code. In fact, that opinion simply stated the general rule as established by the courts with reference to making purchases without competitive bidding when such commodity is essentially and absolutely non-competitive. In that opinion it was pointed out that competitive bidding cannot be disregarded in those cases in which the article is only imperfectly competitive.

The other communication to which you refer, which involved the question of the Omort trucks, appears to have been an informal communication to the Bureau of Inspection and Supervision of Public Offices, and did not undertake to decide that such a truck could be purchased without competitive bidding. Such communication apparently referred to the former rule as adopted in the opinion of 1923, and pointed out that it was a question of fact to be determined by the purchasing authority. However, it is understood that the Bureau of Inspection and Supervision of Public Offices, in interpreting the 1928 opinion, together with the facts with reference to the character of such trucks, regarded the same as a proper subject for competitive bidding.

As suggested in the 1923 opinion, competitive bidding is one of the established principles of this State governing all purchases for the use of the State or the subdivisions thereof, and may not be dispensed with except under circumstances where the application of this principle is impossible. Undoubtedly, it is within the power of the board of township trustees, in adopting the specifications for which bids are asked, to indicate the character of the truck which it desires. That is to say, it may require certain features which it is believed necessary and essential in its use in connection with the work for which it is purchased. However, from a practical standpoint, it is apparent that in view of the numerous makes of road machinery existing, it would be difficult for the township trustees to determine that there is but one particular make of truck which contains the features that are desired. Furthermore, it is possible for township trustees to specify generally the character of truck desired, and in determining which is the lowest and best bid, such board may take into consideration the various features of such truck as are bid upon by the respective bidders.

In the final analysis, even with competitive bidding, obviously the results would be the same insofar as the trustees desire to obtain a truck which possesses certain mechanical features. At the same time, competitive bidding will have been obtained, and in the event that there are other makes of machines in existence which contain the same features, it is possible that such board may obtain the kind of truck desired at a lower cost. While the principle must be recognized that there are such things as articles which are absolutely and essentially non-competitive, as set forth in the 1923 opinion, I am inclined to the view that such principle cannot properly be applied to purchases of trucks under Section 3373 of the General Code.

Furthermore, it cannot be assumed, even if but one particular type is the only one satisfactory, but that one person will be in a position to offer the article. More than one person might very well have available for sale exactly the same type of patented articles, in which case the competition prescribed by the statute would be beneficial to the public.

Based upon the foregoing, it is my opinion that under the provisions of Section

3373 of the General Code, all purchases of trucks by township trustees, where the amount involved exceeds five hundred dollars, shall be made in pursuance to competitive bidding, in accordance with said section. I am further of the opinion that the principle governing purchases of articles that are essentially and absolutely non-competitive, has no application in making such purchase.

Respectfully,
GILBERT BETTMAN,
Attorney General.

409.

NOTE—MUNICIPAL—HOLDER'S RIGHT OF INTEREST UPON INTEREST, DISCUSSED.

SYLLABUS:

When a note issued by a municipality for a period of sixty days with interest at the rate of six per cent per annum, is not paid at maturity, interest due at maturity may be added to the principal amount of the note, and such interest due at maturity and the principal amount of the note should bear interest at the rate of six per cent per annum until paid, but interest upon interest may not be compounded annually.

COLUMBUS, OHIO, May 16, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“Section 2293-8, G. C., 112 O. L., page 367, provides in part that bonds or notes issued by any subdivision shall bear interest at not to exceed six per cent, per annum.

The city of _____ issued a note for \$11,600.00, dated March 1, 1927, for a period of sixty days with interest payable at the rate of six per cent per annum. Said note was not paid when due and was not paid until April 24, 1929.

Interest thereon was due in sixty days after the date of the issuance of the note and the question arises as to the manner of computing interest due the bank from the due date of the note to the date of actual payment, the bank claiming interest compounded annually.

QUESTION: When interest on certificate of indebtedness of a city issued by the city is not paid when due, is the holder of such certificate entitled to interest on interest?

Opinion No. 1753, page 1230, year 1920, may be pertinent.”

The opinion to which you refer holds that interest coupons which have matured on a bond and have not been paid, bear interest from the date of maturity at six per cent. This principle is in accordance with the provisions of Section 8305, General Code, cited in that opinion and also in accordance with the holding of the Supreme Court of Ohio in the case of *Cramer vs. Lepper, et al.*, 26 O. S. 89, the second branch of the syllabus being as follows:

“Under a contract for the payment of interest at a specified rate annually,