

OPINION NO. 67-122**Syllabus:**

1. Township trustees may lawfully use the road and bridge funds as provided in Section 5573.13, Revised Code, to purchase a building to be used for storage and repair of road equipment.

2. Township trustees may not acquire real estate for the storage and repair of road equipment by paying for same on a deferred payment plan such as is available for the purchase of road equipment nor by paying for same under a land contract.

To: Forrest P. Moore, Hocking County Pros. Atty., Logan, Ohio
By: William B. Saxbe, Attorney General, December 14, 1967

I have before me your recent letter concerning the proposal by the Trustees of Falls Township to acquire a building and site for the storage and repair of township road equipment. It is my understanding that the trustees wish to apply road and bridge funds in the amount of \$5,000 presently available, towards the purchase price and to pay the balance of \$10,000 over a ten year period.

You inquire specifically:

- "(1) Can the trustees lawfully use road and bridge funds to make a down payment on the purchase of a building to be used for storage and repair of road equipment?
- "(2) Can the township trustees acquire real estate for the storage and repair of road equipment and pay for the same on a deferred payment plan such as is available for the purchase of road machinery?
- "(3) If a deferred payment plan for the building and real estate is lawful, can the

trustees accomplish the purchase as purchasers under a land contract?"

The authority of the board of trustees to provide for storage machinery owned by the township is given in Section 5549.21, Revised Code, the pertinent portion of which is set out below:

"The board of township trustees may purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township, and shall provide suitable places for housing and storing machinery and tools owned by the township. It may purchase such material and employ such labor as is necessary for carrying into effect this section, or it may authorize the purchase or employment of such material and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board. All payments on account of machinery, tools, material, and labor shall be made from the township road fund. * * *"

(Emphasis added)

Opinion No. 6267, Opinions of the Attorney General for 1943, considered a similar problem with respect to Section 5549.21, supra, Section 3373, General Code. Branch 3 of the syllabus of said opinion states at page 447:

"3. When the township trustees purchase a building for the housing and storing of machinery and tools owned by a township and used for the construction, maintenance and reconstruction of highways, the purchase price thereof may be paid from a road fund created by reason of a levy of taxes on taxable property of the township * * *"

In that opinion he found that the expression a "township road fund" as used in Section 3373, General Code, (Section 5549.21, Revised Code) included the monies provided for in the present Sections 5575.10 and 5573.13, Revised Code. He stated at pages 449-450:

"However, if by the expression 'township road fund' you refer to a fund in the treasury made up of monies derived from taxable property in the township, I do not find any such restriction upon their use, and if the building sought to be acquired is for the purpose of housing machinery for tools used for the construction, widening and reconstruction of highways, it would appear to be within the purpose of the fund so created."

It may be helpful to divide your second question into two parts, namely:

- (a) May township trustees acquire real estate for the storage and repair of road equipment.
- (b) May the trustees purchase such real estate on a deferred payment plan.

Question (a) may be answered in the affirmative with authority found as early as 1925 in Opinion No. 2803, Opinions of the Attorney General and confirmed in Opinion No. 6267, supra, at page 448. Branch one of the former opinion states:

"1. Under the provisions of Section 3373, General Code (Section 5549.21, Revised Code) the township trustees may purchase land upon which to erect a building to house and store machinery and tools owned by the township, if in the judgment of such trustees same is necessary and essential in order to preserve such tools and equipment."

Question (b) requires a negative response. The latter portion of Section 5549.21, supra, provides:

"* * * 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, as provided in section 5575.01 of the Revised Code. Where, in compliance with section 505.10 of the Revised Code, the board desires to sell machinery, equipment, or tools owned by the township to the person from whom it is to purchase other machinery, equipment, or tools, the board may offer, where the amount of the purchase alone involved does not exceed one thousand dollars, to sell such machinery, equipment, or tools and have the amount 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 board may give notice to the competitive bidders of its willingness to accept offers for the purchase of the old machinery, equipment, or tools, and such offers shall be subtracted from the selling price of the other equipment, as bid, in determining the lowest responsible bidder. Notice of the willingness of the board to accept offers for the purchase of the old machinery, equipment, or tools shall be made as a part of the advertisement for bids."

It is a well established principle that township trustees possess only those powers expressly conferred upon them by statute and those which may necessarily be implied therefrom. This principle is particularly applicable with respect to the authority to contract. While a township trustee's authority to acquire real estate may be implied from the above

quoted provision, authority to acquire such real estate on a deferred payment plan may not be so implied.

That the legislature intended to limit the method of providing storage for township equipment to that expressed in Section 5549.21, *supra*, may be implied not only from the above stated principle but also from contrasting its provisions with Section 505.37, Revised Code, dealing with the purchase of fire-fighting equipment and buildings therefor. Paragraph four of such section sets out the elaborate limitations:

"The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings, and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may also construct any buildings necessary to house fire-fighting equipment and pay for such buildings over a period of four years. * * *"

Without such specific authorization with respect to storage buildings for road equipment, the board of trustees of the township do not have authority to enter into a deferred payments contract nor for a land contract (in answer to your third question.)

Therefore, it is my opinion and you are hereby advised that:

1. Township trustees may lawfully use the road and bridge funds as provided in Section 5573.13, Revised Code, to purchase a building to be used for storage and repair of road equipment.

2. Township trustees may not acquire real estate for the storage and repair of road equipment by paying for same on a deferred payment plan such as is available for the purchase of road equipment nor by paying for same under a land contract.