

**OPINION NO. 74-002****Syllabus:**

1. R.C. 3313.41 requires only a single publication of notice of sale of school board property, which shall be made at least thirty days in advance of the publication.
2. The board of education may reserve the right to reject any and all bids made at the auction. Opinion No. 417, Opinions of the Attorney General for 1921, affirmed.
3. The board of education may hire an appraiser to appraise the real estate prior to offering it at the public auction.
4. The board of education may not divide property to be sold into smaller parcels to be offered separately at the public auction.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio  
By: William J. Brown, Attorney General, January 10, 1974

Your request for my opinion poses the following questions:

"1. Do the requirements of Section 3313.41 of the Ohio Revised Code of publication of notice of sale at least thirty days prior to the sale require only one insertion of the publication more than thirty days in advance thereof or does it require continued publication commencing more than thirty days prior to the sale and up to the date of the sale?

2. May the Board of Education reserve the right to reject any and all bids as previously ruled by your predecessor in office by Attorney General's Opinion in 1921, Volume 1, page 481?

3. May the Board of Education hire an appraiser to appraise the real estate prior to the offering of the same for public sale?

4. May the Board of Education retain the services of a registered surveyor to divide the school property into parcels prior to the offering of the same for sale at public auction, or may the real estate only be sold in parcels after it has been offered at public sale for more than two times prior to selling the same at private sale?"

Sale of school board property is governed by R.C. 3313.41,

which states:

"When the board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value six 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 a private sale, either as an entire tract or in parcels, as the board deems best.

If the board of education decides to dispose of such real property, it may sell and convey the same to any municipal corporation, county, township, tax supported, in whole or in part, university, college, university branch, or technical college, or board of trustees of the school district library in which such real estate is situated, upon such terms as are agreed upon.

When a board of education decides to trade as a part, or entire consideration, a motor

vehicle on the purchase price of another motor vehicle, it may trade the same upon such terms as are agreed upon by the parties thereto.

The president and the clerk of the board of education shall execute and deliver deeds or other necessary instruments of conveyance to complete the sale or transfer provided for by this section."

With respect to your first question, I would refer you to Muskingum Valley Turnpike Co. v. Ward, 13 Ohio Reports 120 (1844), in which the court held in the third branch of the syllabus that:

"Where the law requires 'at least sixty days' notice' to be given of the time and place of payment, a single notice, given at least sixty days before the time of payment, is sufficient; it is not intended that notice should be given sixty consecutive days."

See also Craig v. Fox, 16 Ohio Reports 567 (1847); Tabler v. Wiseman, 1 Ohio Decisions Reprint 497 (1852); City of Newport News v. Potter, 122 F. 332 (4th Cir. 1903). The rationale of the above cases, that had the legislature intended to require the daily publication of notice for 30 days prior to the sale it would have so provided, is applicable to the present situation. There is no provision in R.C. 3313.41 for the daily or even weekly publication of notice, but merely the requirement of "at least thirty days notice thereof". By way of contrast see R.C. 721.03, which requires advertisement for bids once a week for five consecutive weeks prior to the sale or lease of real estate belonging to a municipal corporation. In answer then to your first question, R.C. 3313.41 requires only one publication of notice which must be made at least thirty days in advance of the sale.

Your second question is whether a board of education may reserve the right to reject any and all bids, as previously ruled in Opinion No. 2140, Opinions of the Attorney general for 1921. In that Opinion my predecessor relied on the reasoning of Opinion No. 417, Opinions of the Attorney General for 1912, that a board of education, as a body politic and corporate, with the power to dispose of real and personal property, may, in the absence of a provision to the contrary, reserve the right to reject any and all bids made at a public auction of the property. This authority was recognized again in Opinion No. 369, Opinions of the Attorney General for 1945; and in State, ex rel. Amber v. Board of Education, 155 Ohio St. 94 (1951) the court in upholding such a reservation noted at 96 that:

"\* \* \* A careful study of the pertinent statutes discloses no prohibition whatsoever against reserving the right to reject bids; and there is no affirmative provision that the receiving of bids at a public auction must inevitably result in a sale. \* \* \*"

See also Opinion No. 2395, Opinions of the Attorney General for 1961, wherein my predecessor applied this rationale in affirming the right of a board of township trustees to reject bids at a sale by public auction. I find nothing to warrant a different interpretation in the present case and, therefore, must conclude that a board of education may reserve the right to reject any and all bids at a public auction, held pursuant to R.C. 3313.41.

With respect to your third question it should first be noted that school boards, as creatures of statute, are strictly limited to the powers that are expressly given to them, and those which are necessarily implied from the powers that are expressly given. Schwing v. McClure, 120 Ohio St. 335 (1929); Board of Education v. Best, 52 Ohio St. 138, 152 (1894).

It follows from my answer to your second question that a board of education, in its corporate capacity, does have implied authority to hire an expert appraiser to determine the value of the land. An appraisal would be essential to a decision on whether bids received at a public auction are satisfactory or should be rejected. In Opinion No. 7225, Opinions of the Attorney General for 1956, the issue of a board of education's authority to hire an appraiser was discussed, as it related to the board's purchase of property. My predecessor ruled that the authority was necessarily implied from R.C. 3313.17, which provides for such purchases. He rejected the argument that the appraisal was a duty of the board that could not be delegated, saying at page 741: "In the highly complex society in which we live today there are innumerable tasks which no prudent person would undertake to perform for himself, and which no one could be expected, as a public officer, to personally accomplish." See also Opinion No. 264, Opinions of the Attorney General for 1951, wherein my predecessor held that it was reasonable and necessary to recognize implied authority for a board of county commissioners to hire an auctioneer to cry a public auction of lands.

In the sale of property, just as with its purchase, boards of education are not necessarily well-equipped to make their own appraisal of the property's value. It necessarily follows that a board of education has implied authority to hire an expert to appraise the value of property to be sold at public auction pursuant to R.C. 3313.41.

Your final question is two-fold. You ask whether a board of education may divide property to be sold at auction into smaller parcels to be offered separately, and, if such division is proper, whether the board can retain the services of a registered surveyor to divide the school property into parcels.

While I find no specific prohibition against such action, it appears that the principle of expressio unius est exclusio alterius must be applied to preclude it. That maxim states that the mention of one thing implies the exclusion of all others, " \* \* \* [W]hen a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner." Transportation Co. v. Glander, 155 Ohio St. 471, 480 (1951). "The force of the maxim is strengthened by contrast where a thing is provided in one part of the statute and omitted in another." 2A Sutherland on Statutory Construction 123, Section 47.23 (4th ed. 1973).

R.C. 3313.41 provides that a board of education, having twice offered "a tract" at public auction without selling it, may sell it at a private sale, either as an entire tract or in parcels. While there is express authority to divide the property into parcels for private sale, there is no mention of such authority with respect to the auction. Furthermore, I find nothing to indicate that the legislature intended to confer such authority, and it is not necessarily implied by the directive that a public

auction be held. By way of contrast, see R.C. 2127.32 which provides that real estate sold under probate court order "shall be sold either in whole or in parcels at public auction \* \* \*."

While the division of property into smaller parcels may be a reasonable and effective way of maximizing the board's return on the sale, it should be remembered that a board of education, as a creature of statute, is strictly limited to those powers expressly granted or necessarily implied from those expressly given. Schwing v. McClure, supra. I must conclude, then, that the rule of expressio unius est exclusio alterius applies, and a board of education may not, pursuant to R.C. 3313.41, divide property into smaller parcels to be offered separately at public auction.

In specific answer to your questions, it is my opinion and you are so advised that:

1. R.C. 3313.41 requires only a single publication of notice of sale of school board property, which shall be made at least thirty days in advance of the publication.

2. The board of education may reserve the right to reject any and all bids made at the auction. Opinion No. 417, Opinions of the Attorney General for 1921, approved and followed.

3. The board of education may hire an appraiser to appraise the real estate prior to offering it at the public auction..

4. The board of education may not divide property to be sold into smaller parcels to be offered separately at the public auction.