

OPINION NO. 75-006

Syllabus:

R.C. 3313.41 requires a public auction for the sale of items of personal property, belonging to a board of education, whose aggregate value exceeds \$600; it does not authorize trade-ins of property other than motor vehicles.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, February 5, 1975

The request of your predecessor for my opinion concerning the disposal of personal property of a board of education reads as follows:

"Several questions, as follows, have been presented to this office relating to the disposal by boards of education of personal property at public auction, as set forth in Section 3313.41, Revised Code, when the value exceeds \$600.00:

"(1) May a board of education trade in personal property, such as typewriters or business machines as part of the purchase price of similar machines when the aggregate value of the trade-in exceeds \$600.00?"

"(2) May a board of education who has properly advertised for sealed bids on typewriters, whose aggregate value exceeds \$4,000.00 or \$6,000.00, as provided in Section 3313.46, Revised Code, sell the typewriters being replaced (aggregate value over \$600.00) to a company who places a bid only for the purchase of the trade-in typewriters and not for the sale of the replacement typewriters?"

Under R.C. 3313.41, a board of education is authorized to sell or dispose of its personal property in the following manner:

"When a 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."

It will be observed immediately that the only authority granted to a board of education, under this Section, to

trade in personal property is with reference to motor vehicles. The authority of a board of education to dispose of its real or personal property is to be strictly construed. Opinion No. 596, Opinions of the Attorney General for 1951, p. 355. In Cleveland v. State Bank, 16 Ohio St. 236 (1865), the Supreme Court held that a statute authorizing commissioners for the City of Cleveland to "sell" shares of a local railway stock as they deemed expedient, "and to do whatsoever else may be necessary to secure and advance the interests of the city in the premises", was insufficient authorization for a stock swap with another railroad. I conclude, therefore, that, under R.C. 3313.41, a board of education is not authorized to trade in personal property in the aggregate value of more than \$600 with the sole exception of motor vehicles. See also Opinion No. 1027, Opinions of the Attorney General for 1933, and Opinion No. 2474, Opinions of the Attorney General for 1934.

The term "sale" was first construed in Taylor v. Galloway, 1 Ohio 232 (1823). The Supreme Court there held that the power to sell given in a will did not authorize an exchange or barter of real property, but allowed a sale for money only. Ohio courts since Taylor have continued to construe the term narrowly in any situation where a fiduciary duty was involved. For instance, in Binns v. Isabel, 39 Ohio L. Abs. 229, 12 Ohio Supp. 113 (1942), the court narrowly construed a probate court's statutory power to sell realty of a decedent. See Shuster v. North American Mortgage Loan Co., 139 Ohio St. 315, 40 N.E. 2d 130 (1942) (trusteeship), and Smith v. Gowan, 18 C.C. (n.s.) 99 (1911) (agency); and see also 43 A O. Jur. 2d, Powers, Section 15. Since board of education trustees have a fiduciary obligation to the public, and statutes setting out their powers in such situations are strictly construed, Schwing v. McClure, 120 Ohio St. 335 (1929), I must conclude that the narrow construction of the power to sell is the proper one to be applied here.

In view of the foregoing, the answer to the second question must be negative. In accepting bids at public auction in the stipulated circumstances here, R.C. 3313.41 authorizes acceptance of only those bids relating to the purchase of old typewriters or business machines. A bid which concomitantly offers new equipment for sale is invalid in that it is a barter or trade-in. The two transactions must be separate and distinct in conformance with statutory guidelines.

In specific answer to the questions posed it is my opinion, and you are so advised that R.C. 3313.41 requires a public auction for the sale of items of personal property, belonging to a board of education, whose aggregate value exceeds \$600; it does not authorize trade-ins of property other than motor vehicles.