

OPINION NO. 69-054

Syllabus:

It is not necessary for a board of township trustees to advertise, in accordance with Sections 5549.21 and 5575.01, Revised Code, for the purchase of gasoline in bulk for consumption in township vehicles even though such purchases may exceed \$1000.00 within the course of one year.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: Paul W. Brown, Attorney General, June 4, 1969

Your request for my opinion reads as follows:

"Several of the Board of Township Trustees in our county have contracted with oil companies for the bulk purchase of gasoline in operating the township trucks, graders and other vehicles. These contracts have been entered into by soliciting quotations and the State Examiner's Office has questioned the propriety of township purchasing bulk gasoline in this manner, and have advised

some of the township clerks that it is necessary for them to purchase gasoline pursuant to Section 5749.21 /sic/ of the Revised Code of the State of Ohio and to advertise for the purchase of this gasoline if the amount is in excess of \$1000.00 in any one year.

"Would you please furnish us with your opinion as to whether or not it is necessary for the Board of Township Trustees to advertise for the purchase of bulk gasoline to be used in the various township vehicles when such purchases exceed \$1000.00 with the course of one year."

I assume that the statutory provision to which you intend to refer in your letter is Section 5549.21, Revised Code, relating to the purchase of machinery, materials and supplies, and the employment of labor, necessary in constructing, reconstructing, maintaining and repairing roads and culverts within a township. I further assume that you intend to use the word "gasoline" in your letter in the broader sense of "fuel" for motor vehicles, and that all the motor vehicles in question are used within a township for the purposes enumerated in Section 5549.21, supra, which provides in pertinent part as follows:

"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 * * *. 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. 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. * * *"

Section 5575.01, Revised Code, establishes the requirements of competitive bidding as follows:

"In the maintenance and repair of roads the board of township trustees may proceed either by contract or force account. When it proceeds by contract the contract shall, if the amount involved exceeds one thousand dollars, be let by the board to the lowest responsible bidder after advertisement for bids once, not later than two weeks prior to the date fixed for the letting of such contract, in a newspaper published in the county but if there is no such paper published in the county, then in one having general circulation in the township. If the amount involved is one

thousand dollars or less, the contract may be let without competitive bidding.* * *

"Before undertaking the construction or reconstruction of a township road, the board shall cause to be made by the county engineer an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment, and all other items of cost.* * *"

(Emphasis added.)

Motor vehicle fuel might arguably fall within the meaning of "material", as that word is used in Section 5549.21, supra, if that statute were read alone. However, when it is read in conjunction with Section 5575.01, Revised Code, which statute not only prescribes the procedure for competitive bidding to be followed pursuant to Section 5549.21, supra, but relates generally to the same subject area, i.e., the maintenance and repair of roads, as Section 5549.21, supra, it becomes apparent that the Legislature did not intend the word "material" to include motor vehicle fuel. As the above excerpt of Section 5575.01, supra, indicates, "material" and "fuel" are listed separately in that statute, and I must presume that the Legislature intended to treat these two enumerated categories separately, not only in Section 5575.01, supra, but also in Section 5549.21, supra. "Fuel" is not listed as one of the categories subject to competitive bidding pursuant to Section 5549.21, supra.

It is, therefore, my opinion and you are hereby advised that it is not necessary for a board of township trustees to advertise, in accordance with Sections 5549.21 and 5575.01, Revised Code, for the purchase of gasoline in bulk for consumption in township vehicles even though such purchases may exceed \$1000.00 within the course of one year.