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NOTES OF TOWNSHIP ISSUED BY TOWNSHIP TRUSTEES—PURCHASE OF FIRE FIGHTING EQUIPMENT—SECTION 3298-54 G. C.—NOT REQUIRED TO BE ADVERTISED OR OFFERED FOR PUBLIC SALE—MAY BE SOLD BY TRUSTEES THROUGH PRIVATE NEGOTIATIONS—NORMAL COMMERCIAL CHANNELS FOR SALE AND EXCHANGE OF NEGOTIABLE INSTRUMENTS—MAY BE SOLD AT PRICE ACCEPTABLE TO TRUSTEES OR AT PREVAILING PRICE FOR SIMILAR INSTRUMENTS IF HIGHER THAN LOWEST ACCEPTABLE PRICE.

SYLLABUS:

Notes of a township issued by township trustees for the purchase of firefighting equipment under authority of Section 3298-54 of the General Code of Ohio are not required to be advertised or offered for public sale but may be offered for sale by the trustees by private negotiations through normal commercial channels customarily used in the sale and exchange of negotiable instruments and sold at such price as may be acceptable to them or at the prevailing price for similar instruments if higher than the lowest acceptable price.

Columbus, Ohio, May 6, 1949

Hon. Forrest E. Sidener, Jr., Prosecuting Attorney
Madison County, London, Ohio

Dear Sir :

Receipt is hereby acknowledged of your recent request for my opinion which reads in part as follows :

“I am writing for an informal opinion as to your office’s interpretation of the last line of Section 3298-54 of the General Code of Ohio. The line to which I refer reads as follows :

‘Such notes *shall be offered for sale on the open market* or given to the vendor if no sale is made.’ (Underscoring the writer’s.)

“I am interested in what is meant by the words ‘shall be offered for sale on the open market’. Does that mean that the note shall be advertised and offered for public sale ; or, would it suffice to contact the local banking institutions, ask for sealed bids and sell the note to the lowest bidder.”

The last paragraph of Section 3298-54 of the General Code, to which you refer in your letter of inquiry, reads :

“The board of trustees of any township or fire district or districts created by them under the provisions of this act, may purchase the necessary fire fighting equipment for such township, fire district or districts and pay for the same over a period of four years. Such trustees shall be authorized to issue the notes of the township, fire district or districts, as the case may be, signed by the trustees and attested by the signature of the township clerk, and covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to the provisions of sections 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed ten thousand dollars covered by the issuance of notes payable over a period of four years. One-fourth of such purchase price shall be paid at the time of purchase. The remainder of the purchase price shall be covered by said notes maturing in two, three and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made.”

It is stated in 43 Am. Jur. at page 765, in discussing the necessity of competitive bidding with respect to public works and contracts, that :

“Whether a contract for public work or to furnish supplies, services, etc., to the public is to be entered into through private negotiation or only after competitive bidding is a matter of statutory provision and construction. In the absence of some controlling constitutional or statutory provision, municipal ordinance, or other legislative requirement, competitive bidding is not an essential prerequisite to the validity of contracts for public work, contracts to furnish materials to public bodies, or other contracts by and with public bodies.”

Also see *Reiter v. Chapman*, 31 P. (2nd) 1005, 1008, 177 Wash. 392, 92 A. L. R. 828.

To the same effect in discussing the disposition and sale of bonds and obligations of political subdivisions generally it is stated in 43 Am. Jur. (supra) at page 373, as follows :

“The subdivision officials are vested with a discretion as to the method of sale or disposal, where the controlling statutes do not require the bonds to be sold in any particular manner, and the courts, in the absence of fraud or an abuse of the discretion vested in such officials, have no power to control their action. Thus, where the power is granted without restriction, the authorities of the municipality are left free to dispose of them at such prices as they can obtain. They have the implied power to agree upon the terms of sale. In some instances, however, although the statutes are silent as to specific method of sale, thus allowing exercise of discretion in many respects, they nevertheless forbid sale below par, which mandate must be observed.”

I am of the opinion that notes of a township issued as provided for by the above section of the General Code may be considered public contracts for the payment of money. Their sale, therefore, unless otherwise directed by statute, there being no constitutional requirement in Ohio, may be by private negotiation. While other sections of the Code relative to public contracts entered into by township trustees specifically direct that contracts for the purposes stated in the respective sections shall be by advertisement and receipt of bids there is no general section covering all such contracts entered into by such trustees. Were it not for the fact that the provisions of the Uniform Bond Act (Sections 2293-1 to 2295-15 inclusive, of the General Code) are specifically excepted from their application to the notes

authorized by the above quoted Section 3298-54 that act would control the manner of sale of such notes.

In determining the answer to your inquiry we are compelled to rely wholly upon the wording of the statute itself. As a general rule, words of a statute, in common use, will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them. Ordinarily, such words are to be given their natural, literal and full meaning. This is especially true where there is an absence of any definition of the intended meaning of the words or terms used in the statute itself. (*Baker v. Powhatan Mining Co.*, 146 O. S. 600, 33 O. O. 84, 67 N. E. (2nd) 714.)

The term "open market" is one of frequent lay usage, yet the courts have used the term only in rare instances and the only definition of the term by a court, of which I am apprised, is one by the Supreme Court of Colorado, reported in the case of *Harvey v. City and County of Denver*, 18 P. (2nd) 321, 322, 92 Colo. 114, wherein the court say :

"It conveys the idea of buying, at the dealer's price, what he offers, as distinguished from the idea of presenting to him a schedule of what you desire, in which he may or may not directly deal, and which he may be obliged to import, or manufacture to special design, and asking him at what price he can meet your requirements."

It is my opinion that the term as applied in the section of the General Code under discussion would imply an offer of sale of the notes of the township by the trustees to a prospective purchaser or to prospective purchasers through normal commercial channels customarily used in the sale and exchange of negotiable instruments ,at such price as they would be willing to accept or at the prevailing price for similar instruments if higher than the lowest acceptable price, under such circumstances that the trustees would be under no obligation to sell such notes at a price that would not be acceptable to them and the prospective buyer or buyers under no obligation to purchase the same at a greater price than they were willing to pay.

In specific answer to your question, it is my opinion that notes issued pursuant to Section 3298-54 of the General Code need not be advertised or offered for public sale but may be offered for sale by private negotiations through normal commercial channels customarily used in the sale and

exchange of negotiable instruments and sold at such price as may be acceptable to the township trustees or at the prevailing price for similar instruments if higher than the lowest acceptable price.

Respectfully,

HERBERT S. DUFFY,
Attorney General.