

2053.

CONTRACT—VOID—ILLEGAL—FAILURE TO MEET STATUTORY REQUIREMENTS—MOTOR TRUCKS—WHERE CITY EXPENDED MONEY ON ILLEGAL CONTRACT, PAYMENTS STOPPED—CONTRACT VOID AB INITIO—NO LIABILITY ON CONTRACT—NO RECOVERY IN QUANTUM MERUIT—FINDINGS—AGAINST CORPORATION AND OFFICIALS—DUTY TO RETURN PROPERTY.

*SYLLABUS:*

1. *A contract void and illegal by reason of its failure to meet statutory requirements, will not be permitted to operate as a contract of sale by being treated as a lease which transfers title at the end of a given period.*

2. *When a city has expended an amount of money upon an illegal contract for equipment and payments on it are stopped, such contract is void ab initio and the corporation incurs no liability express or implied ex-contractu from the transaction and there can be no recovery in quantum meruit on any equipment obtained by the corporation.*

3. *Where contract is made without compliance with statutory requirements, finding should be made against the company dealt with and officials of the corporation responsible for payment of all money paid out on such a contract, and in collecting such money, it is the duty of the corporation to return all property received by them under the void contract where such can be done.*

COLUMBUS, OHIO, March 9, 1938.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: This will acknowledge the receipt of your recent communication. The facts herein given are taken from the statement enclosed in your letter.

“Through Ordinance No. 3523 passed July 6, 1936, Council authorized the purchase of 7 new trucks for a price not to exceed \$9,000.00.

Section 2 of the same ordinance provided for the sale of 7 old trucks to apply upon the aforementioned purchase price.

No appropriation ordinance was passed appropriating any funds to pay for said trucks.

The board of control on August 20, 1936, after due advertisement for bids, awarded a contract for the purchase of 7 new

trucks to the Fife Motor Sales Co., on their bid of \$8,860.00, with an allowance of \$700.00 for the 7 old trucks. The Fife Motor Sales Co., is the agent for International trucks, but it is here stated that said bid was not presented as such.

Inasmuch as no funds were available to pay for said trucks, the director of Public Service entered into a contract with the International Harvester Co., for the lease of said 7 new trucks at a rental fee \$2,054.50 plus interest at the rate of 6 per cent covering the period of time from October 15, 1936, to December 31, 1936.

\* \* \* \* \*

Further clauses and options in the lease provided for its extension upon payment of \$3,753.00 in monthly installments during 1937 and the sum of \$3,393.30, in like manner in 1938.

By exercise of an option the trucks were to become the property of the city upon payment of the remaining payments or at the expiration of the lease. \* \* \* \*"

You request an opinion in answer to the following questions:

"Question 1. When a city has expended an amount of money upon an illegal contract for equipment, and payments are stopped upon advice of our State Examiner, should the transaction be closed by recovery of the payments already made, and return of the equipment?

Question 2. Should the city retain the equipment and pay the balance as a moral obligation?

Question 3. Should the city retain the equipment without making further payment, placing upon the Company the burden of collecting, through court proceedings, any balance it may feel is due?"

Section 5625-33 of the General Code limiting the appropriation and expenditure of money provides in part:

"No subdivision or taxing unit shall: \* \* \* (d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the

treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. \* \* ”

Also bearing upon the situation are the provisions of Section 4328, General Code.

“The director of public service may make any contract or purchase supplies or material or provide labor for any work under the supervision of that department not involving more than five hundred dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds five hundred dollars, such expenditure shall first be authorized and directed by ordinance of council. When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city.”

There can be no doubt that the language used in these sections sets forth certain mandatory requirements for public contracts. In view of this fact the courts have seen fit to interpret most strictly sections relating to public contracts in order that the protection of public money which the legislature intended to provide should be fact rather than fiction. For this reason it is a now well established rule in Ohio that public contracts entered into without compliance with the mandatory requirements of statutes, or in disregard of statutory provisions are null and void and cannot be enforced against the municipal corporation. This rule has been sustained by many judicial decisions of this state. (O. J., Vol. 28, page 922.) Carrying the point of view of the law expressed here further, it has been held that since a municipal corporation cannot bind itself directly in a contract made without compliance with statutes governing it, no implied contract to pay for benefits received by it exists. (*Wellston vs. Morgan*, 65 O. S., 219; *Costner vs. Pleasant Ridge*, 7 N. P. (N. S.) 174; *Lancaster vs. Miller* 58 O. S., 558; *Frishic vs. East Cleveland*, 98 O. S., 266.)

In *Lancaster vs. Miller*, cited supra, the court made the following statement which so clearly sets forth the necessity of statutory compliance.

“It is well settled in this state that when the statute prescribes the mode by which the power therein conferred upon a

municipal body shall be exercised, the mode specified is the measure of the power granted and a contract made otherwise than as expressly prescribed and limited by statute is not binding or obligatory as a contract."

We come now to the matter of property which has been accepted and used by a municipal corporation under a contract void because of non-compliance with the statutes governing it.

Regarding such property there is a rule equally well established and consistently followed as the one discussed above. This rule is that no recovery can be had against a municipal corporation even on a quantum meruit basis for benefits accepted and enjoyed by it under a contract invalid by reason of its disregard of statutory requirements in the formation or execution thereof. *Lancaster vs. Miller*, supra; *Hummel & Co., vs. Woodfield*, 115 O. S., 675; *Hummel vs. Woodfield*, 122 O. S., 148.

Persons who deal with municipal corporations for their own profit must at their own peril take notice of limitations imposed by statute upon the powers of those bodies. Hence those who trust or give property to municipal corporations should do so only after full investigation of laws governing the transaction. In a case, however, where a municipal corporation has come into possession of property by virtue of an illegal contract which is *malum prohibitum*, the *Woodfield* case, supra, has been cited as authority for the rule that the courts will in such a case compel restitution of the property to the owner where such property is returnable. This is as far as the Ohio doctrine goes and is perhaps the only manner in which a moral obligation in respect to such contracts is recognized. Further than this we cannot go.

In view of these facts, it is my opinion, (1) that the lease in question was a void and illegal contract by reason of its failure to meet statutory requirements, and that it could not by transferring title at the end of a period of time operate as a contract of sale; (See 1922 O.A.G., Vol. I, page 499, 1929 O.A.G., Vol. II, page 1147, 1928 O.A.G., Vol. IV, page 2873 and 1937 O. A. G., No. 229.)

(2) That when a city has expended an amount of money upon an illegal contract for equipment and payments on it are stopped, such contract is void *ab initio* and the corporation incurs no liability express or implied *ex contractu* from the transaction and there can be no recovery in quantum meruit on any equipment obtained by the corporation.

(3) Where contract is made without compliance with statutory requirements, finding should be made against the company dealt with and officials of the corporation responsible for payment for all money paid out on such a contract and in collecting such money, it is the duty

of the corporation to return all property received by them under the void contract where such can be done.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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2054.

APPROVAL—BONDS OF VILLAGE OF NEW MADISON,  
DARKE COUNTY, OHIO, \$11,500.00, PART OF ISSUE  
DATED OCTOBER 15, 1935.

COLUMBUS, OHIO, March 9, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Village of New Madison,  
Darke County, Ohio, \$11,500.00.  
(Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of waterworks bonds in the aggregate amount of \$12,000, dated October 15, 1935, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*