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TOWNSHIP AND MUNICIPAL CORPORATION, JOINT ACQUISITION OF REAL ESTATE—TOWNSHIP MAY SELL ITS INTEREST AT AUCTION OR BY CONVEYANCE TO THE MUNICIPALITY—§505.10 R.C.

SYLLABUS:

Where a township has joined with a city to purchase real property and thereafter the township and city shared the expense of constructing a fire station on such property, the township may sell its interest in such property either by public auction as provided in Section 505.10, Revised Code, or by conveyance to the city in which the property is located, as provided in Section 505.10, Revised Code.

Columbus, Ohio, December 12, 1958

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I would like to request an opinion from your office concerning the following matter:

- "1. The City of Kent and Franklin Township several years ago jointly purchased a piece of property in the City of Kent and, at that time, jointly constructed a fire station.
- "2. At the time this was done the township contracted with the city, in which the city agreed to provide fire protection in the township area, and this has been a practice of long standing. At that time the township owned two trucks and they were kept in this fire station.
- "3. In 1957 the township entered into a contract to provide fire protection for the rural area with the Village of Brady Lake, and moved their trucks from a jointly owned fire station located in Kent and now quarters them at Brady Lake.

"The question I wish to propound is as follows: By what method may the township dispose of their interest in the fire station located in the City of Kent, bearing in mind the fact that the real property is jointly owned?"

Section 505.37, Revised Code, reads in pertinent part as follows:

"The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in Sections 505.37 to 505.44, inclusive, of the Revised Code, and may prorate the expense of such joint action on such terms as are mutually agreed upon."

That same section then provides in the last full paragraph as follows:

"The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code, or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings

and sites for such township-fire district, or municipal corporation and pay for it over a period of four years.”

Thus it appears that the purchase of buildings and sites through “joint action” is permissible. That this “joint action” results in a “joint purchase” in the words of the statute, is likewise clearly indicated, but it should be borne in mind that with relation to real property in Ohio, where joint tenancy is expressed without words of survivorship, a tenancy in common results. *In re Hutchinson*, 120 Ohio St., 542.

The exact nature of the relationships created by a joint purchase under this section is not spelled out in the statute but it should be noted that the legislature did not, in Section 505.37, Revised Code, create a joint board.

The creation of a joint board, such as is provided for in Section 6133.02, Revised Code, is not to be assumed unless the legislature has said in no uncertain terms who is to compose it. This later section, quoted for purposes of illustration only provides in part:

“* * * the proceedings shall be conducted by a joint board of county commissioners consisting of the members of the board of county commissioners of the several counties in which land may be benefited or damaged by the proposed improvement.”

Such a board was not created for the purchase of fire equipment, *etc.*, by the section under consideration and one need not resort to conjecture to see that in the instant case the board of trustees would be outnumbered by the city council, if such board were to consist of these two bodies, and could be outvoted and divested of any effective control over anything contributed by them.

A somewhat analogous situation was treated by one of my predecessors in Opinion No. 2520, Opinions of the Attorney General for 1940, p. 677, where it is stated in Syllabus 1:

“1. A township and a village cooperating under the terms of Section 3298-54, General Code, in the purchase of fire fighting equipment may not vote jointly as a unit upon the question of issuing bonds to finance the purchase of such equipment.”

This opinion dealt with the application of the Uniform Bond Act, Sections 2293-1, *et seq.* General Code, but the reasoning in support of

the first syllabus in applicable here for the reasons stated at page 679, in the last sentence of the first full paragraph where it is stated:

“In addition, it should be observed that Section 3298-54 and 3298-60, General Code, although they provide for joint action by townships and municipalities in matters relating to fire protection, do not set up or constitute the cooperating divisions a voting unit or subdivision either in general terms or within the meaning of the word as used in the Uniform Bond Act.”

From the foregoing discussion it appears that any action undertaken under Section 505.37, Revised Code, is necessarily the result of the independent action taken by each body voting separately to accomplish the result desired by both. One could as readily discern that should one of the bodies take unilateral action, the other would not be bound.

Applying this reasoning to the instant case, it appears that if the trustees desire to dispose of their interest in the real estate in question they can and must do so by action as a board of trustees.

While providing for the purchase of such property as is here involved, Section 505.37, Revised Code, is silent as to the manner of disposing of such property.

Looking then to the general powers of a board of trustees we find that Section 505.10, Revised Code, provides in pertinent part:

“The board of township trustees may accept, on behalf of the township, the donation by bequest, devise, deed of (or) gift, or otherwise, of any property, real or personal, for any township use. When the township has property which the board, by resolution, finds it does not need, the board may sell and convey such property. Such sale must be by public auction and upon notice thereof being published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of such publications to be at least five days before date of sale.

“When a township has title to real property situated within a municipal corporation in that township, the board of such township may, by resolution, authorize the transfer and conveyance of such property to the municipal corporation for municipal purposes, upon such terms as are agreed to between such board and the legislative authority of such municipal corporation.”

The township thus has an optional method of disposing of real property situated within a municipal corporation and as stated in the

last paragraph of the section last quoted, it may by resolution authorize the transfer to the municipal corporation for municipal purposes.

That the township is not the only owner of the property would seem to pose no problem, for it can dispose of only such interest as it possesses and the statute does not require sole ownership as a condition precedent to the authority therein granted.

Should the trustees desire they could, under this section, dispose of the property by public auction as provided in the first paragraph of the section.

Thus, in specific answer to your question you are advised that where a township has joined with a city to purchase real property and thereafter the township and city shared the expense of constructing a fire station on such property, the township may sell its interest in such property either by public auction as provided in Section 505.10, Revised Code, or by conveyance to the city in which the property is located, as provided in Section 505.10, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General