

**OPINION NO. 66-129**

**Syllabus:**

1. The township trustees may purchase equipment whose purchase price does not exceed one thousand dollars without competitive bidding.

2. Where the board desires to sell road equipment to the person or firm from which it desires to purchase other road equipment for not more than one thousand dollars, the board may not sell road equipment at a price exceeding the price of the equipment being acquired without public auction and notice under Section 505.10, Revised Code.

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**To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William B. Saxbe, Attorney General, July 26, 1966**

Your request for my opinion reads as follows:

"Revised Code Section 5549.21 provides, in part, that where a board of township trustees desires to sell equipment owned by the township to the person from whom it is to purchase other equipment, the board may offer, 'where the amount of the purchase alone involved does not exceed one thousand dollars' to sell such equipment and 'have the amount' credited by the vendor against the purchase of the other \* \* \* equipment'. I assume that all of this may be accomplished without advertising.

"May such a transaction be consummated without advertising, where the purchase price of the equipment to be sold by the township exceeds the price of the equipment being acquired, resulting in a cash payment to the township of the excess?"

Section 5549.21, Revised Code, provides in relevant part:

"Where, in compliance with section 505.10 of the Revised Code, the board desires to sell machinery, equipment, or tools owned by the township to the person from whom it is to purchase other machinery, equipment, or tools, the board may offer, where the amount of the

purchase alone involved does not exceed one thousand dollars, to sell such machinery, equipment, or tools and have the amount credited by the vendor against the purchase of the other machinery, equipment, or tools."

Where the purchase price does not exceed one thousand dollars, the trustees may purchase without advertising for bids. On this point I follow Informal Opinion No. 443, Informal Opinions of the Attorney General for 1955, dated April 18, 1955, where the syllabus states in part:

"2. \* \* \* If the estimated cost of such material is less than one thousand dollars it may be purchased by the trustees in the open market."

The reasoning of the opinion is that since purchases not exceeding one thousand dollars are not included in the provision requiring competitive bidding those mandatory provisions do not apply to such purchases. Although specifically ruling on the purchase of road construction materials, that opinion is equally apposite to road machinery, equipment, and tools.

Section 5549.21, supra, in its language refers to Section 505.10, Revised Code, which section reads in part:

" \* \* \* When the township has property, including motor vehicles, road machinery, equipment, and tools, 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 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.

"Where the board finds, by resolution that the township has motor vehicles, road machinery, equipment, or tools which are not needed, or are unfit for public use, and the board desires to sell such motor vehicles, road machinery, equipment, or tools to the person or firm from which it proposes to purchase other motor vehicles, road machinery, equipment, or tools to such person or firm, and to have such selling price credited to the person or firm against the purchase price of other motor vehicles, road machinery, equipment, or tools."

(Emphasis added)

As indicated in the first quoted paragraph of Section 505.10, supra, the sale of township property by auction generally is mandatory. However, the second quoted paragraph carves out an exception to that rule. A board of township trustees may "trade-in" the old equipment as part of the transaction.

The General Assembly intended the township to benefit from values generally higher from a trade-in than from a sale of used equipment. However, the mere existence of a combined purchase and sale cannot be used to subvert entirely the statutory requirements of sale by auction. Township property worth thousands of dollars cannot be sold without auction if property as inexpensive as a shovel were purchased as part of the transaction.

Moreover, the statute is phrased in terms of "selling price credited." This language carries the clear implication that the board of township trustees cannot, on a combined purchase and sale, sell equipment for more than the price of the equipment being acquired without advertising for bids.

Accordingly, it is my opinion and you are advised that:

1. The township trustees may purchase equipment whose purchase price does not exceed one thousand dollars without competitive bidding.

2. Where the board of township trustees desires to sell road equipment to the person or firm from which it desires to purchase other road equipment for not more than one thousand dollars, the board may sell road equipment at a price not exceeding the price of the equipment being acquired without public auction and notice under Section 505.10, Revised Code.