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## TOWNSHIP TRUSTEES:

1. MAY PURCHASE BUILDING TO HOUSE AND STORE MACHINERY AND TOOLS OWNED BY TOWNSHIP—SECTION 3373, G. C.
2. MAY PURCHASE BUILDING TO HOUSE AND STORE SUCH EQUIPMENT WITHOUT SUBMITTING QUESTION TO VOTE OF ELECTORS OF TOWNSHIP.
3. WHERE SUCH PURCHASES USED FOR CONSTRUCTION, MAINTENANCE AND RECONSTRUCTION OF HIGHWAYS, PURCHASE PRICE MAY BE PAID FROM ROAD FUND CREATED BY REASON OF LEVY OF TAXES ON TAXABLE PROPERTY OF TOWNSHIP—MAY NOT BE PAID FROM PROCEEDS OF LIQUID FUEL TAX DISTRIBUTED UNDER AUTHORITY OF SECTION 5541-8, G. C.

## SYLLABUS:

1. The trustees of a township may, under authority of Section 3373 of the General Code, purchase a building for the purpose of housing and storing machinery and tools owned by the township.

2. Under authority of Section 3373 of the General Code, township trustees may purchase a building for the housing and storing of machinery and tools without submitting the question of such purchase to a vote of the electors of such township.

3. When the township trustees purchase a building for the housing and storing of machinery and tools owned by a township and used for the construction, maintenance and reconstruction of highways, the purchase price thereof may be paid from a road fund created by reason of a levy of taxes on the taxable property of the township but may not be paid from the proceeds of the liquid fuel tax distributed to it under authority of Section 5541-8 of the General Code.

Columbus, Ohio, August 12, 1943.

Hon. Roland Pontius, Prosecuting Attorney,  
Jefferson, Ohio.

Dear Sir:

Your request for my opinion reads:

"Section 3373 of the General Code authorizes township trustees to provide suitable places for the housing and storing of machinery and tools owned by the township. The trustees of Saybrook Township, Ashtabula County, wish to purchase a building which is suitable for such purpose and which has been offered to them for the price of \$4000.00.

Will you kindly advise whether or not they may purchase such a building without a vote of the people and whether or not the purchase price should be paid from the Road Fund of the township, such funds being available?

In the event that it is necessary to submit this question to a vote, we will wish to have it submitted at the next November election, and will, therefore, appreciate receiving your opinion at your earliest convenience."

Section 3373 of the General Code, referred to in your inquiry, contains the following provisions:

"\* \* \* The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. \* \* \*"

One of my predecessors in office in an opinion reported in Opinions of the Attorney General for 1925, No. 2803, page 625, held that:

"(1) Under the provisions of Section 3373, General Code, the township trustees may purchase land upon which to erect a building to house and store machinery and tools owned by the township, if in the judgment of such trustees the same is necessary and essential, in order to preserve such tools and equipment.

(2) In awarding a contract for the construction of such a building, the commissioners should comply with the provision of law relating to advertising and giving notice to bidders."

The matter referred to in the second paragraph of the syllabus just above quoted was the subject of an opinion of a subsequent Attorney General which is reported in Opinions of the Attorney General for 1931, Vol. I, page 219. That Attorney General ruled:

"Township trustees are not required to advertise for bids in acquiring a suitable building for housing and storing machinery and tools owned by such township."

The conclusion set forth in the opinion last above cited was based upon the proposition that while Section 3373 of the General Code spe-

cifically required competitive bidding with reference to contracts for maintenance and repair of roads and the purchase of machinery, tools and material, it makes no such specific requirement as to the acquisition of property for the housing of such equipment. Section 3373 of the General Code has been amended since the rendition of such opinions in respects other than here under consideration, but no amendment has been made with respect to the provision concerning the requirement of providing housing facilities for tools and machinery.

In the next succeeding chapter of the General Code following that of which Section 3373 is a part is contained authority for the acquisition of town halls upon a favorable vote of the electors of the township. In the succeeding chapter similar provision is made with respect to the acquisition of public libraries. Other provisions are contained in the General Code authorizing township trustees to acquire memorial buildings, parks, etc., upon a vote of the electors.

In the statute directing and requiring the township trustees to provide housing and storing facilities for machinery and tools no reference is made to the consent of the electors. With respect to the acquisition of town halls, public libraries, memorial buildings and parks you will observe that the grant of authority to the township trustees is to exercise the power of acquisition only when the electors by their vote have authorized the acquisition of such property. In other words, such grants of authority are in form a grant of power to the electors to authorize the township trustees to acquire property for the purposes mentioned in such statutes. You will observe from the language of Section 3373 no authority is granted to the electors to authorize the township trustees to acquire suitable housing and storing facilities for township machinery and tools. The Legislature itself has imposed the duty upon the township trustees to acquire and provide this space for housing and storing township machinery. Such being true, even if you were to construe other sections of the General Code as authorizing the submission of the question of acquiring property for such purposes to the electors of the township, such vote would appear to be a redundancy for even though the majority of the electors, by their votes, would indicate that in their opinion the tools and machinery should not be sheltered, nevertheless, by reason of the provisions of the statute above quoted, it would remain the duty of the township trustees to provide such housing and shelter. However, I am unable to find any provision of statute purporting to authorize the submission of such question to the electors of the township.

It would thus appear that since the General Assembly has provided that the trustees shall provide such housing and shelter and has not made provision for the submission of the question of acquisition to the electors of the district, your first inquiry must be answered in the affirmative.

Your second inquiry is as to whether the cost of such building may be paid from the township road fund.

If by "township road fund" you refer to a fund made up of the moneys paid to the township under authority of Section 5541-8 of the General Code, your question appears to be answered by the language of such section. You will observe that the language of such section specifically limits the use of the moneys so derived from liquid fuel tax when paid to the township. It provides that such moneys may be used "for the sole purpose of constructing, widening and reconstructing the public roads and highways within such township."

The meaning of the language above quoted has been construed by several attorneys general and is scarcely broad enough to permit the interpretation that the purchase of a building for the housing of machinery and tools owned by a township is the constructing, widening or reconstruction of public roads and highways. See Opinions of the Attorney General for 1936, Vol. III, 1471; Opinions of the Attorney General for 1928, Vol. I, 84; Opinions of the Attorney General for 1939, Vol. II, 1269.

However, if by the expression "township road fund" you refer to a fund in the treasury made up of monies derived from taxes levied upon the taxable property in the township, I do not find any such restriction upon their use, and if the building sought to be acquired is for the purpose of housing machinery and tools used for the construction, widening and reconstruction of highways, it would appear to be within the purpose of the levy from which such proceeds were derived and within the purpose of the fund so created.

Specifically answering your inquiry, it is my opinion that:

1. The trustees of a township may, under authority of Section 3373 of the General Code, purchase a building for the purpose of housing and storing machinery and tools owned by the township.
2. Under authority of Section 3373 of the General Code, township trustees may purchase a building for the housing and storing of machinery and tools without submitting the question of such purchase to a vote of the electors of such township.
3. When the township trustees purchase a building for the housing and storing of machinery and tools owned by a township and used for the construction, maintenance and reconstruction of highways, the purchase price thereof may be paid from a road fund created by reason of a

levy of taxes on the taxable property of the township but may not be paid from the proceeds of the liquid fuel tax distributed to it under authority of Section 5541-8 of the General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.