

2160.

ROADS AND HIGHWAYS—AUTHORITY OF TOWNSHIP TRUSTEES TO PURCHASE MACHINERY FOR USE IN MAINTENANCE AND REPAIR OF ROADS—WHEN APPROVAL OF COUNTY COMMISSIONERS IS NECESSARY FOR TOWNSHIP TRUSTEES TO PURCHASE MACHINERY.

1. *By reason of the provisions of section 3371-1 G. C., (108 O. L. 499), township trustees are not authorized to purchase machinery for use in the maintenance and repair of roads unless they first secure the approval of the county surveyor to the expenditure; and this is true even though the trustees have resort to competitive bids in accordance with section 3373 G. C.*

2. *The consent and approval by county commissioners to the purchase of machinery by township trustees for use in the maintenance and repair of roads, is requisite only in case the township trustees have recourse to the installment plan described in section 7201 G. C. (108 O. L. 505), and is not required in case the township trustees are making the purchase on a cash basis.*

COLUMBUS, OHIO, June 10, 1921.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—You have submitted for the consideration of this office the following:

“Section 3373 General Code (108 O. L. Pt. 1, 499), provides in part as follows:

‘Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. \* \* \* All purchases of materials, machinery, and tools, shall where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided.’

Section 7200 G. C. (107 O. L. 115) provides in part as follows:

‘The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, which shall be paid for out of the road funds of the county.’

Section 7201 G. C. (108 O. L. Pt. 1, 505), provides the terms upon which county commissioners and township trustees, in the purchase of machinery, etc., shall pay for the same. The last sentence of this section reads as follows:

‘The power herein conferred on township trustees shall be exercised by them only with the consent to and approval of such purchase and the terms thereof, by the county commissioners of the county.’

Section 3371-1 G. C. (108 O. L. Pt. 1, p. 499) provides as follows:

'In the maintenance and repair of roads the township trustees and any township highway superintendent, appointed by them, shall be subject to the general supervision and direction of the county surveyor. They shall follow the direction of the county surveyor as to methods to be followed in making repairs and all expenditures made by them for maintenance and repair purposes shall where the amount involved exceeds fifty dollars receive the approval of the county surveyor before payment is made.'

Under the above referred to sections I presume there is no question but what township trustees are authorized to purchase a tractor for road work under certain conditions, the first of which is that where the amount involved exceeds five hundred dollars that the purchase be made from the lowest responsible bidder after legal advertisement.

Quaere: Is it necessary under section 3371-1 G. C. for the county surveyor to approve such expenditure by the township trustees?

Quaere: Is it necessary, under section 7201 G. C. for the county commissioners to approve of such purchase by the township trustees, where full cash payment can be made, or is this approval only necessary when the terms of the purchase are part cash and the balance in notes?"

Your quotations from statutes are believed to be sufficient for present purposes, save as to section 7201, which is here quoted in full, as follows:

"County commissioners and township trustees, in the purchase of machinery, tools, trucks and other equipment for use in constructing, maintaining and repairing roads, shall be authorized to purchase such machinery, tools, trucks and equipment upon the following terms, to-wit: not less than one-third of the purchase price thereof shall be paid in cash, and of the remainder not more than one-third may be paid at any time within one year from the date of purchase and not more than one-third at any time within two years from the date of purchase. Such commissioners or trustees shall be authorized to issue to the purchaser the notes of the county or township, as the case may be, signed by the commissioners or trustees and attested by the signature of the county auditor or township clerk, and covering such deferred payments and payable at the times above provided, which notes may bear interest at not to exceed six per cent per annum. In the legislation under which such notes are authorized, the county commissioners or township trustees shall make provision for levying and collecting annually by taxation an amount sufficient to pay the interest, if any, thereon, and to provide a sinking fund for the final redemption of such notes at maturity. The provisions of section 5660 of the General Code shall apply only to such portion of the purchase price of such machinery, tools, trucks or equipment as is to be paid in cash.

**The power herein conferred on township trustees shall be exercised by them only with the consent to and approval of such purchase and the terms thereof by the county commissioners of the county."**

It is worthy of remark at the outset that the statutory changes giving rise to your questions were made as part of the same act (108 O. L. 478), that is to say, sections 7201 and 3371-1 were enacted as original sections. No change was made in the act with respect to section 7200. There were changes made in

section 3373, in that the competitive bidding requirement respecting purchases of materials, machinery and tools was made applicable only to amounts in excess of five hundred dollars, where previously the amount had been one hundred dollars; and further in that the trustees were directed to provide for the housing and storing of machinery and tools owned by the township.

Your inquiries are based on the assumption that a tractor for road work comes within the purview of section 3373. Your assumption is clearly correct, since the object of the statute is to authorize the purchase of machinery for road maintenance and repair work.

Section 3371-1 is inclusive in form in its employment of the words:

*"and all expenditures made by them for maintenance and repair purposes shall where the amount involved exceeds fifty dollars receive the approval of the county surveyor before payment is made."*

No exception is made for cases where under the statutes the trustees are commanded to resort to competitive bids. Moreover, the limited exception as to amounts under fifty dollars shows that the legislature had in mind the approval by the surveyor of large expenditures rather than small ones. Any claim that the statutory language last quoted is intended to apply only to current expense items, such as the purchase of supplies, tools and material, and the employment of labor, as distinguished from occasional special expenditures such as for the purchase of machinery, is clearly without merit, since the approval of the surveyor is required as to

*"all expenditures \* \* \* for maintenance and repair purposes,"*

and the very authority of the trustees to purchase machinery rests upon the basis that the machinery will be used for maintenance and repair purposes.

Accordingly, your first question is answered in the affirmative.

Coming to your question regarding section 7201: As already noted, that section appears as an original enactment in the act in 108 Ohio laws, making changes in the highway code. Prior to the time of the enactment of said section, county commissioners had authority to purchase road machinery (section 7200, G. C., 107 O. L. 115), as did township trustees (section 3373, G. C. 107 O. L. 93). The existence of such authority is recognized in the opening lines of section 7201. This latter section, therefore, is to be looked upon as a grant of additional power, and not as a limitation upon powers previously existing. The conclusion thus becomes clear that the limitation contained in the last sentence of section 7201 applies only to the additional power granted by the section itself—a conclusion which is fortified by reference to the fact that the "terms" of the purchase by the trustees, as well as the purchase itself, are to be subject to the consent and approval of the county commissioners. Specific answer to your second question is therefore made by the statement that the consent and approval by county commissioners to the purchase of road machinery by township trustees is requisite only in case the township trustees have recourse to the installment plan described in section 7201, G. C., and is not required in case the township trustees proceed to make the purchase on a cash basis.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*