

Note from the Attorney General's Office:

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1185

COUNTY COMMISSIONERS: SALE OF COUNTY OWNED REAL PROPERTY—PROCEEDINGS UNDER § 307.09 RC MANDATORY—§ 307.10 RC—WRITTEN BIDS, BIDS MAY BE SEALED OR UNSEALED AS THE PUBLISHED ADVERTISEMENT SPECIFIES.

SYLLABUS:

1. A board of county commissioners selling or leasing county owned real property under the provisions of Section 307.09, Revised Code, must proceed in compliance with Section 307.10, Revised Code, and such sale or lease must be by acceptance of the written bid of the highest responsible bidder.

2. Bids received by a board of county commissioners in response to the advertisement of the sale or lease of county owned real estate, such sale or lease being conducted in accordance with Section 307.10, Revised Code, may be sealed or unsealed bids, as specified in the published advertisement inviting such bids.

Columbus, Ohio, October 17, 1957

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Warren County Commissioners have passed a resolution providing for the sale of certain county owned real estate, namely the land upon which Memorial Hall is situated, the same

having been condemned by the office of the State Fire Marshall, and a question has arisen as to the proper procedure to handle the sale under Sections 307.09 and 307.10, Ohio Revised Code.

"Section 307.10 Ohio Revised Code provides that the sale must be to 'the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. The Board may reject any bids and readvertise until all such real estate is sold.'

"It is the desire of the Commissioners to sell the property at *public auction*, to the highest bidder, but of course the purchaser would not obtain a clear title unless the proper procedure was followed.

"Specifically, I would like to know whether this real estate can be sold at public auction or whether they must proceed to obtain sealed or open, written or oral bids."

In answer to the first portion of your question, attention is invited initially to Section 307.10, Revised Code, as changed by Amended Substitute Senate Bill No. 104, 102nd General Assembly, effective August 15, 1957. This section reads as follows:

*"No sale of real estate, or lease of real estate used or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof, as provided by section 307.09 of the Revised Code shall be made unless it is authorized by a resolution adopted by a majority of the board of county commissioners. When such a sale or lease is authorized a deed or lease shall be made by the board to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. The board may reject any bids and readvertise until all such real estate is sold or leased. * * *"*

Former Section 307.10, Revised Code, read in the pertinent part as follows:

No sale of real estate, as provided by Section 307.09 of the Revised Code, shall be made unless it is authorized by a resolution adopted by a majority of the board of county commissioners. When such sale is authorized a deed shall be made by the board to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation within such county. The board may reject any bids and readvertise until all such real estate is sold. * * *"

It is to be noted that the legislature has added required language to clarify the authority of the county commissioner to sell "or lease real estate

used or to be used for the purpose of airports, landing fields or air navigational facilities or parts thereof." The remainder of the statute is in essence the same as the former Section 307.10, Revised Code.

Section 307.12, Revised Code, provides that as to the sale of personal property of the county which is not needed for public use, or which has become unfit for the use for which it was purchased. . "the board may sell such property at public auction."

Section 505.10, Revised Code, requires that township property in excess of that needed, on resolution passed by the trustees making such a finding, may be sold, and such sale must be by public auction, and in part reads as follows:

"* * *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. * * *."

It is therefore apparent that the legislature has expressly provided for public auction as a method of disposal of county and township property and purposely limited the use of public auction to *excess* township property, real or personal, and county owned *personal* property.

A further study of the recently enacted statute, Section 307.10, Revised Code, shows that the sale "shall be made by the board to the highest responsible bidder." This requires the board of county commissioners to study the bids and apply judgment and discretion thereto in determining which bid is the *highest responsible* bidder. Such could not be accomplished in the conduct of a public auction.

If the procedure of sale by auction were to be read into or interpolated into the amended statute, could it be said to apply to *leasing* of lands for airports, landing fields or air navigational facilities? I do not believe this to be so. The present amended Section 307.10, Revised Code, injects the element of leasing into the same procedural requirements as those required for a sale. This can be accomplished only after advertising once a week for four consecutive weeks in a newspaper of general circulation within the county. In the implementation of the authority to lease, the terms and tenure of proposed leases would require prospective lessees to submit

their respective offers; these to be weighed by the board and awarded to the highest responsible bidder.

Bidder responsibility is possibly more important in leasing than in an outright sale, and I doubt that the responsibility of bidders could be established during the course of a public auction.

Your second question as to whether the board of county commissioners must proceed to obtain sealed or open, oral or written bids, will now be considered.

Section 1335.05, Revised Code, otherwise known as the statute of frauds, reads as follows:

No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default, or miscarriage of another person; nor to charge an executor or administrator upon a special promise to answer damages out of his own estate; nor to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, or upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized."

A parol contract for the transfer of an interest in land is voidable, *Minns vs. Morse*, 15 Ohio, 568. Moreover, in *Gillespie, et al., vs. The Citizens Building of Cleveland*, 31 O. O., 229, it was held that:

"In an action for specific performance to require the defendant to execute a written lease for two years to certain office space, the oral agreement is unenforceable under Section 8621, General Code." (Section 1335.05, Revised Code.)

It is to be noted that the board of county commissioners has authority under the provisions of Section 307.09, Revised Code, to lease county owned real estate for the purpose of airports, landing fields or air navigational facilities, or parts thereof for a term not to exceed twenty years and may renew leases for similar terms.

It is conceivable that the leases or renewal thereof may have sliding scale rentals and that one prospective lessee's proposal could therefore be more advantageous, higher, than another.

Such proposal would have to be in writing to be easily comparable and to be binding if accepted by the board.

The manifest purpose of statutes relating to competitive bidding is the protection of public interests.

There are numerous statutory provisions relative to bidding on public contracts which expressly direct the use of sealed bids. Among these are:

Section 153.34, Revised Code, on county contracts;

Section 6103.10, Revised Code, on county water supply contracts;

Section 6117.27, Revised Code, on county sanitation matters;

Section 153.08, Revised Code, state building construction;

Section 510.31, Revised Code, state welfare purchases.

Section 307.10, Revised Code, however, does not contain such an express direction, and in view of such omission I must conclude that the use of sealed bids in the case at hand is not mandatory.

I know of no reason, however, why the county commissioners should not, in their discretion, elect to require sealed bids in the proposed sale of county lands, and to specify in the advertisement of the sale whether bids submitted shall be sealed or unsealed, especially in view of the manifest purpose of competitive bidding in protecting the public interest.

Accordingly, in specific answer to your question it is my opinion and you are advised:

1. A board of county commissioners selling or leasing county owned real property under the provisions of Section 307.09, Revised Code, must proceed in compliance with Section 307.10, Revised Code, and such sale or lease must be by acceptance of the written bid of the highest responsible bidder.

2. Bids received by a board of county commissioners in response to the advertisement of the sale or lease of county owned real estate, such sale or lease being conducted in accordance with Section 307.10, Revised Code, may be sealed or unsealed bids, as specified in the published advertisement inviting such bids.

Respectfully,
WILLIAM SANBE
Attorney General