

4008

TRUCKS FOR REPAIR AND MAINTENANCE OF HIGHWAY — COUNTY COMMISSIONERS MAY PURCHASE UNDER SECTION 7200 G.C. — COMMISSIONERS NOT BOUND BY SECTION 2412-1 G.C., WHICH REQUIRES APPROVAL JUDGE, COMMON PLEAS COURT — COMMISSIONERS BOUND TO HAVE APPROVAL ALL THREE MEMBERS OR LAPSE OF TWENTY DAYS SINCE INTRODUCTION OF PROPOSITION — SECTION 2414 G.C.

SYLLABUS:

1. *County commissioners may purchase trucks for the repair and maintenance of highways under Section 7200, General Code, and are not in such purchases required to follow the conditions found in Section 2412-1, General Code, which requires the approval of the judge of the Common Pleas Court to a purchase by county commissioners.*

2. *In the expenditure of moneys for the purchase of a truck under Section 7200, General Code, the county commissioners are bound by the terms of Section 2414, General Code, which requires either the approval of all three members of the board of county commissioners or a lapse of twenty days time before the proposition may be assented to.*

Columbus, Ohio, July 22, 1941.

Hon. Glenn L. Fortune, Prosecuting Attorney,
Carrollton, Ohio.

Dear Sir:

You have recently asked my opinion on the question of whether county commissioners, in purchasing trucks to be used in the maintenance and repair of roads, must proceed under Section 2412-1, General Code, or whether such purchases may be made under Section 7200, General Code.

Section 2412-1, in so far as it affects your question, is as follows:

“ * * * If the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county, who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order, fixing the number and kind of such vehicles, and the amount to be expended for each.”

You will notice that under the above statute it is only when the county commissioners purchase motor vehicles “for their use or for the use of any department under their control” that it is necessary to secure the approval of a judge of the Common Pleas Court.

The question of what departments are under the direct control of the county commissioners was considered in Opinion No. 2779, Opinions of the Attorney General for 1925, page 598, and the following statement was made which points to the meaning of the words in question:

“ * * * By ‘departments under the direct control of the county commissioners’ it is believed is meant such as the county infirmary, the county hospital, the county tuberculosis hospital and other similar departments or institutions.”

In the same opinion the following statement was made:

“* * * It can not be said that other county officers are under the direct control of the county commissioners, such as to include them within the statute.”

The same view was taken of Section 2412-1 in Opinion No. 1296, Opinions of the Attorney General for 1927, Vol. III, page 2343.

Trucks purchased by the county commissioners for the use of the county “highway department” as you phrase it in your letter, fall under the jurisdiction and direction of the county engineer (see Sections 2783-1 and 7200, General Code), who is a county officer elected by the people of the county and not subject to the county commissioners. Therefore, under the rule of the above opinions it can not be said that such trucks are bought for a department under the direct control of the county commissioners.

If Section 7200, General Code, now is examined, having in mind the question you ask, it is made to appear that that section authorizes the purchase of trucks by the county commissioners for use in the maintaining of highways. So much of that section as affects your question is 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. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor. * * *”

It would seem that the words of the above section are sufficiently broad to allow the purchase of trucks under it and I find that such has been the administrative interpretation of that act ever since its passage.

I also find that the purchase of trucks under that section was discussed in Opinion No. 448, Opinions of the Attorney General for 1929, Vol. I, page 665. While the discussion in that opinion was not upon the propriety of the purchase of trucks under that section, yet the opinion in its implications clearly sanctions such purchases. In my Opinion No. 3786, issued on May 16 of the present year, the history and reason for being of Section 2412-1 was discussed at length. The general conclusions of that opinion point the way to the specific conclusions here reached. I have no difficulty, therefore, in coming to the opinion that trucks may be purchased by county commissioners under Section 7200, General Code, for the maintenance and repair of highways.

You next ask if an expenditure of money by county commissioners for a truck to be used for the purposes above discussed is subject to Section 2414, General Code. That section is as follows:

“No proposition involving an expenditure of one thousand dollars or more shall be agreed to by the board, unless twenty days have elapsed since the introduction of the proposition, unless by the unanimous consent of all the members present of the board, which consent shall be taken by yeas and nays, and entered on the record.”

The language just quoted is clear and all-inclusive and contains no exceptions of any nature. You will note that it contains the statement "no proposition". Such language leaves no room for doubt and under such circumstances it is not permissible to do more than apply the statute according to its clear and unmistakable terms. No reason appears to me why it should not and does not apply to the transaction about which you inquire if the expenditure involved is \$1,000 or more.

You conclude your letter by asking if purchases of trucks under Section 7200, supra, by the county commissioners must be made subject to competitive bidding and whether or not the commissioners may exercise a free choice as to make or type of truck to be purchased.

The question as to competitive bidding was answered in an opinion of the Attorney General dated May 17, 1928 and found in 1928 Opinions of the Attorney General, Vol. II, page 1193. The syllabus of that opinion which states this conclusion is as follows:

"A board of county commissioners has authority to 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 as authorized by Section 7200, General Code, without resorting to advertising or competitive bidding."

And in an opinion dated May 28, 1929, found in 1929 Opinions of the Attorney General, Vol. I, page 665, it was determined that the county commissioners under Section 7200 of the General Code may use their discretion as to the make or type of equipment purchased. Since the opinions just mentioned are precisely in point as to the last two questions you ask, I do not deem it necessary further to discuss such matters.

Answering your questions specifically, it is my opinion that county commissioners may purchase trucks for the repair and maintenance of highways under Section 7200, General Code, and are not in such purchases required to follow the conditions found in Section 2412-1, General Code, which requires the approval of the judge of the Common Pleas Court to a purchase by county commissioners and that in the expenditure of moneys for the purchase of a truck under Section 7200, General Code, the county commissioners are bound by the terms of

Section 2414, General Code, which requires either the approval of all three members of the board of county commissioners or a lapse of twenty days time before the proposition may be assented to.

Respectfully,

THOMAS J. HERBERT,
Attorney General.