

Finding said lase in proper legal form, I hereby approve it and am returning it, together with all other papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1753.

TOWNSHIP TRUSTEES—PURCHASE OF ROAD MACHINERY UNDER TERMS OF SECTION 7201, GENERAL CODE, BY ISSUANCE OF TOWNSHIP NOTES TO SELLER OF SUCH MACHINERY AUTHORIZED—ISSUANCE OF NOTES OTHER THAN TO SUCH SELLER UNAUTHORIZED.

SYLLABUS:

1. *Under the provisions of Section 7201, General Code, township trustees may purchase a road grader for use in the construction, maintenance and repair of roads upon the terms therein provided, by the issuance of township notes to the seller of such grader.*

2. *Section 7201 does not authorize the issuance of notes for the purposes therein specified to other than the seller of such road machinery.*

COLUMBUS, OHIO, April 9, 1930.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I am in receipt of the following letter from the clerk of the board of trustees of Rootstown Township in this county:

"The trustees of Rootstown Township, having decided to buy a road maintainer, advertised for bids on same (one insertion in the Evening Record) of a type of grader approved by the county engineer. One proposal only was received from the Cuyahoga Equipment Co., of Cleveland for 1 Warco Model E Center Control Grader, with McCormick Deering power at \$2925.00. Their proposal included an offer of \$400.00 for used Hatfield-Penfield Grader owned by Trustees.

The proposal was accepted by the trustees and terms of payment arranged as follows:

\$950.00 with interest at 6% April 1, 1931.

\$950.00 with interest at 6% April 1, 1932.

Now the trustees desire to know if they can legally borrow \$1900.00, giving the township's notes due as above, pay cash for the grader, and secure 2% cash discount amounting to \$58.50 as offered by the Equipment Company in their original proposal. This would mean a saving of \$58.50 on the price of the Grader. We would appreciate an opinion from you on this point.'

In my opinion this situation is covered by Section 7201 of the General Code, which provides among other things that '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 not to exceed 6% per annum.'

I wish your opinion as to whether or not 'purchaser' used in this connection refers to the seller of the machinery and if this section then provides that the township trustees may give the note of the township to the seller. As also suggested in the letter, I wish to know if this section would authorize the township trustees to borrow the money to pay for such machinery thereby obtaining a cash discount, provided in any event, that they comply with the requirements set forth in this section."

Section 7201, General Code, to which you refer, provides :

"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 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 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."

This section has been considered by this office in a number of opinions. In one of these, appearing in Opinions of the Attorney General for 1921, p. 506, it was held:

"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."

This opinion points out that the authority vested in township trustees to purchase road machinery is contained in Section 3373, General Code, and that Section 7201 grants the additional power to make such purchases on the installment plan. If

Section 7201 authorizes the issuance of notes to a person other than the seller of the machinery, in so far as the seller is concerned, the machinery is sold for cash. In fact, that is exactly what the township in question seeks to do—sell the notes to a person other than the seller of the machinery and make a cash purchase, taking a two per cent cash discount. If this may be done under Section 7201, then it would seem to follow that the consent of the county commissioners must be secured when road machinery is purchased for cash. Such a conclusion would invalidate Section 3371-1, General Code, which provides that when such purchases of over \$50.00 are made for cash, only the approval of the county surveyor is required.

In an opinion appearing in Opinions of the Attorney General for 1927, Vol. II, p. 1113, the first and second branches of the syllabus are as follows:

“1. Under the provisions of Section 7201, General Code, township trustees may purchase a tractor or other equipment for use in constructing, maintaining and repairing roads upon the terms prescribed in such section, namely, not less than one-third of the purchase price in cash, not more than one-third at any time within one year and not more than one-third at any time within two years from the date of purchase.

2. By the express terms of Section 3373, General Code, all purchases of machinery by township trustees for use in constructing, maintaining, and repairing roads must, where the amount involves five hundred dollars, be made from the lowest responsible bidder after advertisement, as prescribed by such section.”

This opinion held that Sections 7201 and 3373 are in *pari materia*. Section 3373, General Code, requires, as above indicated, the taking of competitive bids when the amount of the purchase exceeds five hundred dollars. If the two sections are in *pari materia*, and I think they are, this fact is pertinent to a consideration of the use of the word “purchaser” by the Legislature in Section 7201, wherein it is provided that the notes may be issued to the purchaser. When a contract is let pursuant to advertisement and competitive bidding, the successful bidder is, in common parlance, referred to as the purchaser of the contract. It is customary to refer to the award of a contract for a road construction, for instance, as “the sale of the road”. I am of the view that although the use of the word “purchaser” is unfortunate, to say the least, it was very probably used in this sense. This section was apparently loosely drawn. To illustrate, it provides that when purchases are made on the installment plan, not less than one-third shall be paid in cash and one-third of the remainder shall be paid in one year, etc. This part of the section was discussed in the 1927 opinion, *supra*, and held to mean that not less than one-third of the purchase price shall be paid in cash and of the remainder not more than one-third of the purchase price may be paid at any time within one year.

In reaching a decision as to whether or not Section 7201 authorizes the issuance of township notes to any one other than the seller of machinery purchased on the installment plan, it is necessary to give consideration to Section 2293-17, General Code, being part of the Uniform Bond Act. This last mentioned section provides:

“The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors.”

This office has held that under this section, as enacted by the 87th General Assembly, townships are prohibited from incurring net indebtedness without a vote of the electors except as therein specified. Opinions of the Attorney General, 1928, Vol. I, p. 690; Opinion No. 149, March 6, 1929; No. 330, April 22, 1929; and No. 909, September 24, 1929. To place a construction upon Section 7201 such as would authorize the issuance of general township notes payable to bearer, would raise a serious question as to whether or not this section has been repealed by implication by Section 2293-17, *supra*. It is well established that when a section is subject to two constructions, one of which will render it invalid, that construction will be adopted which will give full force and effect to every enactment of the General Assembly not obnoxious to the constitution. *Beverstock vs. Board of Education, et al.*, 75 O. S. 144.

In view of the foregoing and in specific answer to your question, it is my opinion that:

1. Under the provisions of Section 7201, General Code, township trustees may purchase a road grader for use in the construction, maintenance and repair of roads upon the terms therein provided, by the issuance of township notes to the seller of such grader.

2. Section 7201 does not authorize the issuance of notes for the purposes therein specified to other than the seller of such road machinery.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1754.

TEACHER'S CERTIFICATE—USING SPECIAL CERTIFICATE FOR
TEACHING CERTAIN SUBJECTS IN HIGH SCHOOL TO TEACH SAME
SUBJECTS IN ELEMENTARY SCHOOL AUTHORIZED.

SYLLABUS:

A person holding a certificate qualifying him to teach certain subjects in a high school, may lawfully be employed to teach those same subjects in an elementary school.

COLUMBUS, OHIO, April 10, 1930.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry which reads as follows:

“Will you kindly give me your opinion as to whether or not a person holding a special teacher's certificate to teach special subjects, in this instance, being two subjects, in a high school, may teach in an elementary school without having an elementary certificate, in other words, whether or not a high school certificate as above stated includes an elementary certificate.”

An elementary school is defined by Section 7648, General Code, as one in which instruction and training are given in spelling, reading, writing, arithmetic, English language, English grammar, and composition, geography, history of the United States including civil government, physiology and hygiene and any other subjects required by law, primarily to students of the first to eighth school years, inclusive.

Other statutes require that the subject of thrift be taught for at least thirty minutes