

2803.

TOWNSHIP TRUSTEES MAY PURCHASE LAND TO BE USED FOR STORING MACHINERY OWNED BY TOWNSHIP—IN CONSTRUCTION OF BUILDINGS NOTICE TO BIDDERS IS NECESSARY.

*SYLLABUS:*

(1) *Under the provisions of section 3373 G. C. 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.*

COLUMBUS, OHIO, Sept. 25, 1925.

HON. DON BELL, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—I acknowledge receipt of your request for my opinion upon the following:

“The board of trustees of Bay township, Ottawa county, desire to purchase a site and erect thereon, by contract or force account, a building suitable for housing and storing machinery and tools belonging to said township. The question arises as to whether they are authorized under the law to do so.

“In the Opinions of the Attorney General, 1918, page 853, I find a holding to the effect that township trustees have no authority in law to purchase or lease real estate whereon to erect a building in which to store tools and machinery owned by the township. As is said in that opinion, section 3373 of the General Code is as favorable as any that can be found in the statutes from which the implied power desired might be conferred. However, upon tracing the history of said section, I find that in 1919 the legislature amended it in part to read as follows: ‘The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township.’

“There is an analogous provision with regard to the housing and storing of machinery and tools owned by the county, found in section 7200 G. C. That section says, among other things, that ‘the county commissioners shall provide suitable places for housing and storing machinery, tools, equipment and conveyances owned by the county.’

“In Opinions of the Attorney General, 1920, page 1020, Attorney General Price gave an opinion holding that by necessary implication this portion of section 7200 G. C. confers on county commissioners authority to purchase a site, with building, for the purpose of housing and storing machinery, tools, equipment and conveyances owned by the county.

“I should like to have your opinion:

“(1) As to whether the township trustees may purchase a site upon which to erect a building to be used for storing and housing machinery belonging to the township?

“(2) As to whether they may erect a building upon the site, when purchased, by contract or by force account?

"(3) If the building be erected by contract, are the provisions of section 3373, G. C., with regard to advertising for bids and letting to the lowest bidder, applicable in this case?"

In examining the opinions to which you refer it will be observed that the former made particular reference to the provision found in section 7200, which requires the county commissioners to provide suitable places for housing and storing machinery. In fact, the opinion intimated that because this provision was found in the section relating to the duties of the commissioners and was not contained in the section relating to the duties of the trustees that such power should be denied the trustees. In fact, it is stated in the opinion that no logical reason can be seen why the legislature distinguished such powers in its legislation; but the opinion further intimates that because it did so, the inference is that the legislature intended that the township trustees should not exercise the power.

As stated in your communication, section 3373 as amended in 107 O. L. page 69, and as it existed prior to said amendment, did not contain the provision in reference to providing suitable places for housing and storing machinery. However, in the amendment in 108 O. L., Pt. 1, page 499, the provision was authorized in the language which you have quoted.

The opinion to which you refer in 1920, specifically held that such language "by necessary implication confers on county commissioners authority to purchase a site with building for the purpose of housing and storing machinery," etc.

It would follow as a proposition of law that there must be a necessity existing for such a purchase before such implied power would be authorized. It is believed reasonable to conclude that the county commissioners in the event that there is no site which contains a building suitable to purchase for such purpose, and in the event that it is essential to have such a building to house such tools, that the commissioners under such circumstances would be justified in purchasing real estate on which to erect a building, if in its judgment and discretion the same is necessary and essential to properly preserve the tools. No logical reason can be seen why the same power under section 3373, as it now exists, is not given to township trustees, if, as before indicated, the same is necessary and essential in order to properly preserve the tools and equipment which the statute make it mandatory to protect.

You are further advised, however, that section 3373 authorizes the trustees to proceed by force account in the maintenance and repair of roads. I would not regard this section as authorizing the erection of such a building by the township trustees by force account.

It would further be my opinion that any contract let for the erection of such a building would have to follow the provisions of the statute relative to advertising.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2804.

SURPLUS REMAINING TO CREDIT OF WATERWORKS FUND MAY PROPERLY BE USED IN CONSTRUCTING A STACK FOR COMBINED WATERWORKS SYSTEM AND LIGHT PLANT.

*SYLLABUS:*

*When a waterworks system and an electric light plant are properly combined under the provisions of section 4345-1, a surplus remaining to the credit of the water-*