

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1007.

ABANDONED TOWNSHIP QUARRY FOR 20 YEARS—TOWNSHIP TRUSTEES MAY SUBMIT REOPENING TO VOTE OF PEOPLE WHICH INVOLVES PURCHASE OF NEW EQUIPMENT WHERE TAX LEVY OR BOND ISSUE IS NEEDED.

SYLLABUS:

Where a quarry owned by a township has been abandoned without operation or activity for twenty years, township trustees must submit to a vote of the people any plan to reopen the quarry which would involve the purchase of new equipment and machinery, even though such a purchase would not involve a tax levy or bond issue.

COLUMBUS, OHIO, August 12, 1937.

HON. ALEXANDER H. NYZER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR: This will acknowledge your recent request for an opinion. Your letter read as follows:

“May I have your opinion on the following question:

Green Creek Township, many years ago, purchased a stone quarry and the necessary equipment to operate the same. Some twenty years ago the then Board of Trustees sold the machinery with which the quarry was operated. At the present time the township still owns the quarry, but no machinery to operate the same. Assuming that the township has plenty of money to use for the purpose, can they purchase the necessary machinery to operate the quarry without submitting the question to a vote of the people?”

Authority to purchase stone quarries and the machinery necessary for their operation is granted township trustees under Section 3298-20, of the General Code. This section reads as follows:

“No tax shall be levied or bonds issued by the trustees of the township to purchase real property containing suitable stone or gravel and the necessary machinery for operating the same, unless approved by a vote of the people in the manner provided by law.”

Some years ago an interpretation of the power granted in the above quoted section was given in an opinion from this office. The matter then at issue was whether or not the township trustees, without a vote of the people, were empowered to replace old worn-out machinery and to purchase new machinery under Section 3298-20, supra. This opinion (1928 O.A.G. Vol. II, page 1071) gave the following interpretation and statement as to Section 3298-20 (page 1073) :

“In both forms of Section 3298-20, General Code, that is, before and after its amendment in The Uniform Bond Act, the inhibition against township trustees levying a tax or issuing bonds without a vote of the people is on the purchase of real estate and machinery. This section is clearly limited to the initial expenditure, that is, the original acquisition of real estate and the machinery necessary to quarry stone or gravel, and does not cover the operation of the stone quarry or gravel pit, once it has been acquired, or the repair or replacement of machinery necessary to such operation. *A favorable vote of the people authorizing the purchase of real estate and machinery for operating the same establishes a definite policy, that is, it authorizes the purchase of said real estate and authorizes the trustees to purchase machinery and operates the quarry. Once this policy has been established the authority to operate continues and carries with it the power to replace parts of machinery that have been broken and to purchase new machinery to replace that which has become worn out in the course of such operation.* In my opinion, therefore, Section 3298-20, General Code, has no application to the purchase by township trustees of machinery for the operation of a stone quarry to replace worn-out machinery originally acquired for that purpose, pursuant to and in accordance with the authority contained in the statutes.” (Italics the writer’s.)

I am in accord with the opinion discussed. However, the facts in the present case present a different situation, in that the matter of replacing old machinery or buying additional machinery is in no way involved. The case before us presents a situation where a cessation of interest and activity in the quarry for a period of twenty years practically

amounts to an abandonment of the original policy or purpose which was submitted to and approved by the people. Moreover, the reopening of operations which necessitate the purchase of an entirely new outfit is, it seems to me, a new activity and development for the present township body such as the purchasing of a new quarry and machinery for its operation would effect. Certainly such a new project should be submitted to the people.

From your letter, I assume that the contemplated purchase of machinery will not involve a tax levy or bond issue. Such a fact does in no way alter the situation. Bearing upon this matter and clearly upholding the position taken here is a recent opinion of the Attorney General for 1935 (O. A. G., 1935, Vol. I, page 696). On page 700 of the cited opinion the following paragraph appears:

“Section 3298-20, General Code, here under consideration, is, of course, couched in somewhat different language than some of the sections under consideration in the foregoing opinions and it should also be observed that there is no express machinery provided for submitting to the electors the sole policy question of purchasing such land or machinery; but the same may be said as to the statutes under consideration in the 1933 opinion, supra. (Reference here is to O. A. G., 1933, Vol. III, page 1707, which deals with authority of township trustees to erect a public building without submitting the question to the electors.) While questions of this nature are not without difficulty, this office has long adhered to the policy of strict construction of such statutes authorizing the expenditure of public funds. That construction has, of course, ample support by the courts. In *State, ex rel. vs. Pierce*, 96 O. S. 44, the third branch of the syllabus is as follows:

‘In case of doubt as to the right of any administrative board to expend public money under legislative grant, such doubt must be resolved in favor of the public and against the grant of power.’

It is my opinion that a board of township trustees may purchase land containing gravel for use on the township roads, and machinery to operate such land, only pursuant to authority of the electors, notwithstanding the fact that sufficient available funds may be on hand for such purpose.”

In view of the facts and the law given above, it is my opinion that where a quarry owned by a township has been abandoned without operation or activity for twenty years, township trustees must submit to a

vote of the people any plan to reopen the quarry which would involve the purchase of new equipment and machinery, even though such a purchase would not involve a tax levy or bond issue.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1008.

APPROVAL—CONTRACT BY AND BETWEEN THE CITY OF
MARIETTA AND THE STATE OF OHIO COVERING THE
PROPOSED IMPROVEMENT OF GILMAN STREET.

COLUMBUS, OHIO, August 13, 1937.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, as to form and legality, a certain contract in duplicate by and between the City of Marietta and the Director of Highways, covering the proposed improvement of the Gilman Street extension in Marietta, Washington County, Ohio, W. P. M. A., 983-A. Attached thereto is a certificate of the City Auditor of Marietta, Ohio, certifying that the money required for the payment of the cost of said improvement, other than that part assumed by the State, is in the City Treasury or in process of collection for the State and City Road Improvement Fund and not appropriated for any other purpose. There is also attached certificate of the Auditor of the Department of Highways certifying that the money representing all cost of said improvement, except the sum to be paid by the City of Marietta, is payable from an advance of Federal funds deposited in the State Treasury in a trust account, and that no funds of the State of Ohio are in anywise obligated for the payment of any of the cost of said project.

After examination, I find said contract to be correct as to form and legality and I have, therefore, attached my signature thereto approving the same, which is being returned herewith.

Respectfully,

HERBERT S. DUFFY,

Attorney General.