

October 18, 2006

The Honorable Pat Story
Meigs County Prosecuting Attorney
117 West Second Street
Pomeroy, Ohio 45769

SYLLABUS:

2006-044

A board of health of a general health district has no authority to purchase a motor vehicle by means of an installment purchase agreement.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL

JIM PETRO, ATTORNEY GENERAL

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OPINION NO. 2006-044

The Honorable Pat Story
Meigs County Prosecuting Attorney
117 West Second Street
Pomeroy, Ohio 45769

Dear Prosecutor Story:

You have asked whether a board of health of a general health district has the authority to purchase a motor vehicle by installment sale. For the following reasons, we conclude that the board does not have such authority.

As a creature of statute, the board of health of a general health district has only those powers conferred by statute, either expressly or by necessary implication. *See* 1925 Op. Att’y Gen. No. 2995, p. 761. As you note in your request for an opinion, a board of health has been found to have the implied authority to acquire motor vehicles for the use of its employees in carrying out the health district’s statutory duties.¹ As a corollary to this proposition, you have asked whether a board of health may acquire a motor vehicle by means of an installment purchase contract.

An installment purchase contract or agreement is a method for financing the purchase of property, “where title passes immediately to the purchaser, who agrees to pay for the property in installments over a period of years.” 2004 Op. Att’y Gen. No. 2004-012, at 2-93, n. 1. *See also State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 285 N.E.2d 362 (1972) (distinguishing between a lease and an installment purchase contract); 1965 Op. Att’y Gen. No. 65-030, at 2-72 (an installment contract is “an agreement for present performance with payment to be made in the future at designated times”).

¹ *See* 1989 Op. Att’y Gen. No. 89-032; 1959 Op. Att’y Gen. No. 935, p. 639 (syllabus, paragraph one) (a board of health of a general health district “may rent automobiles for the use of its employees when it has determined that such automobiles are necessary to the successful, economical and efficient conduct of its work”); 1925 Op. Att’y Gen. No. 2995, p. 761 (syllabus) (a board of health has the implied authority to purchase an automobile for the use of its employees “where conditions are such that the successful, economical, and efficient performance of the board’s duties, which are expressly imposed by statute, requires such a purchase”). *Accord* 1929 Op. Att’y Gen. No. 498, vol. I, p. 752.

Opinions of this office have consistently concluded that, although a public body may have the general authority to acquire property, it may not acquire property through use of an installment purchase contract without clear statutory authority. 2000 Op. Att’y Gen. No. 2000-019. *Accord* 1984 Op. Att’y Gen. No. 84-050; 1958 Op. Att’y Gen. No. 1604, p. 22, at 28. *See also* 1958 Op. Att’y Gen. No. 2820, p. 597, at 599. *Cf.* 1980 Op. Att’y Gen. No. 80-042 (a board of county commissioners has the authority to acquire real property to establish a sanitary landfill by a purchase agreement that provides for the purchase price to be paid in annual installments, with interest payable upon the unpaid balance, pursuant to R.C. 343.01, which authorizes the board to acquire real property “by appropriation *or any other method*” (emphasis added)). This unwillingness to infer from a public body’s power to acquire property the authority to enter into an installment purchase agreement is attributable, at least in part, to the fact that a public body incurs a debt when it enters into an installment contract,² and state constitutional and statutory controls strictly limit the ability of the State and its political subdivision to incur debt. *See, e.g.*, Ohio Const. art. XII, § 11 (discussed *infra*);³ R.C. 133.04-.07, R.C. 133.09 (setting limitations on the net indebtedness of municipalities, school districts, counties, and townships); R.C. 5705.41(D)(1) (a subdivision may not make a contract unless there is attached thereto a certificate of the fiscal officer that “the amount required to meet the obligation ... has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances”). *See also* R.C. 5705.01(F) (payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness are not current operating expenses of a subdivision for purposes of the tax levy law); R.C. 5705.03(A) and R.C. 5705.04 (authorizing separate tax levies to pay current operating expenses and to pay the interest and sinking fund on, and retire at maturity, the bonds, notes, and certificates of indebtedness of a subdivision).

In *State ex rel. Kitchen v. Christman*, the court held that, a city’s contract to acquire a swimming pool, which bound the city to make successive appropriations for a period of years until the full amount of the contract price was paid, was an installment purchase agreement that

² *See State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 285 N.E.2d 362 (1972) (discussed *infra*); 1984 Op. Att’y Gen. No. 84-050; 1980 Op. Att’y Gen. No. 80-042.

³ *See also, e.g.*, Ohio Const. art. VIII, § 1 (the state’s debt may never exceed seven hundred and fifty thousand dollars); Ohio Const. art. VIII, § 3 (“[e]xcept the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state”); Ohio Const. art. VIII, § 5 (“[t]he state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war”); Ohio Const. art. VIII, § 7 (creation of sinking fund); Ohio Const. art. XII, § 4 (“[t]he General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt”); Ohio Const. art. XII, § 6 (“[e]xcept as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement”).

created bonded indebtedness, stating that, a city's pledge to make future appropriations of tax revenues was no different than when the city issued bonds and pledged its taxing power for their payment. 31 Ohio St. 2d at 71-72. The court held, therefore, that, as bonded indebtedness, the installment plan was subject to Ohio Const. art. XII, § 11, which states that, "[n]o bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity." *See also* 1985 Op. Att'y Gen. No. 85-008, at 2-31, n. 6 ("if the county creates a present indebtedness in entering into a lease/purchase agreement for the county jail, a tax must be levied to retire the debt"); 1984 Op. Att'y Gen. No. 84-050, at 2-169 ("Ohio Const. art. XII, § 11 prohibits creation of a debt by a township unless the legislation under which the debt is incurred provides for the levy and collection of taxes sufficient to pay the debt and the interest thereon"); 1980 Op. Att'y Gen. No. 80-042, at 2-178 (although a board of county commissioners has the statutory authority to acquire real property for a sanitary landfill by means of an installment purchase contract, it "is likely that, upon entering the installment purchase contract contemplated, the county would incur bonded indebtedness within the meaning of Ohio Const. art. XII, § 11 in the amount of the total contract price," and in "the event bonded indebtedness is created, the enabling legislation must provide for the levy of a tax for the liquidation of the debt").

No statute authorizes a tax levy for the purpose of paying a general health district's debt created by an installment agreement for the purchase of an automobile or other personal property. *Cf.* R.C. 3707.55(A) (a board of health may enter into a contract to purchase real property and "may enter into loan agreements, including mortgages, for the acquisition of such property"); R.C. 3707.55(C) (the board of county commissioners may issue securities for the acquisition of real property by a general health district). *Cf. also* R.C. 505.37(D) (a board of township trustees may issue securities to purchase firefighting equipment and provide for levying and collecting a tax to pay the interest on, and principal, of the securities); R.C. 3313.37(B)(4) (a board of education may acquire equipment by various means, including installment payments, and "if the purchase price is to be paid over a period of time, the contract setting forth the terms of such purchase shall be considered a continuing contract" pursuant to R.C. 5705.41);⁴ R.C. 5549.02(A) (a board of county commissioners may acquire road equipment where "not less than

⁴ If a subdivision enters into a "continuing contract," (such as a lease), it need only certify that the amount required to meet the obligation in the fiscal year in which the contract is made (rather than the total amount) has been appropriated and is in the treasury or in the process of collection. R.C. 5705.41(D)(1). An amount that remains as an obligation at the end of a fiscal year and that becomes payable during the next fiscal year is included in the annual appropriation measure for the next year as a fixed charge. R.C. 5705.44. *See* 1987 Op. Att'y Gen. No. 87-069. An installment contract is not considered, as a general matter, to be a continuing contract. *See* 1965 Op. Att'y Gen. No. 65-030, at 2-72; 1958 Op. Att'y Gen. No. 1604, p. 22. An installment purchase may, however, be designated a continuing contract by statute. *See* 1987 Op. Att'y Gen. No. 87-069.

one-fourth of the purchase price shall be paid in cash, and the remainder of the purchase price shall be paid in not more than five equal annual installments,” each installment to be secured by a note, and “[i]n the legislation under which such notes are authorized, the board of county commissioners shall make provision for levying and collecting annually, by taxation, an amount sufficient to pay the interest and provide a sinking fund for the final redemption of such notes at maturity”). Therefore, to imply authority for a board of health to enter into an installment purchase agreement for the purchase of a motor vehicle, in the absence of statutory authority for a tax levy to retire the debt, could violate Ohio Const. art. XII, § 11. *See* 1984 Op. Att’y Gen. No. 84-050; 1980 Op. Att’y Gen. No. 80-042.

In conclusion, it is my opinion, and you are advised that, a board of health of a general health district has no authority to purchase a motor vehicle by means of an installment purchase agreement.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General