

## OPINION NO. 87-050

**Syllabus:**

When a township owns a motor vehicle that it does not need and wishes to sell, the sale must be by public auction and upon notice as provided in R.C. 505.10, unless a statutory exception to the notice and auction requirements is applicable.

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**To: Michael R. Fegen, Huron County Prosecuting Attorney, Norwalk, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987**

I have before me your request for an opinion concerning the sale by a township of a used motor vehicle. A member of your staff has indicated that your question relates to a township which owns a motor vehicle that it is no longer able to use. The township wishes to simply take the motor vehicle to a junkyard and sell it for \$25.00. The question is whether R.C. 505.10 requires that the motor vehicle must, instead, be sold at public auction.

R.C. 505.10 states:

The board of township trustees may accept, on behalf of the township, the donation by bequest, devise, deed of gift, or otherwise, of any property, real or personal, for any township use. When the township has property, including motor vehicles, road machinery, equipment, and tools, which the board, by resolution, finds it does not need, the board may sell and convey such property. Except as otherwise provided in sections 505.08 and 505.101 of the Revised Code, the sale must be by public auction and upon notice thereof being published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of such publications to be at least five days before the date of sale.

Where the board finds, by resolution, that the township has motor vehicles, road machinery, equipment, or tools which are not needed, or which are unfit for public use, and the board wishes to sell such motor vehicles, road machinery, equipment, or tools to the person or firm from which it proposes to purchase other motor vehicles, road machinery, equipment, or tools, the board may offer to sell the motor vehicles, road machinery, equipment, or tools to such person or firm, and to have such selling price credited to the person or firm against the purchase price of other motor vehicles, road machinery, equipment, or tools.

Where the board advertises for bids for the sale of new motor vehicles, road machinery, equipment, or tools to the township, it may include in the same advertisement a notice of the willingness of the board to accept bids for the purchase of township-owned motor vehicles, road machinery, equipment, or tools, which are obsolete or not needed for public use, and to have the amount of such bids subtracted from the selling price of the new motor vehicles, road machinery, equipment, or tools, as a means of determining the lowest responsible bidder.

When a township has title to real property, the board of such township may, by resolution, authorize the transfer and conveyance of such property to any other political subdivision of the state upon such terms as are agreed to between such board and the legislative authority of such political subdivision. (Emphasis added.)

R.C. 505.10 thus expressly provides that, when a township has a motor vehicle which the board of trustees, by resolution, finds it does not need, the board may sell such property. R.C. 505.10 further provides, as a general rule, that if the board chooses to sell the property, it must make the sale by public auction, after complying with notice requirements. Certain exceptions to the public auction requirement are established by statute. See R.C. 505.08; R.C. 505.10; R.C. 505.101; R.C. 5549.21; 1966 Op. Att'y Gen. No. 66-129. These exceptions are, however, not relevant to the facts that you have presented. There is no statutory exception to the public auction requirement of R.C. 505.10 for items that have minimal monetary value or that have no worth except their salvage value. Your question is, in essence, whether such an exception may be implied in the case of a motor vehicle that appears to be ready for the junkyard.

It is firmly established that a board of township trustees has only such powers as are expressly granted by statute or are by necessary implication required to carry out the powers that are expressly granted. See, e.g., Hopple v. Trustees of Brown Township, 13 Ohio St. 311 (1862). With respect to the sale of property owned by the township, the powers of the trustees are set forth in R.C. 505.10. Pursuant to R.C. 505.10, the trustees have discretion to determine that particular property is not needed by the township and should be sold. See generally Dennison v. Dennison, 165 Ohio St. 146, 149, 134 N.E.2d 574, 576 (1956) ("[o]rdinarily, the word, 'shall,' is a mandatory one, whereas 'may' denotes the granting of discretion"). Once the board of township trustees determines that the property should be sold, the board is required by R.C. 505.10 to make the sale by public auction and upon notice as prescribed by R.C. 505.10, unless a statutory exception to the notice and auction requirements is applicable. See Op. No. 66-129 at 2-256 ("the sale of township property by auction generally is mandatory. However, the second...paragraph [of R.C. 505.10] carves out an exception to that rule. A board of township trustees may 'trade-in' the old equipment as part of the transaction"); 1958 Op. Att'y Gen. No. 3150, p. 739. As was stated in 1958 Op. Att'y Gen. No. 2341, p. 422 at 424: "[R.C. 505.10] is broad in its terms. It [the board of township trustees] may sell any properties which it declares by resolution it does not need...But it must be kept in mind that any property proposed to be sold must be sold by public auction, as provided in the statute." Accord, 1961 Op. Att'y Gen. No. 2395, p. 381; cf. Schwing v. McClure, 120 Ohio St. 335, 342, 166 N.E. 230, 232 (1929) (public officers cannot "pass title to public property except when acting within their strict powers. Property devoted to public use can only be disposed of by express authority, and a school corporation must pursue the statutory method of disposing of its property"); 1948 Op. Att'y Gen. No. 4038, p. 543 at 545 (considering a statute setting forth the authority of a board of county commissioners to sell county property at public auction and stating that "[t]he use of the word 'may' indicates that the statute is permissive so far as the commissioners' availing themselves of its terms is concerned. But once they have

decided to use the power, its exercise must be in the manner prescribed by the statute").

Where the General Assembly has intended that public auction or notice requirements should not apply to items having values below a particular dollar amount, it has expressly so stated. See, e.g., R.C. 307.12;<sup>1</sup> R.C. 3313.41.<sup>2</sup> No such exception has been provided in R.C. 505.10, and no such exception may be implied. See generally Akron Transportation Co. v. Glander, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951) ("when a statute directs a thing may be done by a specified means or in

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<sup>1</sup> R.C. 307.12 states, in part:

(A) When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the board may sell such property at public auction or by sealed bid to the highest bidder, after giving at least ten days' notice of the time, place, and manner of sale by posting a typewritten or printed notice in the offices of the county auditor and board. In case the fair market value of the property to be sold pursuant to this division is, in the opinion of the board, in excess of two thousand dollars, notice of the time, place, and manner of the sale shall also be published in a newspaper of general circulation in the county at least ten days prior to such sale. The board of county commissioners may authorize the sale of such property without advertisement or public notification and competitive bidding to the federal government, state, or any political subdivision of the state. (Emphasis added.)

<sup>2</sup> R.C. 3313.41 states, in part:

(A) Except as provided in divisions (C) and (D) of this section, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity, and that exceeds in value two thousand dollars, it shall sell the property at public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property. The board may offer real property for sale as an entire tract or in parcels.

(B) When the board of education has twice offered real or personal property for sale at public auction pursuant to division (A) of this section, and the property has not been sold, the board may sell it at a private sale. (Emphasis added.)

a particular manner it may not be done by other means or in a different manner"); Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged...").

A similar question was considered in 1948 Op. No. 4038 in connection with G.C. 2447-2 (now R.C. 307.12), which authorized a board of county commissioners to sell personal property of the county at public auction after posting notice and, in the case of property of value in excess of two hundred dollars, publishing notice. The opinion considered, inter alia, the question whether G.C. 2447-2 "could...mean that a 'sale' should be conducted for 'minor' items such as, spot-lights, auto batteries, used tires, sirens, horns, signal lights, auto radios, small office tables and chairs, desk sets of pen and ink wells, empty oil drums and miscellaneous junk accumulating at the county highway garage." The opinion states, at 545: "Your...question refers to miscellaneous small items of personal property which accumulate at county garages. These items are subject to the statutory provisions [of G.C. 2447-2 (now R.C. 307.12)], and if they are to be disposed of must be sold in compliance therewith." It was, thus, concluded that even items that may be categorized as "miscellaneous junk" must, if they are to be sold, be sold in compliance with statutory notice and auction requirements.

I recognize your concern that, in certain instances, the costs of providing notice and holding an auction pursuant to R.C. 505.10 may exceed the value of the property being sold. It may be possible to alleviate this concern by combining the sale of a number of different items. See, e.g., 1948 Op. No. 4038. In any event, the township trustees are not prevented from simply discarding as trash any items that they reasonably determine to have no resale value.

In light of the clear language of R.C. 505.10, it must, however, be concluded that if a board of township trustees chooses to sell any item owned by the township, including a motor vehicle, it must make the sale by public auction and upon notice as provided in R.C. 505.10, unless a statutory exception to the notice and auction requirements is applicable. This conclusion reflects the philosophy that "what is junk and trash to some people is usable material, treasure trove or perhaps antiques to others." City of New Berlin v. Stein, 58 Wis. 2d 417, 419, 206 N.W.2d 207, 208 (1973). It also operates to maximize the sale price that the township will receive. See generally State ex rel. Smith v. Maharry, 97 Ohio St. 272, 276, 119 N.E. 822, 823 (1918) ("we have come to regard all public property and all public moneys as a public trust. The public officers in temporary custody of such public trusts are the trustees for the public...; that is, the rights of the public, as beneficiaries, are paramount...").

For the reasons set forth above, it is my opinion, and you are hereby advised, that when a township owns a motor vehicle that it does not need and wishes to sell, the sale must be by public auction and upon notice as provided in R.C. 505.10, unless a statutory exception to the notice and auction requirements is applicable.