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TOWNSHIP TRUSTEES MAY ERECT A BUILDING TO HOUSE MACHINERY AND TOOLS OWNED BY TOWNSHIP—§5549.21 R.C.

SYLLABUS:

Pursuant to Section 5549.21, Revised Code, a board of township trustees may erect a building to house and store machinery and tools owned by the township, and it may purchase such material and employ such labor as is necessary to erect such building, or it may authorize the purchase or employment of such material and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board.

Columbus, Ohio, January 11, 1962

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of York Township, Belmont County, Ohio, desires to erect by contract or forced account, a building suitable for housing and storing machinery and tools belonging to said township, said machinery and tools being used in the maintenance and repair of township roads. The Board of Trustees desired to build this building by forced account; however, we find in Attorney General’s Opinion of 1925, number 2803, that it was deemed necessary for the trustees to proceed in the construction of a building by contract rather than forced account.”

In Opinion No. 2803, Opinions of the Attorney General for 1925, page 625, one of the questions was whether a board of township trustees could, by force account, erect a building to house machinery. At page 626 of that opinion, the then Attorney General stated:

“You are further advised, however, that section 3773 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.”

Former Section 3773, General Code, considered in the 1925 opinion, provided in part:

“In the maintenance and repair of roads the township trustees may proceed either by contract or force account. When they proceed by contract the contract shall * * *. Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. *The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township.* They shall have the power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, or they may authorize the purchase or employment of the same by one of their number or by the township highway superintendent at a price to be fixed by the township trustees. * * *” (Emphasis added)

The emphasized language in the above section was inserted therein in 1919, 108 Ohio Laws, Part I, page 500. The Attorney General in the 1925 opinion evidently felt that the first sentence of Section 3773 governed as to force account, that sentence providing that the force account method could be used in the maintenance and repair of roads, but not referring to the erection of buildings. He did not, however, discuss the effect of the words giving the township trustees “the power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, etc.”

Present Section 5549.21, Revised Code, contains language similar to that of former Section 3773, General Code, reading in part:

“The board of township trustees may purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township, and shall provide suitable places for housing and storing machinery and tools owned by the township. It may purchase such material and employ such labor as is necessary for carrying into effect this section, or it may authorize the purchase or employment of such material and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board. * * *”

Without question, the duty to provide suitable places for housing and storing machinery and tools implies the authority to acquire or construct buildings for such purpose. Therefore, under present Section 5549.21,

Revised Code (as well as former Section 3773, General Code), the board of township trustees may, to carry into effect the providing of a building to house and store machinery and tools, purchase such material and employ such labor as is necessary, or authorize the purchase or employment of such material and labor by one of its number, or by the township highway superintendent at a price to be fixed by the board. And in actuality, the power to purchase such material and employ such labor as is necessary is a grant of authority to proceed in force account. As stated in the first paragraph of the syllabus of Opinion No. 816, Opinions of the Attorney General for 1939, Vol. II, page 1039:

“1. The term ‘force account’ implies that the department officer or board having work to do, instead of entering into a contract for the performance of the work, assumes a direct oversight of the same, employing men with teams, purchasing material and paying for the same without reference to any contract whatever. (Opinion No. 857 of the Opinions of the Attorney General for 1917 approved and followed.)”

In conclusion, it is my opinion and you are advised that pursuant to Section 5549.21, Revised Code, a board of township trustees may erect a building to house and store machinery and tools owned by the township, and it may purchase such material and employ such labor as is necessary to erect such building, or it may authorize the purchase or employment of such material and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board.

Respectfully,

MARK McELROY

Attorney General