

AUDITOR OF STATE BULLETIN 2000-010
July 24, 2000

TO: ALL TOWNSHIP CLERKS
ALL TOWNSHIP TRUSTEES
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: TOWNSHIP COMPETITIVE BIDDING

The purpose of this bulletin is to inform township officials of 2000 Op. Att’y Gen. No. 2000-019. This Opinion addresses two issues. First, whether competitive bidding is necessary if the township trustees acquire road work equipment pursuant to a lease. Second, whether the Revised Code permits townships to enter into a lease with option to purchase. The Attorney General concluded that townships must comply with competitive bidding requirements as provided in Ohio Rev. Code §§ 5549.21 and 5575.01 when purchasing road work equipment, but not when they lease road work equipment. The Attorney General also concluded that townships do not have the authority to acquire road work equipment by means of a lease with option to purchase.

The Attorney General was asked to opine on these issues because Ohio Rev. Code § 5549.21 specifically requires all purchases of machinery, where the amount exceeds \$15,000, to be made from the lowest responsible bidder after advertisement. The statute makes no mention of leases. Based on the above-cited Revised Code section, the Attorney General concluded that townships must comply with competitive bidding requirements when purchasing road work equipment, but not when they choose to lease the same.

The Attorney General addressed the nature of a “lease with option to purchase” by determining that this arrangement is not included within either the term “lease” or the term “purchase.” Relying on State ex rel. Celebrezze v. TeleCommunications, Inc., 62 Ohio Misc. 2d 405, 601 N.E.2d 234 (Ct. Cl. 1990), the Attorney General interpreted this arrangement as a different type of financial transaction that equates to a form of purchase by installment payments. Based on the fact that public bodies are not permitted to purchase property by installment payments without clear statutory authority, townships do not possess the power to enter into a lease with option to purchase. Furthermore, Am. Sub. H.B. 187, 123rd Gen. A. (eff. 9/20/1999) deleted language from Ohio Rev. Code § 5549.02(A) that authorized a township to purchase road equipment by installment payments.

Therefore, according to the Attorney General’s Opinion, township officials must comply with competitive bidding requirements when purchasing road work equipment, but not when leasing the equipment. In addition, township officials do not have the authority to acquire road work equipment by means of a lease with option to purchase.

If you have any questions about this bulletin, please contact the Legal Division of the Auditor of State’s Office at 1-614-752-8683 or 1-800-282-0370.