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OFFICIAL OPINION NO. 80

September 18, 1951.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your request for an official opinion is as follows:

“Attached is a statement submitted by the City Attorney of the City of Clinton relative to a proposed transfer of fire fighting equipment from Clinton Township, Vermillion County to the City of Clinton.

“It is our understanding that the equipment referred to was purchased by the trustee of Clinton Township pursuant to Chapter 95, Acts of 1947; that the township trustee paid for the chassis from Township Fund in the year 1950; that the seller holds four (4) notes each in the principal sum of \$1,635.00, each bearing 4% interest per annum, with maturity dates of July 1, 1951, January 1, 1952, July 1, 1952 and January 1, 1953.

“May I please have your official opinion on the following question:

“Under the circumstances set forth above and in the statement of the City Attorney of Clinton, can the fire fighting equipment be legally sold by Clinton Township to the City of Clinton without the trustee abiding by the provisions of Section 1, Chapter 141, Acts of 1897 as amended by Section 1, Chapter 39, Acts of 1915 (Burns 65-125) and without the officials of the city abiding by the provisions of Chapter 99, Acts of 1945 (Burns 53-501—509) ?”

The situation appears to be that Clinton Township desires to sell and the City of Clinton desires to purchase certain fire fighting equipment. Simply, the question is, how may this be done. It is noted that Clinton Township owns

the chassis and the vendor to the Township has certain rights in the equipment attached to the chassis. Any title conveyed by the Township would be subject to any existing rights in such vendor.

The answer to your question may be influenced by the object sought to be achieved by the transfer of the fire fighting property. The Legislature has provided means whereby a township and a city or town by contract may enter into a mutual fire fighting compact. They may jointly purchase, own and operate fire fighting equipment. Such an operative enterprise is provided for by Burns Statutes, Section 65-501, *et seq.* The title to the Act (Chapter 229, Acts of 1929) reads as follows:

“An act authorizing townships and certain cities, towns and townships to purchase or cooperate in the purchase of fire-fighting apparatus and equipment, to provide for the housing, maintenance, operation and upkeep of the same, and prescribing the method of paying and dividing or prorating the payment therefor and the costs and expenses thereof.”

If both units of government are joining in a mutual enterprise for fire protection, they may be authorized by the legislature to accomplish that result by a contract by the governing powers of each unit. That is to say, that by a proper contract the township might convey all or a part of its ownership in the equipment to the City, upon such terms as agreed upon, for the joint use by the township and city in fighting fires. That if both units may act together in *purchasing* fire fighting equipment, it seems consistent that one unit may convey an interest in the equipment to the other unit to be used in a joint enterprise.

Under the legislative authority above referred to, this transfer might be accomplished without complying with the requirements for the sale and purchase of property. By entering into such a joint enterprise for fire protection, the transfer of the title to fire fighting equipment from the township to the City, would not entirely divest the township of all interest in, or benefits from, such equipment, since the township would continue to receive fire protection in accordance with the mutual contract.

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For an out and out *sale* of property by a township trustee, the Legislature has provided by Burns Statutes, Section 65-125, in part as follows:

“No township trustee shall sell any real or personal property of such township except at public auction, after notice for thirty (30) days prior to the day of sale, by posting notices (thereof) at six (6) public places in said township of the time, terms and places of said sale, giving a description of the property to be sold.”

Also with some exceptions, the Legislature has provided the method to be used by the various units of government, in the *purchase* of property. The title of Chapter 99, Acts of 1945, reads as follows:

“An Act concerning purchases of materials, equipment, goods and supplies with public funds of the state, county, township, city or town; prescribing the method therefor; providing penalty for violation thereof; providing that this act shall take precedence; repealing all laws and parts of laws in conflict therewith; and declaring an emergency.”

Section 1 of said Act reads as follows:

“That any person, officer, board, commissioner, department, commission, or purchasing agent hereinafter designated as purchaser, duly authorized and empowered by law or delegated and entrusted with authority, to make purchases of material or materials, equipment, goods and supplies, except current utility bills, payment for which is to be made from any appropriation of public funds made under the provisions of the budget law, for any unit of the state, county, township, city or town government shall comply with the requirements of this act whenever the total amount of any purchase exceeds five hundred dollars: *Provided*, That in all cases of the purchase of materials and supplies where the total amount of any such purchase does not exceed the sum of five hundred dollars the purchaser shall be and is hereby authorized to buy in the open market without the giving of notice or

the receiving of bids; and *Provided, further*, That such material or materials, equipment, goods and supplies may be purchased from the United States Government, or any agency, division or instrumentality thereof, without the giving of notice or the receiving of bids, and further providing that municipally owned utilities in case of emergency only may purchase repairs and equipment without the giving of notice or the receiving of bids."

Section 8 of said Act reads as follows:

"This act shall be deemed and construed as being supplemental to all existing laws concerning the purchase of material, equipment, goods and supplies by the state, counties, townships, cities or towns, payment for which is to be made from any appropriation of public funds made under the provisions of the budget laws: *Provided*, that nothing contained herein shall be construed so as to prohibit the purchase for the repair and maintenance of county highways of supplies, tools and materials, not exceeding three hundred fifty dollars in any one month without the receiving of bids, as provided in Chapter 145, Acts of 1935: *Provided, further*, That repair parts for machinery and/or equipment which can only be procured from the manufacturer of such machinery and/or equipment may be purchased without the giving of notice or the receiving of bids: *Provided, further*, That the provisions of this act shall not apply to purchases made by the Indiana State Highway Commission, nor to the central purchasing bureau, nor to the state supported institutions of higher education, except that copies of purchase orders shall be kept on file and be open to public inspection."

It does not appear that the situation as described comes within any of the exceptions of the foregoing Acts.

Therefore, if the sale by the township is to be treated as an isolated sale and the purchase by the City is to be treated as an isolated purchase, and not treated as a mutual contract or joint enterprise for fire protection by the two units of government, then, in such event, it is my opinion that the

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township should comply with Chp. 141, Acts of 1897 as amended by Chp. 39, Acts of 1915 (Burns Statutes, Sec. 65-125); and that the city should comply with Chp. 99, Acts of 1945 (Burns, Sec. 53-501, *et seq.*).

OFFICIAL OPINION NO. 81

September 18, 1951.

Honorable Arthur M. Thurston,
Superintendent,
Indiana State Police,
Stout Field,
Indianapolis 21, Indiana.

Dear Mr. Thurston:

I have your request for an official opinion which reads as follows:

“Our attention has been called to the recent amendment of the store license law which provides that persons offering products for sale from motor vehicles under certain conditions are required to buy a store license. Below are two questions that we will undoubtedly be confronted with when enforcement action is started regarding this law.

“1. Is it legal for a person to offer for sale or sell products after they have made application for a store license but have not received the license?

“2. In Section 5 of the law it defines the criminal offense as—‘offering for sale or delivered from and sold at wholesale or retail’. The law makes no mention of the violation ‘offering for sale’ but only states that the truck shall be impounded by the arresting authorities after a sale has been made. It is possible to impound the vehicle when the only violation has been ‘offering for sale’?”

There are two sections of the Indiana Store License Law which are concerned in the answer to your first question: Section 1 of the original act as amended by Sec. 1 of chapter 263 of the Acts of 1951, which reads as follows: