

OFFICIAL OPINION NO. 36

July 7, 1947.

Mr. Carter Bowser,
State Fire Marshal,
State House,
Indianapolis, Indiana.

Dear Mr. Bowser:

I have your letter requesting an official opinion upon the following questions:

"1. Can water plugs be classed as equipment or apparatus under the provisions of H. B. 63.

"2. Can the trustee advertise for bids for apparatus before the appropriation is available.

"In other words, he desires to advertise for bids so that he will know the amount of money to be appropriated."

In answering your first question reference must be made to Section I, Chapter 95 of the Acts of 1947 (H. B. 63) which provides in part as follows:

"Section 1. The trustee of any township in the state of Indiana, by and with the consent and approval of the advisory board, is hereby authorized and empowered to purchase for such township fire-fighting apparatus and equipment and to provide for the housing, care, maintenance, operation and use thereof for the purpose of extinguishing fires which may occur within the limits of such township outside of the limits of any city or town therein, and on behalf of such township to employ full or part-time firemen to operate such apparatus and equipment and to fight and extinguish fires occurring in said township outside of the limits of any city or town therein. * * *"

The foregoing quoted statute does not specifically authorize the trustee to purchase water plugs and it must, therefore, be determined whether water plugs may be classified

as apparatus or equipment which the trustee is specifically authorized to purchase. A reading of the entire act fails to reveal any clue which in any way limits the definition of such terms as used in such act, and such terms must be construed according to their plain, or ordinary and usual sense.

Burns' 1933, Section 1-201;
Chicago and Calumet Dist. Trans. Co. v. Mueller
(1938), 213 Ind. 530, 533.

The term "equipment" has been construed by the appellate courts of this state on several occasions.

Old Colony Insurance Company v. Kolmer
(1922), 78 Ind. App. 479, 483-484;
General Parts Corp. v. First Trust etc. Bank
(1928), 87 Ind. App. 501, 504;
Department of Treasury v. Ranger-Cook, Inc.
(1943), 144 Ind. App. 107, 113.

In the case of Old Colony Insurance Company v. Kolmer, *supra*, the court held that a rectifier kept in a garage for the purpose of charging the battery of an electric automobile was included within the term "equipment" for the purpose of construing an insurance policy against loss or theft of equipment of such automobile. In that case the court stated at pages 483 to 484 as follows:

"After an extended search, we have not been able to find that the meaning of the term 'equipment,' when used in connection with an automobile, has ever been defined by any court, or that any rule has been established by which it may be determined when an appliance, used in connection therewith, falls within the meaning of such term. Under these circumstances we very naturally turn to the definitions found in the dictionaries, in determining the commonly accepted meaning of such term, as a basis for its application in the instant case. Webster's International Dictionary defines the verb 'equip' to mean, 'To furnish for service, or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way;' and the noun 'equipment'

to mean, 'Whatever is used in equipping * * * the collective designation for the articles comprising an outfit.' In the Century Dictionary the verb 'equip' is defined as meaning, 'To fit out; furnish with means for the prosecution of a purpose; provide with whatever is needed for efficient action or service;' the noun 'equippage' as meaning 'An outfit; provision of means or materials for carrying out a purpose; furniture for efficient service or action; an equipment;' and the noun 'equipment' as meaning, 'anything that is used in or provided for equipping, as furniture,' etc. It is stated in the instant case, in the agreement as to the facts, that the rectifier in question was owned by appellee and kept by her in a public garage where she kept her automobile; that it had been in use and operation by her in charging her said automobile with electricity, and when so used, it was attached thereto by means of a charging plug and cable; and that it was not used in conjunction with any other automobile. In addition to these facts, the trial court may have considered it a matter of common knowledge, that it is necessary to charge automobiles, such as appellee's, with electricity, in order to operate the same, and that this was done by means of a rectifier; and that some owners of such automobiles have them charged at public stations, while others have their own appliance for such purpose. In fact it was agreed on the trial that this was true in Indianapolis where appellee's automobile was located. In view of these facts, it is clear to us, in the light of the definitions cited above, that the trial court was justified in holding that the rectifier in question was an equipment of the automobile, and covered by the policy in suit, since that term was used therein, without restrictions or limitations."

It is apparent from the above quoted part of the 1947 Act, Chapter 95, that the purpose of such statute was to permit the township trustee to purchase such apparatus and equipment necessary to accomplish the specific purpose of preventing and controlling fires in the township. It is, of course, common knowledge that in accomplishing such pur-

pose it is necessary to provide some means to furnish water to extinguish fires. It would seem that the use of fire plugs would be entirely consistent with the accomplishment of this purpose. Accordingly, it is my opinion that water plugs would come within the term "equipment" which the trustee is authorized to purchase.

In answering your second question reference should be made to Section 1 of Chapter 95 of the Acts of 1947, which provides in part as follows:

"* * * All funds for the purchase, housing, care, maintenance, operation and use of such apparatus and equipment and for the payment of the wages or salaries of any firemen employed shall be appropriated and paid out of a fund that shall be raised by a tax levied against all taxable real and personal property, located in the township outside of the corporate limits of any city or town therein. After a sufficient appropriation has been made and approved and is available for the purchase of such apparatus and equipment the trustee by and with the consent and approval of the advisory board may purchase the same for the township on an installment conditional sale or mortgage contract running for a period of not exceeding six years, amortized in equal or approximately equal installments payable on July 1 and January 1 of each year, the interest, collection, finance and all other charges thereon not to exceed four per centum per annum upon the balance from time to time remaining unpaid; or the trustee and advisory board on behalf of the township may borrow the necessary funds to make the purchase from any financial institution in the state of Indiana on the same terms, in which case they shall, on behalf of the township, execute and deliver to the institution the negotiable note or bond of the township for the sum borrowed which shall bear interest at a rate not exceeding four per centum per annum, both principal and interest to be payable in equal or approximately equal installments on each January 1st and July 1st over a period not exceeding six years. * * * Except as herein otherwise provided all purchases of

fire-fighting apparatus and equipment shall be made in the manner now or hereafter provided by law for the purchase of township supplies. If the amount involved be sufficient to require notice under the laws of the state for bids in connection with the purchase of any such apparatus or equipment, the notice shall offer all bidders the opportunity of proposing to sell such apparatus and equipment to the township upon conditional sale or mortgage contract and any bidder proposing to sell on conditional sale or mortgage contract shall state in his bid the proposed interest rate and terms thereof, which interest rate and terms shall be considered by the township trustee and advisory board in determining the best bid received. All bids submitted shall specify the cash price at which the bidder proposes to sell such apparatus or equipment to the township *in order that the township trustee and advisory board may determine whether it is to the best interest of the township to purchase the apparatus or equipment on the terms of any conditional sale or mortgage contract proposed by the bidder or to purchase the same for cash if sufficient funds are available or can be raised by negotiating a loan with a financial institution in accordance with the provisions of this act.*" (Our emphasis).

From the foregoing statute it is clear that there is no express or implied prohibition against advertising for bids before an appropriation is available and in the absence of such a prohibition, I see no valid reason why the trustee would not be authorized to do so. This seems particularly apropos of this situation in order that it may be determined how much money should be appropriated and whether such apparatus and equipment should be purchased for cash or upon a conditional sale or mortgage contract. Accordingly, my answer to your second question is in the affirmative.