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OFFICIAL OPINION NO. 24

June 25, 1963

Mr. B. B. McDonald  
State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in response to your letter requesting my Official Opinion in answer to the problem therein stated, which reads as follows:

“Assuming the statutory requirements for sale and transfer of its property are met, may a town board sell and transfer personal and real property owned by the town and receive other property or services in payment therefor?”

The Acts of 1905, Ch. 129, Sec. 31, as amended and found in Burns' (1962 Supp.), Section 48-301, provides in part, as follows:

“The board of town trustees shall have the following powers:

\* \* \*

“Second. To purchase, hold and convey any estate, real or personal, for the use of the corporation, so far as such purchase or conveyance may be necessary to carry out the objects contemplated in this act.

“Third. To organize fire companies, to regulate their government and the times and manner of their exercise \* \* \*”

The above statute is the only one relating to the powers of town trustees in dealing with town property.

The correspondence accompanying your specific request makes reference to Burns' (1950 Repl.), Section 48-1407, and specifically to paragraph fiftieth thereof. (Acts of 1905, Ch. 129, Sec. 53, p. 219.) The introductory paragraph of said section reads as follows:

“The common council of every city shall have the power to enact ordinances for the following purposes:”

The fiftieth paragraph referred to in the correspondence reads as follows:

“Fiftieth. To authorize the alienation and conveyance of any property, real or personal, belonging to such city, whether used for public and governmental or for private purposes: Provided, That no such property shall be sold until the same has been appraised by three [3] disinterested freeholders of such city appointed by the judge of the circuit court in the county in which such city is located; and no sale or conveyance of any such property shall be made for a less sum than such appraisement, and, in the case of real estate, only by a two-thirds vote of the common council; such conveyance shall be by the mayor, in the name of the city, attested by the city clerk and with the seal of the city: And provided, further, That where it is shown to the common council that any personal property does not exceed in value the sum of one hundred dollars [\$100], the council may authorize the sale thereof without an appraisement.”

As can be readily seen the two statutes deal with two separate governing bodies, namely town board and city council. It is my opinion that the restrictions imposed by the fiftieth, Burns' 48-1407, *supra*, in no way control the functions of a town board in dealing with real estate which it owns.

In the case of *Micks et al. v. Stevenson* (1899), 22 Ind. App. 475, 478, our court adopts Chancellor Kent's definition of a sale, which definition is as follows:

“\* \* \* ‘A sale is a contract for the transfer of property from one person to another for a valuable consideration; and these things are requisite for its validity, viz.: The thing sold, which is the object of the contract, the price and consent of the contracting parties.’ \* \* \*”

You will note from the above definition that a sale does not necessarily require payment in money, but is for “a valuable

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consideration." In the case of *Ditmar, Guardian of West v. West* (1893), 7 Ind. App. 637, our court has followed Chancellor Kent's definition of a "valuable consideration." Our court stated therein on pp. 638, 639 as follows:

"It is elementary law that anything is a valuable consideration for a contract which is of advantage to the one or of disadvantage to the other."

In view of the foregoing, in answer to your question, it is my opinion that a town board may sell and transfer personal and real property owned by the town and receive other property or services in payment therefor.

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### OFFICIAL OPINION NO. 25

June 26, 1963

George A. Everett, Acting Superintendent  
Indiana State Police  
301 State Office Building  
Indianapolis 4, Indiana

Dear Superintendent Everett:

This is in response to your letter of June 11, 1963, wherein you request an Official Opinion.

In your letter you refer to the Acts of 1957, Ch. 253, as found in Burns' (1962 Supp.), Sections 47-2632 to 47-2637, inclusive, which created a classification of registration plates available to owners of antique motor vehicles. Your specific question is stated as follows:

"The Acts of 1957, Ch. 253 (Burns', 1962 Supp., §§ 47-2632—47-2637), created a classification of registration plates for 'antique motor vehicles'. Does the definition of an antique motor vehicle contained in that Act restrict the use of such a motor vehicle so registered, and if so, to what extent?"

Your question is particularly concerned with the definition of the term "antique motor vehicle," contained in Section 1