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Frank Sellars
Jackson Township Trustee
412 W. Zimmerman St.
Forest, OH 45843

RE: Sealed Bidding Questions for the Disposition of Township Property and Trustee Interest in
Purchasing said Property

Dear Frank,

You recently reached out to my office with some questions on the sealed bidding process, specifically concerning a decommissioned firetruck the township wishes to sell. You also asked if a trustee or their family is interested in bidding on the firetruck if they have to abstain at all. First, it is important to note that the Board is not limited to the sealed bidding method. Since you stated the Board believes the fair market value of the firetruck to be in excess of \$2,500.00, the Board may also hold a public auction. The Board may also utilize internet auctions, regardless of the property's FMV. The specific questions you presented along with my answers are as follows:

“If the bidders that submit sealed bids are able to increase their bids at the time the bids are opened?”

The answer is **NO** bidders that submitted sealed bids are not able to increase their bids at the time of opening. ORC 505.10 states the property must be awarded to the party who submitted the highest **sealed** bid. No additional bids can be submitted after the cutoff date and time specified in the required publications and postings.

“Is it possible for the only people allowed to bid at this time be those that have sent in a sealed bid and are present at the opening?”

The question cannot be answered with a simple yes or no because it is framed incorrectly. As stated above, no additional bids are able to be submitted after the cutoff date and time specified in the required publications and postings.

“If a Trustee or a Trustees family member wants to bid on the truck at what point in this process do they need to abstain?”

As I’ve explained in the body of this letter, ORC 2921.42 and ORC 102.03 do not prohibit a township trustee from purchasing property from the township as long as he or his family member bids on the property in the same manner as any other citizen. (*ORC 505.10(D) states that the Board of Township Trustees shall consult with the Ohio Ethics Commission and comply with Chapters 102 and 2921 of the revised code.*) The trustee cannot use his authority or influence of his position, or any other confidential information to secure the property for himself or his family members. In 2006 The Ohio Ethics Commission issued a publication where a similar circumstance presented itself. In the publication, it states while public officials are not prohibited from purchasing property from their soil and water board, they must abstain from “voting, deliberating, participating in discussions, petitioning other board members, or otherwise using their official authority or influence with regard to offering property for sale, authorizing the sale of the property, obtaining information in formulating a bid, securing the property at a better price than it would be available to others, or any other matter related to the property.” It is my opinion that if the trustee or his family is interested in placing sealed bids, that trustee must abstain from any voting or any other matter in regards to this property.

Therefore, if the township wishes to pursue the sealed bidding process, they must fully understand the procedure. If they so wish to pursue the sealed bidding process, all bids must be submitted in accordance with the published and posted notices which shall specify a cutoff date for bid submissions. No additional bids can be submitted after this specified time. It is my recommendation that if the township wants open bidding amongst the attendees, then they should hold a public auction rather than procure bids through the sealed bidding process. You will find below, I have set forth each disposition method according to ORC 505.10 and its requirements. As stated above, a trustee and/or a trustee’s family may place bids on the firetruck, but he must refrain from any voting, deliberating, discussion, or

otherwise using his elected position in authorizing the sale of the property, or any other matter related to the property.

Pursuant to ORC 505.10(A), the township board of trustees, *by resolution*, may find property to be unneeded, obsolete, or unfit for use. The first method the township may dispose of this property is by public auction. ORC 505.10(A)(1) lays out the statutory requirements the Board must follow in holding a public auction. They are as follows:

- a. In the opinion of The Board the fair market value of the property must exceed \$2,500.00.
- b. Property is to be sold to the *highest bidder* at the auction.
- c. The Board shall publish notice of the time, place, and manner of the sale once a week for two (2) weeks and at least two (2) weeks prior to the sale in a newspaper that is of general circulation of the township.
- d. The Board shall also post a typewritten or printed notice of the time, place, and manner of the sale in the office of the Board for at least ten (10) days prior to the sale.
- e. May also insert notice in trade publications or the Board's internet website. If the Board publishes the notice on their website, it eliminates the need for the 2nd newspaper publishing but only if the 1st newspaper notice contains all of the following:
 - a. It is published at least two (2) weeks before the sale.
 - b. Includes a statement that the notice is also posted on the Board's website
 - c. It includes the Board's internet address
 - d. Includes instructions describing how the notice may be accessed on the Board's website.
- f. The Board may also want to include the following details in the published and posted notices:
 - a. What township property is being auctioned
 - b. Make and Model of firetruck
 - c. Mileage
 - d. Condition

ORC 505.10(B) states that when the board has offered property at a public auction and did not receive an acceptable offer, the board, *by resolution* may enter a contract, without advertising or bidding, for the sale of that property. The resolution shall specify a minimum acceptable price and the minimum acceptable terms for this public contract. The minimum acceptable price shall not be lower than the minimum price initially established for the public auction.

The second method a township, *by resolution*, may dispose of unneeded, obsolete, or property that is unfit for use is by the procurement of sealed bids. ORC 505.10(A)(1) once again lays out the statutory requirements the Board must follow in procuring sealed bids. They are as follows:

- a. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be sold to the bidder whom submitted the *highest bid*.
- b. The Board may reject all bids and hold another sale either by sealed bids or public auction.
- c. In the opinion of The Board the fair market value of the property must exceed \$2,500.00.
- d. The Board shall publish notice of the time, place, and manner of the sale once a week for two (2) weeks and at least two (2) weeks prior to the sale in a newspaper that is of general circulation of the township.
- e. The Board shall also post a typewritten or printed notice of the time, place, and manner of the sale in the office of the Board for at least ten (10) days prior to the sale.
- f. May also insert notice in trade publications or the Board's internet website. If the Board publishes the notice on their website, it eliminates the need for the 2nd newspaper publishing but only if the 1st newspaper notice contains all of the following:
 - a. It is published at least two (2) weeks before the sale.
 - b. Includes a statement that the notice is also posted on the Board's website
 - c. It includes the Board's internet address
 - d. Includes instructions describing how the notice may be accessed on the Board's website.
- g. The Board would also want to post the following within the published and posted notices:
 - a. What the property is that's being bid on
 - b. Make and Model of firetruck
 - c. Mileage
 - d. Condition
 - e. Time and Place where the item will be on display at
 - f. A date and time concerning the cut off for bid submissions
 - g. Address and hours of where bid submissions are to be submitted

Another method, *by resolution*, a township may dispose of unneeded, obsolete, or property that is unfit for use **regardless of value** is by internet auction. ORC 505.10(D) lists the requirements to sell property via internet auction. They are as follows:

- a. The Board shall adopt, during each calendar year, a resolution expressing its intent to sell that property by internet auction. The resolution shall include the following:
 - a. A description of how the auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than ten (10) days, including Saturdays, Sundays, and legal holidays.

- b. An indication whether the township will conduct the auction or if the board will contract with a representative to conduct the auction and shall establish the general terms of the sale. If the representative is known at the time the resolution is adopted, his/her name, address, and phone number shall be included.
- b. After the resolution is adopted, the Board shall publish, in a newspaper of general circulation of the township, notice of its intent to sell unneeded, obsolete, or unfit for use personal property by internet auction.
- c. The notice shall include a summary of the information provided in the resolution and shall be published at least twice.
- d. A similar notice shall be posted throughout the calendar year in the Board's offices.
- e. The Board may also insert notice in trade publications or the Board's website. If the Board publishes the notice on their website, it eliminates the need for the 2nd newspaper publishing but only if the 1st newspaper notice contains all of the following:
 - a. It is published at least two (2) weeks before the internet auction begins.
 - b. Includes a statement that the notice is also posted on the Board's website.
 - c. It includes the Board's internet address
 - d. Includes instructions describing how the notice may be accessed on the Board's website.
- f. When property is sold by internet auction, the Board or its representative may establish a minimum price that will be accepted along with *any other terms and conditions for the particular sale*, including requirements for pick-up or delivery, method of payment, and sales tax. This information shall be provided on the internet at the time of the auction and may be provided before that time upon request if available.

We now turn to your question regarding when a trustee needs to abstain if he or his family is placing bids on the firetruck. I have cited ORC 505.10 many of times throughout this opinion referencing the disposition methods the township may utilize in selling the firetruck. This same code section, specifically section (D), states that the Board must consult with the Ohio Ethics Commission and comply with Chapters 2921 and 102 of the revised code. ORC 2921.42(A)(1) prohibits a trustee from authorizing a contract he or a family member has interest in. ORC 2921.42(A)(4) prohibits a trustee from having interest in the profits or benefits of a public contract entered into by the township he serves. In the case at hand, the selling of unneeded township property is not a public contract. However, ethics law is not solely confined too ORC 2921.42. Board members are also subject to prohibitions under ORC 102.03. ORC 102.03(D) prohibits a trustee from using his official authority or influence to secure for himself or a family member township property. Therefore, the trustee would be prohibited and needs to abstain

from voting, deliberating, or otherwise using his official duties as a township trustee to offer or authorize for the sale of property, or any other matters relating to this property.

If the township so wishes to pursue the sealed bidding process, they must understand the procedure which I have laid out above. No bids can be submitted after the date and time specified in the published and posted notices required under ORC 505.10. It is my recommendation that if the township wishes to have open bidding, they are able to hold a public auction. Also, if a trustee or a trustee's family member decide to place bids, regardless of what disposition method that is used, they must abstain from any voting, deliberation, discussions, or any other way he's using his elected position in authorizing for the sale of the property, or any other matter related to this property.

Sincerely,

Bradford W. Bailey, Prosecutor

Katey L. Henson, Paralegal

Cc: Christa Gillfillan, Jackson Twp Fiscal Officer