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January 4, 2023

Trumbull County Board of Commissioners  
160 High Street NW, 5th Floor Admin. Bldg.  
Warren, Ohio 44481

**RE: Competitive Bidding and Multiple Vehicle Purchase**

Dear Board of Commissioners:

Recently, I was presented with two file folders containing "Certificates of Legal Counsel" for approval "as to legal form and correctness" of vehicles. The first was a purchase of two Ford F-250 trucks for the Sanitary Engineer's Department for a total of \$99,240.00 and the second was for the purchase of seven Ford F-150 trucks for a total of \$303,870.00, all from Klaben Ford. Because both purchases were in excess of \$50,000.00, I looked through the resolution to determine whether there was competitive bidding or some exception, but the resolution was silent as to the procurement method. However, both purchases had been approved by a majority of the Board at the meeting of November 2, 2022.

Generally speaking, and as I have consistently recommended, when something is purchased in excess of \$50,000 with a statutory exception to competitive bidding, the statute and exception are referenced in the resolution. Because this was not the case with these vehicle purchases, I reached out to the Sanitary Engineer's Department. I asked whether these vehicles were purchased through the Ohio Department of Administrative Services' "state purchasing" program, or purchased at a price lower than the state purchasing price. I was told that there were no vehicles available through state purchasing, and the price paid was actually higher than state purchasing. I asked whether there was any other exception to competitive bidding that was used, and I was told that there was no exception. However, I was told that each individual vehicle was under \$50,000. Even more troubling, I was told that the vehicles had already been delivered, and the invoice had been paid. This may have even occurred prior to the fiscal officer's certificate being executed.

These vehicles were purchased in two groups, with each group having a cost greater than \$50,000. However, the Ohio Courts and Attorneys General have long held that contracts cannot be split into multiple parts to avoid the competitive bidding requirement of R.C. 307.86. In fact, the Ohio Attorney General has explained that:

“[I]tems that reasonably would be included in a single purchase contract may not be purchased separately in order to avoid the requirements of competitive bidding. In *Wing v. City of Cleveland*, 9 Ohio Dec. Reprint 551 (C.P. Cuyahoga County 1885), the court determined that a board of fire commissioners, bound by competitive bidding for purchases at a cost in excess of a certain amount, could not purchase a length of fire hose in a number of separate sections to avoid advertising for bids for the entire length of hose. Similarly, it has been held that a competitive bidding requirement cannot be avoided by making several separate payments on an account that represents, in fact, one contract between the parties. *Ludwig Hommel & Co. v. Woodsfield*, 115 Ohio St. 675, 155 N.E. 386 (1927). See also *State ex rel. Kuhn v. Smith*, 25 Ohio Op.2d 203, 194 N.E.2d 186 (C.P. Monroe County 1963). Thus, depending upon the circumstances, it may be appropriate to aggregate a number of related items for determining the applicability of the dollar threshold requirement for competitive bidding. The primary question is whether each purchase reasonably and in good faith constitutes a separate contract or whether the purchase has been split into separate contracts to avoid the requirements of competitive bidding.” 1992 Ohio Atty.Gen.Ops. No. 92-050.

There does not appear to be any legal authority on the purchase of multiple new vehicles that matches the present situation. Therefore, we must keep in mind that the “primary question is whether each purchase reasonably and in good faith constitutes a separate contract or whether the purchase has been split into separate contracts to avoid the requirements of competitive bidding,” and look for analogous legal authority.

For example, the Ohio Attorney General has opined that “R.C. 307.86 by its terms applies to ‘[a]nything to be purchased,’ and not to an aggregate of purchases, and, therefore, the fact that the aggregate cost of a number of separate purchases at one auction exceeds \$10,000 would not generally trigger the requirement of competitive bidding.” 1992 Ohio Atty.Gen.Ops. No. 92-050. The Ohio Attorney General also declined to aggregate purchases for purposes of the financial threshold of R.C. 307.86 in the cases of the county's purchase of towing services where the cost of any single tow did not exceed that threshold, but where the aggregate cost of tows could exceed it. 1991 Op. Atty Gen. No. 91-051. The Ohio Attorney General has also determined that it is not necessary to aggregate multiple purchases of gasoline for purposes of compliance with R.C. 307.86. 1993 Ohio Op. Atty. Gen. No. 93-024.

In the present situation, we are not aggregating the price of individual vehicles purchased throughout the year, the Board has chosen to aggregate the purchase itself. The result is an expenditure much higher than the \$50,000 threshold of R.C. 307.86. On its face, this is troubling. However, we also recognize that the “primary question is whether each purchase reasonably and in good faith constitutes a separate contract or whether the purchase has been split into separate contracts to avoid the requirements of competitive bidding.” Here, the question is perhaps reversed. Even if this purchase could have been lawfully made in multiple purchases without the requirement to aggregate the amount, can the Board purchase the vehicles in one transaction without triggering the requirement of competitive bidding?

I have discussed this matter with Prosecutor Watkins, and based on the history and legal authority, we are concerned that this purchase could be construed as violating the competitive bidding provisions of R.C. 307.86. Certainly, the procedure used in this purchase is not how we would have advised the Board to procure these vehicles. Because of our concern, we intend to request an opinion from the Ohio Attorney General to clarify whether this is a lawful way to procure multiple vehicles, particularly when we have been told that no other vehicles were available through Ohio state purchasing contracts. If the Ohio Attorney General opines that this contract was entered into in violation of R.C. 307.86 or another statute, we may be forced to take additional legal action or some other action which would be suggested by the Attorney General. The Board should also be aware that while we await an opinion of the Attorney General, this contract could be subject to scrutiny through by the Auditor of State or others that could take administrative or legal action.

I strongly encourage the Board to investigate this matter with its department heads and be sure that appropriate policies and procedures are in place to avoid potential violations of R.C. 307.86. Through the years, this office has often received written request from various political subdivisions regarding the need for competitive bidding under their particular circumstances. If there is any question at all, we encourage the Board to reach out for legal review prior to any large purchase not proposed to be procured through competitive bidding. Last year, we provided 298 legal opinions, including 88 for the Board, and we stand ready to provide the Board the assistance it needs on bidding questions and other questions moving forward. It is our intent to send this matter to the Attorney General as quickly as possible so that this matter can be resolved quickly. If the Board has any questions, please feel free to contact me.

Respectfully,



William J. Danso  
Assistant Prosecuting Attorney