

TOWNSHIPS: Arbitrary refusal of chairman to sign order for purchase price of road machinery where the majority of the members of the board have voted for the issuance of said order, forces the recipient of said order to bring court action.

April 14, 1941

Hon. Mark Wilson
Prosecuting Attorney
Henry County
Clinton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated April 11, 1941, which reads as follows:

"One of our township boards has submitted a proposition to me on which I was unable to give an opinion and I told them I would write for your opinion.

"It appears that the old township board purchased a rock crusher. The president of the board refused to sign the contract to purchase and also the warrant for the first payment on the crusher. Two of the three members of the board agreed to purchase the crusher and one of the members signed the warrant and the contract as chairman. The seller of the crusher was present at the board meeting and the president

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of the board declared to him that he would not sign the contract or sign the warrant for the first payment. The new board has now come into office and does not want the crusher and would like to have the money back already paid by the warrant and the contract to purchase declared null and void. The question seems to narrow down to whether or not two members of the board have a right to contract and issue a warrant without the consent and signature of the president of the board."

In answer, we wish to say that we are enclosing an opinion heretofore rendered by this office to Hon. Robert W. Smart, Prosecuting Attorney of Lawrence County, Mount Vernon, Missouri, dated January 20, 1941. The purpose for enclosing the opinion is for the reason that it is no doubt determinative of one of the points confronting you in this situation. Therefore, you can see that the first question to determine is, whether the person who sold the crusher is entitled to a legal claim from the township for the purchase price thereof.

For the purpose of this opinion, we assume that there was sufficient current revenues, and anticipated revenues to pay the contract price of the crusher, after all the allowed prior claims had been paid.

Section 13968 R. S. Missouri, 1939, provides, in part, as follows:

"Money to be paid out only on order of township board--school districts not affected. - The township trustee and ex officio treasurer shall not pay out any moneys belonging to the

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township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk: * * *

It will be noted in reading the first part of this section that it is provided that the township trustee, ex officio treasurer, shall not pay out any money belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk.

Section 13978 R. S. Missouri, 1939, reads as follows:

"Claims against a township, how presented. - Any person having a claim or account against the township may file such claim or account in the office of the township clerk, to be kept by the said clerk, and laid before the township board at their next meeting: Provided, however, that any person having a claim against the township may present said claim to the township board himself, or by an agent, at any legally convened meeting of said board; said board shall have the power to determine the legality or illegality of any claim or account against the township, and to reject said claim, or any part thereof, as to them appears just and proper; but in no case shall the township board be authorized

to allow any claim, or any part thereof, until the claimant makes out a statement, verified by affidavit to the amount and nature of his claim, setting forth that the same is correct and unpaid, or, if any part thereof has been paid, setting forth how much."

Section 13983 R. S. Missouri, 1939, provides as follows:

"Claims against township, how collected. - When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed - said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant."

Therefore, from the reading of the foregoing sections, it will be noted that the law provides emphatically that the order of the township board shall be signed by the chairman.

In your request you state that two of the members voted for the purchase of the crusher and of course would bind the township and would create a legal obligation upon the township if they were entering into an agreement which they had a legal right to do. Hence, the first question that presents itself is: Was the board within its legal rights in the purchase of the rock crusher? This question can be determined by the opinion which is hereto attached. Therefore, if the contract for the purchase of the machinery was for a greater sum than

the current revenue and the anticipated revenue, added together, - of that particular year, - after subtracting all the prior allowed claims, then, in that event the board would be doing an illegal act and the chairman of the board, on that ground, could refuse to issue the order. The seller of the crusher, in our opinion, would be unable to force the board, and the chairman, in a court action, to issue an order, and thereby force the treasurer, through suitable court order, to pay for the crusher. On the other hand, if the purchase of the crusher was a legal purchase, and the board had a right to obligate the township for the purchase thereof, then the vote by the two members who voted for the purchase of said crusher, (providing there were suitable orders and minutes made by the board) would create a legal obligation upon the township, and the seller of the crusher would have a right to bring an action to force the chairman of the board to fulfill his legal duty, namely, issue an order for the purchase price of the crusher; or, as you state his term of office having expired, could, through suitable action force the present township board to issue the order through its township chairman, and have the same duly honored and paid by the treasurer.

CONCLUSION.

In conclusion, it is our opinion that where a township chairman refuses to sign an order, that if the board, of which he is chairman, has the legal right and does through a legal meeting, vote and rule that such an order shall be made, that he shall sign the same, creates a legal claim which is binding upon the township, but, where the chairman refuses to sign the order, the only way that the order for the purchase price can be procured, during the incumbency of the chairman, is by an order forcing the chairman to carry out his duty placed upon him by statute, procured through suitable court order in a court of record.

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On the other hand, if two members of the board, through their vote, attempt to place upon the township a money obligation which in truth and in fact, they have no legal authority to do, then, in that event, the person for whom the purported order is sought to be made cannot recover.

Respectfully submitted,

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APPROVED:

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