

Opinion No. 140**County Commissioners—Power to Purchase and Sell Property—
Trade-in of Used Equipment.**

Held: A Board of County Commissioners is without power to offer used equipment as a trade-in on the purchase of new equipment without first offering the used equipment for sale at public auction in accordance with the provisions of Section 16-1009, Revised Codes of Montana, 1947.

December 20th, 1950.

Mr. J. Chandice Ettien
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Ettien:

You advise me that the Board of County Commissioners of Granite County have advertised for bids for the purchase of new construction equipment and as a condition to bidding the bidder must agree to accept a used piece of construction equipment as a trade-in at a certain appraised value. You state that you have been unable to find any authorization in the Montana Codes permitting such action by the Board of County Commissioners, and have therefore requested my opinion.

I am quite aware that the modern business practice of sellers of equipment is to make use of what has come to be known as the "trade-in" principle. The prospective seller of new equipment will accept a lower price for the new equipment if the buyer will sell his used equipment to the seller. The seller is willing to make less profit on the sale of the new equipment because he will be able to repair the used equipment and sell it at a greater price than he originally paid to the buyer. Thus, the profit that is made on the sale of the used equipment will offset the smaller profit that the seller made on the original sale of the new equipment. While the trade-in transaction is often considered to be one transaction still it does in fact consist of two separate sales.

Private business organizations make use of the trade-in practice as a matter of course. However, a Board of County Commissioners may not exercise the free discretion employed by private businessmen, as the powers and duties of Boards of County Commissioners are prescribed by law.

Boards of County Commissioners are given the power to buy and sell equipment for County purposes. The underlying principle of the law which guides the actions of the Commissioners is that the Board must seek the greatest legitimate advantage for the County in both transactions. Thus, the law provides that in purchasing equipment the Board must accept the lowest responsible bid. Also, the law provides that in selling County property the Board must first appraise the prop-

erty and if the value exceeds \$100.00 then the property must be sold at public auction to the highest responsible bidder. Section 16-1009, Revised Codes of Montana, 1947. There is no provision in the Montana statutes permitting trade-ins.

The provisions of Section 16-1009, *supra*, are mandatory and the Board of County Commissioners may not sell any real or personal property valued over \$100.00 without first giving notice by publication of their intent to sell the property at public auction on a certain date. However, Section 16-1009, *supra*, also provides that if no bid or offer for sale at public auction is made, after appraisal and notice given, the Board may sell the property at a private sale at any time thereafter for not less than ninety per-cent of the appraised value.

Perhaps, the Legislature should pass a statute permitting Boards of County Commissioners to "trade-in" used equipment without first offering it for sale, but the present status of the law does not permit the Board to so act. However, many Boards do take advantage of the "trade-in" offers of sellers by the following procedure.

First, the Board appraises the used equipment and if the reasonable value exceeds \$100.00 the Board follows the procedure set forth in Section 16-1009, *supra*, and holds a public auction. If no bid or offer is made for the property offered for sale at the public auction, then the Board of County Commissioners may sell the property at private sale. Thus, the Board can then enter into trade-in negotiations with the prospective sellers and sell the used equipment at the best possible price, providing the trade-in offer is an amount at least ninety per cent of the appraised value of the property.

Therefore, it is my opinion that the Board of County Commissioners may not trade-in used equipment unless it first offers the equipment for sale at a public auction in accordance with the provisions of Section 16-1009, Revised Codes of Montana, 1947, and the action contemplated by the Board of County Commissioners of Granite County is not authorized by law.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.