

WESTFIELD TOWNSHIP TRUSTEES
Special Meeting/Lease Contract/Gen.Bus.
April 22, 2010
8:30 am

Trustee Oiler opened the special meeting to review a lease contract with legal counsel by asking for roll call.

Trustees present: Harris, Oiler, and Likley.

Also present: Assistant Prosecutor, Wm. L. Thorne; Fiscal Officer, Martha Evans; Resident, Tim Kratzer.

Bill Thorne presented some issues he noticed with the lease contract as presented by Dollar Leasing Corp. Municipal Equipment Lease.

- ✓ 2 provisions that is illegal under Ohio law. They have a provision that if it is illegal it could come out and we could negotiate that.
- ✓ Under terms & conditions are not particularly illegal are not particularly beneficial to you as an entity – should there be a problem.
 - This is not a done deal, they reserve the right to determine whether they will award this or not for 40 days after application, which means potentially you may have the truck already bid without knowing how you are going to finance it before they approve or deny this. Even if they deny it, they are charging you a significant fee (depending upon the value) of one-half (1/2) of one (1) percent of the total cost.
- ✓ Maintenance - Lee would not be allowed to do the maintenance
 - Requiring all maintenance & repairs on the equipment shall be done by a company certified maintenance employee
- ✓ Insurance - Required to maintain a separate insurance policy on the vehicle paid for by the township, strictly in the name of the bank, so if anything happens to the vehicle the bank gets it all.
- ✓ If the vehicle is destroyed, you still have to pay on the lease.
- ✓ If for any reason you have trouble and the vehicle is repossessed, you still have to pay balance the lease. There is nothing in here that you get credit for the value of the repossessed vehicle.
- ✓ Township does not have the right to assign the lease; they have the right to assign the lease. If you are having a fight with them when you sign the lease you still agree to pay the new Lessor the full amount of the payment even though you may a distribute with the bank. Basically it is a way to get out of fight with you if they sell the lease. You loose your argument rights.

- ✓ There are some hidden costs in here not necessarily unusual or illegal but you need to know of. They reserve the right to file UUC findings at your expense – not unusual but it is an additional cost to what you have in here.
- ✓ Certain provisions that we would have to get – the IRS code that they require you to certify compliance with. Bill would have to pull those codes.
- ✓ Non-appropriation section – this allows you to get out of this contract if for some reason you do not have any funding. The problem with that is: if you do that basically for the next year, you will not make a purchase, lease or otherwise acquire the use any equipment of services equivalent to what you have. If you need that for road work, plow the snow and you can't pay for it and you give it up that means you can't hire anyone to do your snow plowing, which is ridiculous.

Bill Thorne:

If nothing was to go wrong and you got a great interest rate on this it is worth a gamble. Unless you are getting a great rate you are gambling with it. If you have the money to pay for it and none of the default provisions would come into play, legally you could go forward. You are going to have some expenses to pay over and above the actual rental payments. But if this thing goes south on you it's not good. If this is a good interest rate or can you get a better interest rate from somebody else.

Guilford Township went directly through the OTRMA Municipal Lease Program and they didn't have these problems.

Martha related the interest rate for Dollar Corp. Municipal Leasing is 5.13% for anything over \$50,000.

Bill Thorne also pointed out that another township signed a lease agreement and the interest rate quoted was significantly higher when the contract was signed. No one read the final draft. The final draft of a contract needs to be looked at again.

Martha: Westfield Bank is holding almost a million dollars of township funds. A message was left with the loan officer asking if they would loan \$100,000 by holding \$100,000 as collateral and make \$50,000 payments for 2 years. The loan officer did not see a problem with that. A follow up call will research this avenue. Another possibility is to advance funds from general. Lee does not want to get caught in this loop and would rather his department be self-funding.

Bill Thorne: If you look at the lease agreement and you could not make the last payment they could come and take the vehicle. This is not a good lease if you have trouble. You have 30 days to accept or reject the bid. Likley stated the ad states 10 days to award the bid, what is binding in that. You would have to accept or reject within that time frame. You can always ask low bidder to wait for 30 days if you don't have the financing in place,

which the bidder can agree to an extension. Bill will have to research the ORC procedure to purchase using a bank loan. OTRMA is a lease/purchase.

THE TRUSTEES AGREED TO ASK Martha to call and ask if the ad can be changed to 30 days if possible. If not, we can deal with the 10 days. Also trustees asked Martha to pursue the bank and OTRMA.

Likley: From legal counsel's advice we do not pursue the Dollar Leasing Corp. Municipal Equipment Lease agreement for the lease purchase of a truck, look at possibly ORTMA Municipal Lease or Westfield Bank.

A discussion was held concerning the frequency of payments. Negotiations could possibly be made with either a leasing company or the bank. Likley pointed out the more frequent the payments, the less interest paid over the life of the loan or agreement.

Likley: Asked Bill if he had any information regarding the bonds.

Bill Thorne: Directed Tom Karris to prepare a lawsuit. I did get a phone number from a person at Westfield Companies last Thursday. They contacted us for our assistance in collecting money on a criminal defendant bond. I do not know if Tom got hold of them or not.

I have drafted the fire contract and the resolution requested, but unfortunately I also drafted a contract for Montville Township and their contract is significantly larger than yours and the secretary was on page 49 on their contract. Yours will be next. There is a provision in the contract for renegotiating if Gloria Glens should actively want to participate.

Oiler: Previous fiscal officer would like to meet with the board of trustees and try to resolve the matter.

Bill Thorne: I mentioned that to Tom as well and that would imply that obviously Westfield is putting some pressure on her in regards to their paying off the bond. There is nothing illegally that prohibits the board from setting down with her and working out a repayment schedule with her rather than calling the bond.

The only problem at some point obviously the ability to call the bond does expire but we are not there yet at some point it would. During the meeting with her it would be done in executive session because of "pending litigation or threatened litigation" and either Bill or Tom must be present.

Likley: I thought that offer had been extended before.

Harris: How much are we talking on that bond?

Bill Thorne: \$10,000. I know they notified her at least once saying if they had to pay any of it they were going to go after her for recoupment. If she comes in with a plan that she can pay over a period of time and that is satisfactory to the board that is another way you could go to get the money back.

Harris: If we don't strike a deal like that and the bonding company pays then they go after her.

Bill Thorne: They don't have to but they generally do. It's a bond not insurance. For bonding company to recoup money paid out, a lawsuit could be brought against that individual.

Oiler: Asked the board if they would be willing to sit down with the previous fiscal officer in executive session.

Harris: I would be fine with that, to see what she has to say.

Likley: This has dragged on for several years and we are to the point of negotiations/communications with the bonding company to proceed with those actions. Negotiations should go through the bonding company. If it is the wishes of this board to sit down with her and get some sort of payment schedule but it shouldn't drag out for years to get that taken care of and with legal counsel we will take Bill's advice.

Oiler: I think it would worth sitting down with her one time to see where we are with this and what can be done before we proceed. I will try to make arrangements for that to happen. Bill Thorne stated he would have Tom Karris come down for that meeting since he is the one that would initiate the lawsuit. I will let the board know. It will probably be next week before I can get any calls made and arranged.

No other business to come before this board.

Trustee Harris made a motion to adjourn at 9:01 am, seconded by Trustee Oiler.

Unanimous

Approved May 3, 2010