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SECTION 8324 G. C. DOES NOT APPLY TO CONSTRUCTION WORK ON PUBLIC BUILDINGS IN CHARGE OF DIVISION OF PUBLIC LANDS AND BUILDINGS—MECHANICS' LIEN LAW—MATERIAL MEN, LABORERS AND OTHERS SHOULD FIND REMEDY UNDER SECTION 2316 G. C.

SYLLABUS:

Section 8324 of the General Code does not apply to construction work on public buildings in charge of the Division of Public Lands and Buildings, and material men and others who have furnished material, machinery or fuel, or have performed labor in connection with the construction of such buildings should find their remedy in the provisions of Section 2316 of the General Code.

COLUMBUS, OHIO, February 10, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgement is made of your recent request for an opinion, together with various papers pertinent thereto, from which it appears that a material man has filed with the Director of Public Welfare a notice and sworn itemized statement of account, attempting thereby to assert a lien for materials furnished to the principal contractor on the balance due said principal contractor under its contract with the state for the completion of a building at the Girls' Industrial School, Delaware, Ohio. It appears that the attempted lien is claimed under Section 8324 et seq., of the General Code of Ohio. In your letter you say:

“The questions involved in the above claim are such as to justify a request for an opinion as to whether the provisions of Section 8324 apply to construction work in charge of the said Division of Public Lands and Buildings.”

This question has been passed upon in various forms by this department on numerous occasions, and it has been consistently held that Sections 8324 et seq., of the General Code have no application to buildings or improvements erected or constructed by the state.

It is well settled that the state is not bound by the terms of a general statute unless it be expressly so provided (*State of Ohio, ex rel. vs. Board of Public Works, 36 O. S. 409*).

In the case of *State ex rel. Merritt vs. Morrow, 10 O. N. P. (N. S.) 279*, Section 3 of the headnotes reads as follows:

“The mechanic lien law, although general in nature, and the language in the Code broad enough to include public improvements of the state, does not apply to any public improvement made by the state. And any steps taken pursuant to the mechanic lien law to establish a lien or claim against funds in the hands of the state set apart for any public improvements have no effect in law and afford no ground for action either in law or equity against the state.”

The opinion contains a well considered discussion of the law, and the court says on page 285:

“Although the terms of the statute would be held to include the state

under the lien law, the provisions for the enforcement of the law are limited to municipal corporations and do not apply to the state, and hence there is no method by which a lien against the state may be enforced."

The above case was affirmed by the Circuit Court on October 21, 1910, in a memorandum opinion wherein the court says:

"We think that the judgment of the lower court should be affirmed for the reasons given by Judge Kyle in his opinion * * * ."

The above case is cited in *State of Ohio vs. The Citizens Trust and Guaranty Company, et al.*, 15 O. N. P. (N. S.) 149, the second paragraph of the headnotes reading as follows:

"A mechanics' lien filed on property belonging to the state is void, and it follows that a proceeding does not lie to subject funds in the hands of the state to payment of claims for work and material which went into a state building under a contract which was abandoned before completion."

Section 2316 of the General Code, which sets forth the terms and conditions of the bond to be given by contractors engaged in work on public buildings, provides that:

"Such bonds shall also be conditioned for the payment of all material and labor furnished for or used in the construction for which such contract is made. The bond may be enforced against the person, persons or company executing such bond by any claimant for labor or material, and suit may be brought on such bond in the name of the State of Ohio on relation of the claimant within one year from the date of delivering or furnishing such labor or material, in the court of common pleas of the county wherein such labor or material are delivered * * * ."

For the reasons stated in the above authorities, it is my opinion that Section 8324 of the General Code does not apply to construction work on public buildings in charge of the Division of Public Lands and Buildings, and that material men and others who have furnished material, machinery or fuel, or have performed labor in connection with the construction of such buildings should find their remedy in the provisions of Section 2316 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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SPECIAL ASSESSMENTS—BOARD OF EDUCATION—UNDER SECTION 3822 G. C. REIMPROVING OF STREET DOES NOT APPLY TO PROPERTY WHERE NO ASSESSMENT HAS BEEN PAID—HOW BOARD OF EDUCATION MAY BE ASSESSED.

SYLLABUS:

The limitation of assessments for the reimproving of a street provided in Section 3822 of the General Code, does not apply to property of a board of education for which