

tractor having complied with the laws of Ohio relating to compensation, the form of proposal containing the contract bond signed by the Massachusetts Bonding and Insurance Company, its power of attorney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to survey companies, the recommendations of the State Architect and Engineer, Director of Public Welfare and Director of Public Works, letter of certification from the Auditor of State showing that the necessary papers and documents are on file in said office, Controlling Board releases, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2686.

APPROVAL—ABSTRACT OF TITLE AND OTHER INSTRUMENTS, STATE OF OHIO, THROUGH ADJUTANT GENERAL, PROPOSED PURCHASE, BOARD OF COUNTY COMMISSIONERS, HARDIN COUNTY, OHIO, DESIGNATED LAND, CITY OF KENTON, HARDIN COUNTY, OHIO, PURCHASE PRICE, \$30,000.00.

COLUMBUS, OHIO, July 12, 1938.

HON. EMIL F. MARX, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR: There have been submitted for my examination and approval a corrected abstract of title, warranty deed, contract encumbrance record No. 1 and other files relating to the proposed purchase by the State of Ohio of a certain lot and parcel of land in the City of Kenton, Hardin County, Ohio, the same being more particularly described as follows, to wit:

In-Lot Number Sixty (60) in the original plat of the Town (Now City) of Kenton, Hardin County, Ohio, as the same is designated on the recorded plat thereof, in Volume "A", at Page 2, Plat Records of said County.

Upon examination of the abstract of title of the above described lot and parcel of land, upon which there is erected and constructed a

building now used for armory purposes and as the location of a heating plant which is used for the purpose of heating said building and other buildings now owned and used by said county, I find that the County of Hardin, represented by its Board of County Commissioners, has a good and indefeasible fee simple title to this property and that it owns and holds this property free and clear of all encumbrances whatsoever.

It appears further, in this connection, that this property is being sold by the Board of County Commissioners of Hardin County, Ohio, under the authority of Sections 2447 and 2447-1, General Code, and that to this end the Board of County Commissioners of Hardin County heretofore at the time indicated adopted a resolution in words and figures as follows, to wit:

“This 11th. day of October, 1937, the Board of Hardin County Commissioners meeting in regular session, all members being present, and the question coming up for discussion with reference to the disposition to be made of the County owned armory and it appearing that the State of Ohio, present Lessee thereof, will erect a new armory in Kenton, Hardin County, Ohio, unless they are able to purchase the present one from the County, and it further appearing that in that event the County would be unable to derive sufficient income from the operation of said armory to defray the expense thereof, and the Board of Commissioners being of the opinion and finding that the County has no immediate or prospective need or use for said armory and the real estate upon which the same is erected, but that it is necessary to maintain and operate the heating plant therein in order to heat other County buildings; it is therefore moved by Mr. Jesse Miller and seconded by Mr. Elmer J. Ramge, that said armory be advertised and sold as provided by law, reserving therein however the said heating plant, with the right to make replacements thereof, with an easement in said premises and building necessary to operate said plant and that the same be advertised in The Kenton Daily Democrat and the News-Republican, two newspapers of general circulation in the County of Hardin, for a period of four (4) weeks, commencing Tuesday, October 12, and that the sealed bids, be opened in the Commissioners room on Tuesday, November 9, at 10 o'clock A. M.

On roll call Mr. Dulin voted 'aye', Mr. Miller 'aye' and Mr. Ramge aye'.

Whereupon the president declared said resolution duly passed.”

Thereafter, the sale of this property pursuant to said resolution was advertised for four consecutive weeks from and after the 12th day of October, 1937, in two newspapers of general circulation in the County of Hardin and in the State of Ohio. And on November 9, 1937, the following proceedings were had by the Board of Commissioners of Hardin County relating to the sale of this property:

"This day the Board of County Commissioners being in special session, in keeping and as provided for by a resolution to that effect duly passed on the 11th. day of October, 1937, said special session, as in said resolution provided, being for the purpose of opening and passing on bids, if any, received for the sale of the Hardin County Armory, at which special session all three members of the Board were present; and the only bid received was from the State of Ohio in the amount of \$30,000.00; and the matter of acceptance or rejection was then discussed until the hour of midday, at which time the said special session was adjourned until 1:00 o'clock P. M., of the same day, at which time Mr. Dulin and Mr. Miller reappeared; Mr. Range not appearing again, although having due notice and taking part in the forenoon discussion and being advised that the matter of the sale of Armory was up for discussion and disposition at the said afternoon session.

Mr. Jesse Miller moved the adoption of the following:

Be It Resolved, That, Whereas, after careful consideration of this matter, said Board of County Commissioners deem it of the best interest of the County to dispose of the County Armory, reserving therein however the Heating Plant, with the right to make replacements thereof, with an Easement in said premises and building necessary to operate said plant, the bid of the State of Ohio in the amount of \$30,000.00 be and the same is hereby accepted and possession of said Armory to change on the first day of January, 1938; and be it further

Resolved, That the Hardin County Prosecuting Attorney prepare a proper Deed for this transaction stating the necessary reservations regarding the Heating Plan for all County owned buildings, and Abstract of Title.

Mr. J. W. Dulin seconded the adoption of the above resolution and on call of the roll the vote resulted as follows:

Mr. J. W. Dulin, Yes; Mr. Elmer J. Range, absent; Mr. Jesse Miller, Yes.

Whereupon the president declared said resolution passed."

Pursuant to the authority of the resolution thus adopted, the Board of County Commissioners has tendered to you in your capacity as Adjutant General and as an officer acting for and on behalf of the State of Ohio, a warranty deed conveying to the State of Ohio as the grantee therein named the above described lot and parcel of land, together with the appurtenances thereunto belonging. This deed, however, following the terms of the resolution providing for the sale of this property to the State of Ohio, contains a reservation therein stated as follows:

“Except, however, reserving to the Board of County Commissioners of Hardin County, Ohio, and its successors, the county heating plant now located on said premises with a right to make repairs and replacements thereto and an easement on said premises and buildings necessary to maintain and operate said heating plant.”

Upon consideration of this reservation set out in said deed and in the resolution of the Board of County Commissioners providing for the sale of this property to the State of Ohio, I am unable to say as a matter of law that the State of Ohio is not authorized to accept the title to this property subject to said reservation and the easement therein provided for, if the deed in and by which the Board of County Commissioners of Hardin County obtained title to this property does not contain any provisions limiting the authority of said Board of County Commissioners to sell and convey this property, other than those noted in the abstract of title with respect to said deed. The Board of County Commissioners of Hardin County obtained title to this property under date of June 6, 1894, by warranty deed executed by Frederick Johns and Anna E. Johns, his wife, to the then Board of County Commissioners of said county. From the granting clause of this deed, as the same is abstracted, it appears that this property was sold and conveyed to said Board of County Commissioners and its successors in office “for county purposes.” And from the abstract of the habendum clause of said deed, it appears that said Board of County Commissioners was to have and to hold said property “to the proper use” of said grantee, the Board of County Commissioners of Hardin County, Ohio, and its successors in office forever. Inasmuch as it does not appear from the terms of this deed, as the same had been abstracted, that any provision was therein made for a forfeiture or reservation of the title of the Board of County Commissioners in and to this property on the use of the property for other than county purposes, and since, further, it does not appear that this property was conveyed to the Board of County Commissioners of Hardin County in terms of a conditional limitation on the title of the property

dependent upon the use of the same, I am of the opinion that the Board of County Commissioners of said county had full authority to sell this property to the State of Ohio or to any other person upon compliance with the statutory provisions relating to such sale. In re Matter of Copps Chapel Methodist Episcopal Church, 120 O. S., 301. Having reached the conclusion that I am not as a matter of law authorized to disapprove the purchase of this property by reason of the reservation and accompanying easement provided for in the deed of the Board of County Commissioners of Hardin County conveying this property to the State of Ohio, I am required to submit to you as a question of fact the question whether the operation of this heating plant by the Board of County Commissioners and the retention by said Board of an easement in this property for said purpose will in any material way affect the use which the State desires and intends to make of this property after its acquisition by the acceptance of a proper deed conveying this property to the State.

Upon examination of the warranty deed tendered by the Board of County Commissioners, I find that the same is in proper form, subject to the exception here noted with respect to the manner in which said deed is executed. This deed is executed in the name of "THE BOARD OF COUNTY COMMISSIONERS OF HARDIN COUNTY, OHIO. By: J. W. Dulin, Its President." Inasmuch as under the law of this State the Board of County Commissioners as such is vested with the title to the property of the county, this deed should be signed by all of the Board of County Commissioners or, at least, by two members of said Board. In this connection, it is noted that although all three members of the Board adopted the preliminary resolution under date of October 11, 1937, providing for the sale of this property, one of the members of the board was not present at the time of the adoption of the resolution under date of November 9, 1937, providing for and directing the sale of this property to the State of Ohio on its bid of \$30,000.00 therefore. Since it appears that this member of the Board who was absent at the time this later resolution was adopted and who did not vote therefor was present and participated in the discussion of the question of the sale of this property to the State of Ohio on the bid submitted by it, earlier in the day and was advised with respect to the continuance of the meeting to a time later in the same day for the purpose of considering and disposing of this question, it may or may not be a matter of legitimate inference that this absent member did not favor the sale of this property to the State on the bid submitted by it. However this may be, the sale of this property by action of a majority of the Board of County Commissioners is an accomplished fact; and in this view no reason is seen why all of the members of this Board, including the member who did not

vote for this resolution, should not sign the deed. The deed to be executed should, as in the deed herewith returned, be executed in the name of "THE BOARD OF COUNTY COMMISSIONERS OF HARDIN COUNTY, OHIO," by the several members of the Board of County Commissioners, who should sign their several names thereto and acknowledge the instrument before a Notary Public or other officer authorized to take such acknowledgment. The signature of each member of the Board signing the deed should, of course, be witnessed by two persons subscribing their names as such and the execution of the deed may be properly attested by the Clerk of the Board.

Upon examination of contract encumbrance record No. 1 which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account to the credit of your department to pay the purchase price of this property, which purchase price is the sum of \$30,000.00. It likewise appears that the purchase of this property has been approved by the Controlling Board in the manner as provided by the act appropriating this property for the purpose for which the same is being purchased by the State.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2687.

APPROVAL—CONTRACT AND BOND, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, WITH J. T. EDWARDS & COMPANY, COLUMBUS, OHIO, FOR DEPARTMENT OF PUBLIC WELFARE, CONSTRUCTION DINING ROOM TABLES AND SEATS, NEW UNDERGROUND TUNNEL AND DINING ROOM TABLES AND SEATS FOR OHIO STATE REFORMATORY, MANSFIELD, OHIO, TOTAL EXPENDITURE, \$9,554.00.

COLUMBUS, OHIO, July 12, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between J. T. Edwards & Company, Columbus, Ohio, and the State of Ohio, acting by the Department of Public Works, for the Department