

2769.

APPROVAL, BONDS VILLAGE OF WAYNESVILLE, WARREN COUNTY,  
\$14,000.00.

COLUMBUS, OHIO, Sept. 9, 1925.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

2770.

SEWERAGE SYSTEM—APPROVAL OF DIRECTOR OF HEALTH NECESSARY—ONLY MEAN PERSONS OR OFFICIALS DIRECTLY INTERESTED MAY APPEAL FROM DECISION OF DIRECTOR.

## SYLLABUS:

*The only persons who may appeal to the public health council from a decision of the director of health in a matter relating to the approval or disapproval of plans, locations, estimates of costs or other matters submitted to such board, are persons or officials directly interested and subject to such decisions of the director.*

COLUMBUS, OHIO, Sept. 10, 1925.

HON. JOHN E. MONGER, *Director, Department of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication, as follows:

“This department desires your opinion in regard to the following matter:

“Section 1240 of the General Code, (99 V. 494) and as amended by house bill 113, passed March 4, 1925, provides that before a sewerage system or treatment works for sewage shall be installed, the approval of the state department of health must be secured. Preliminary to the making of plans for sewage treatment, it is necessary to select the site for the treatment plant, and it is the usual procedure to have the location for such treatment plant approved prior to the preparation of the plans.

“In a recent instance, a city submitted to the director of health for his approval a location deemed by the city officials a proper location for a sewage treatment plant. This location was viewed by our division of sanitary engineering under the instructions of the director of health, and was also viewed by the director of health in person. Upon the recommendation of our engineers, and upon his own judgment, the director of health approved the location selected by the city officials.

“Following this action of the director of health, an improvement association requested the public health council to grant a hearing at which time an appeal would be made to set aside this action of the director of health, the claim being made that section 1235 of the General Code made provision for such procedure.

“Paragraph (b) of this section, which defines the powers and duties of

the public health council, reads: "To take evidence in appeals from the decision of the commissioner (director) of health in a matter relating to the approval or disapproval of plans, locations, estimates or cost or other matters heretofore required to be submitted to the state board of health for approval."

"The propriety and the legality of the public health council considering an appeal from a voluntary association or an individual was discussed at a recent meeting of the council, and I was instructed to refer the matter to you for your opinion. The public health council wishes to be advised if paragraph (b) of section 1235 of the General Code gives a right to a voluntary association or an individual or group of individuals to appeal to the public health council from a decision of the director of health in a matter relating to the approval or disapproval of plans submitted in accordance with section 1240 of the General Code.

"As a tentative date for hearing such appeal was set for September 11, 1925, I should be very glad if immediate consideration of this matter can be given, so that I may be informed as to your opinion at the earliest possible date."

Section 1240, General Code, as amended in house bill No. 113, provides in part as follows:

"No city, village, county, public institution, corporation or officer or employe thereof or other person shall provide or install a water supply or sewerage, or purification or treatment works for water supply or sewage disposal, or make a change in any water supply, water works intake, water purification works sewerage or sewer treatment works until the plans therefor have been submitted to and approved by the state department of health. \* \* \* In granting an approval authorized by this section the state department of health may stipulate such modifications, conditions and regulations as the public health may require. Any action taken by the director of health shall be a matter of public record and shall be entered in his journal."

This section prohibits any city, village, county, public institution, corporation or person from installing a water supply, sewage or purification or treatment works or to make any change in any water supply, waterworks intake, water purification works, sewerage or sewage treatment works until the plans have been submitted to and approved by the state department of health. Under the reorganization code, the authority granted the state department of health is vested in the director of the department of health. This act also provides that the action taken by the director of health shall be a matter of public record and entered in his journal. No provision is made in this act for any appeal from the order of the director of the department of health. Section 1235, General Code, provides in part as follows:

"It shall be the duty of the public health council and it shall have the power: (a) \* \* \*; (b) To take evidence in appeals from the decision of the commissioner of health in a matter relating to the approval or disapproval of plans, locations, estimates or costs or other matters heretofore required to be submitted to the state board of health for approval; (c) to conduct hearing in cases where the law heretofore required that the state board of health shall give such hearing; to reach decisions on the evidence presented, which shall govern subsequent actions of the commissioner of health with reference thereto."

I can find no other reference in the statutes relating to the department of health which authorizes an appeal to the public health council in the matter of approval or disapproval of plans in matters required to be submitted to the state board of health for approval. The evident intent to give the public health council authority to hear evidence on appeals would be, in my opinion, sufficient authority to permit an appeal from an order of the director of health in such matters.

The usual rules in matters of appeal are that the only persons who may appeal the matter from the determination of a court or of a quasi-judicial body are the persons interested in such decisions.

In the present instance, the city submitted to the director of health for approval a location for a sewage treatment plant for the city. In this instance an improvement association has requested a hearing in the nature of an appeal from the action of the director of health. The only persons upon whom the order of the director of health in the approval of such plan would be binding would be the officials of the city in question. The order would not be binding upon any person not connected with the city government.

It is therefore my opinion that the only persons who may appeal to the public health council from a decision of the director of health in a matter relating to the approval or disapproval of plans, locations, estimates of costs or other matters submitted to such board, are persons or officials directly interested and subject to such decision of the director.

Respectfully,

C. C. CRABBE,

*Attorney General.*

2771.

CONTRACTS—SECTION SEVEN OF AMENDED SUBSTITUTE SENATE  
BILL NO. 94 (SECTION 5660 G. C.) CONSTRUED.

SYLLABUS:

1. *By the terms of senate bill No. 94, contracts may be entered into for the full school year beginning July 1, 1925, and ending June 30, 1926, when the fiscal officer certifies that there are sufficient funds to meet such contracts to January 1, 1926.*

2. *Bills for expenditures for supplies, stationery, books and incidental expenses must be certified by the county auditor before they can be approved by the county commissioners.*

COLUMBUS, OHIO, Sept. 10, 1925.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—I am in receipt of your communication, reading as follows:

“Two problems have been presented to me, involving an interpretation of section 7 of senate bill 94, passed by the recent legislature, and I would like to have an opinion from you with respect to the same.

“Section 7 of senate bill 94 states in substance that no contract, agreement or other obligation calling for or requiring the expenditure of the public fund shall be paid except upon the presentation of a certificate from the county auditor or the fiscal officer, that the money is certified into the