

3504.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY OF WEST PITTSBURGH, PA., FOR THE CONSTRUCTION AND COMPLETION OF STOKER, DUCT WORK AND CONTROL REGULATION COMPLETE FOR OHIO PENITENTIARY, AT AN EXPENDITURE OF \$46,291.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY CORPORATION.

COLUMBUS, OHIO, November 24, 1934.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare, and the Westinghouse Electric and Manufacturing Company of West Pittsburgh, Pennsylvania, and Columbus, Ohio. This contract covers the construction and completion of Stoker, Duct Work and Control Regulation Complete for the Ohio Penitentiary, Columbus, Ohio, in accordance with the form of proposal dated October 22, 1934. Said contract calls for an expenditure of nineteen thousand eight hundred and sixty-nine dollars (\$19,869.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board showing that said board has approved the release of the funds for this project in accordance with section 8 of House Bill No. 699 of the 90th General Assembly, regular session. In addition, you have submitted a contract bond upon which the National Surety Corporation appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with. A certificate of the Secretary of State shows that the foreign contracting corporation herein is admitted to do business in Ohio.

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 data submitted in this connection.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3505.

TAX LEVY—NUMBER OF VOTES REQUIRED TO CARRY LEVY PROPOSED UNDER SECTION 5625-16, G. C.

SYLLABUS:

Where the question of a levy for the current expenses of a village outside the ten mill limitation is submitted to a vote of the electors, and the number of elec-

tors voting on said question was five hundred and twenty-two (522), a favorable vote thereon of three hundred and thirty-nine (339) is not sufficient to authorize such additional levy.

COLUMBUS, OHIO, November 24, 1934.

HON. EMMETT D. LUSK, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

“I would like an official opinion as to the number of votes required to carry a tax levy proposition in accordance with the provisions of Section 5625-18 (effective June 29, 1934).

The Village of New Bremen, Auglaize County, Ohio, submitted to the voters at the General Election on November 6, 1934, a tax levy proposition as follows:

‘PROPOSED INCREASE IN TAX RATE

An additional tax for the benefit of the Village of New Bremen for the purpose of paying current expenses at a rate not exceeding one and one-half mills for two years including current year.

FOR THE TAX LEVY

AGAINST THE TAX LEVY.’

The Board of Elections certified the result of such election as follows:

‘Whole number of votes cast	522
The number cast for tax levy	339
The number cast against levy	183’

From the above, it would seem that 65% of the total votes cast would be 339.3. The question now is whether or not the tax levy legally carried, in accordance with the provisions of the above Section.

Your official opinion on this matter at an early date would be greatly appreciated, inasmuch as the duplicate for the Village of New Bremen cannot be made up until this matter has been decided.”

Section 5625-18, General Code, reads as follows:

“If the majority of the electors voting on a levy for the current expenses of schools or sixty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment

of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution.”

It is clear from this statute that to authorize the levy of the additional tax, referred to in your letter, it is necessary that it be first authorized by at least sixty-five per centum of the electors voting on that question. In the case you present, the entire number of electors voting on this question was five hundred and twenty-two (522), and of this number three hundred and thirty-nine (339) voted for the additional levy. As three hundred and thirty-nine (339) is sixty-four and ninety-four hundredths plus per centum (64.94+%) of the total vote cast on the proposition, it follows that sixty-five per centum (65%) of the electors voting upon this additional levy did not vote in favor thereof. It is my view that the fact that sixty-five per cent (65%) of the total vote cast is three hundred and thirty-nine and three-tenths (339.3) would not make three hundred and thirty-nine (339) a sufficient number to authorize the additional levy.

An analogous situation appears in the case of *Griffin vs. Messenger*, 114 Iowa 99. In that case the council of a municipality consisted of seven members and a three-fourths vote was required to suspend the rule requiring the reading of ordinances on three different days, three-fourths of seven being five and one-fourth. In that case the court held that a vote of five was insufficient to suspend the rule.

I am therefore of the opinion that where the question of a levy for the current expenses of a village outside the ten mill limitation is submitted to a vote of the electors, and the number of electors voting on said question was five hundred and twenty-two (522), a favorable vote thereon of three hundred and thirty-nine (339) is not sufficient to authorize such additional levy.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3506.

COUNTY TREASURER—COUNTY AUDITOR NOT REQUIRED TO INSPECT TREASURER'S BOOKS FOLLOWING ESTABLISHMENT OF BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—SECTION 2699 REPEALED BY IMPLICATION.

SYLLABUS:

Section 2699, General Code, requiring the county auditor to examine the books, vouchers, accounts, moneys and other property of the county treasurer, was repealed by implication at the time of the enactment of the act of the 70th General Assembly, creating the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State and requiring that bureau to examine all county offices.

COLUMBUS, OHIO, November 24, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Your letter of recent date is as follows: