

1157.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE JOS. L. SKELDON ENGINEERING COMPANY, TOLEDO, OHIO, FOR CONSTRUCTION OF NEW BOILERS, STOKERS AND EQUIPMENT, STATE CAPITOL BUILDING, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$26,433.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, October 15, 1927.

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

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for the Division of State House and Grounds, and The Jos. L. Skeldon Engineering Company, of Toledo, Ohio. This contract covers the construction and completion of General Contract for New Boilers, Stokers and Equipment, State Capitol Building, Columbus, Ohio, and calls for an expenditure of twenty-six thousand four hundred and thirty-three dollars (\$26,433.00).

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 from the Controlling Board, signed by the Secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the United States Fidelity and Guaranty Company 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.

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,

EDWARD C. TURNER,
Attorney General.

1158.

TIME—WHEN BANKS SHOULD CLOSE—SECTION 5976, GENERAL CODE CONSTRUED.

SYLLABUS:

Section 5976, General Code, is unaffected by House Bill No. 10, 87th General Assembly, amending Section 5979, General Code, and the first Tuesday after the first Monday in November between the hours of twelve o'clock noon, central standard time, and five-thirty

o'clock p. m., central standard time, is a legal part holiday and banks observing the provisions of this statute should close at twelve o'clock noon, central standard time.

COLUMBUS, OHIO, October 17, 1927.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of October 10, 1927, reading as follows:

“Request has reached this Department for advice as to what time banks should close on the first Tuesday after the first Monday in November of this year, and, insofar as there is an apparent inconsistency between the provisions of Section 5976 of the General Code of Ohio and Section 5979 of the General Code of Ohio, as amended, I am requesting your opinion in order that I may give the correct answer.”

I assume that your question is prompted by the provisions of paragraph 10 of Section 8301 of the General Code, which section provides as follows:

- Sec. 8301. “Legal holidays. The following days, viz.:
1. The first day of January, known as New Year's Day;
 2. The twenty-second day of February, known as Washington's birthday;
 3. The thirtieth day of May, known as Decoration or Memorial day;
 4. The fourth day of July, known as Independence day;
 5. The first Monday of September, known as Labor day;
 6. The twelfth day of October, known as Columbus Discovery day;
 7. The twenty-fifth day of December, known as Christmas day;
 8. Any day appointed and recommended by the governor of this state or the president of the United States as a day of fast or thanksgiving;
 9. The twelfth day of February, known as Lincoln's birthday; and
 10. Any day which may hereafter be made a legal holiday, shall for the purpose of this division be holidays. But if the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth of July, or the twenty-fifth day of December be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday.”

With reference to this section, this department in an opinion reported in Opinions, Attorney General, 1917, Vol. 1, page 289, said as follows:

“The history of the law showing, as it does, the connection of the provisions relative to holidays and the act making certain instruments negotiable, I think it was the intention of the framers of this law that the holiday provision should be read only in connection with the act relating to negotiable instruments, and that the only construction that can be placed upon the phrase ‘for the purpose of this division’ is, that the holidays enumerated in Section 8301 are holidays merely for the purpose of computing time in reference to payment and protesting of commercial paper.”

Section 5976, General Code, to which you refer, reads as follows:

“The first Tuesday after the first Monday in November of each year, between the hours of twelve o'clock noon, central standard time, and five-thirty o'clock p. m. central standard time, shall be a legal part holiday.”

This section was originally enacted on April 24, 1890, in an act entitled "An Act—To create an additional legal holiday" (87 v. 280) and reads as follows:

"That the first Tuesday after the first Monday in November of each year, from and between the hours of twelve o'clock noon and two o'clock p. m., shall be, for election purposes only, a legal part holiday. And no employe who is an elector shall be compelled or required to perform any labor between said hours, nor shall any employer or his or its officers or agents discharge any such employe because he fails or refuses to labor between said hours or require or order any such employe to accompany him to the voting place of such employe, and any person violating any of the provisions of this act shall upon conviction be fined not more than twenty-five dollars."

It will be observed that by the express terms of the section as then enacted, the time specified was made a legal part holiday "for election purpuss only."

On April 23, 1904, this section was amended in an act entitled:

"An Act—To revise the laws of Ohio relating to the conduct of elections; to abolish city boards of elections in registration cities, and boards of deputy state supervisors of elections in certain counties; to create the offices of state supervisor and inspector of elections, and deputy state supervisor and inspector of elections; and to amend, repeal and supplement certain laws and sections of the Revised Statutes of Ohio herein named." (97 v. 185.)

The only substantial change made at this time was that the words "from and between the hours of twelve o'clock noon and two o'clock p. m." were changed to read "from and between the hours of five-thirty a. m. and nine o'clock a. m." As shown by the title above quoted, this amendment was made in an act making changes in the state election laws.

The act in question was codified in the Revised Statutes of Ohio as Section 4446-1, in the chapter entitled "Weights, Measures, Time and Holidays." The codifying commission of 1910 divided the act into two sections; the last sentence, containing the penal provision, being made Section 12949 of the General Code, while the first sentence was codified as Section 5976 in the chapter entitled "Holidays and Time."

Section 5976 was amended on February 6, 1913, to read as it now reads, in an act entitled "An Act—To amend Section 5976 of the General Code, relating to the observance of a portion of election day as a part holiday" (103 v. 25). Three changes were made, first, the hours were changed from five-thirty to nine o'clock a. m. to from twelve o'clock noon to five-thirty p. m., second, the words "central standard time" were inserted in the two places they appear in the statute, and third, the words, "for election purposes only" were omitted.

Even without the legislative history above set forth, the purpose of Section 5976 is manifest. The object of the legislature was to make it possible for the citizens of the state to be relieved from their ordinary duties, for a sufficient period of time to enable them to perform their more important duty of participating in the conduct of the affairs of their government. The section was and is a statute pertaining to elections.

This department has heretofore had reason to consider the sections mentioned in your letter, namely in Opinion No. 623, rendered under date of June 15, 1927. In connection with Section 5976, Sections 4925 and 5056, General Code, were also considered. These sections read

Sec. 4925. "On the day of the November election in each year and of any other election, the polls shall be opened by the judges of elections appointed and organized, as herein provided, by proclamation made by the chairman at the hour of five-thirty o'clock forenoon, standard time, and shall be closed by proclamation at the hour of five-thirty o'clock afternoon."

Sec. 5056. "The polls shall be open at five-thirty o'clock forenoon and kept open up to, and closed at, five-thirty o'clock, central standard time, in the afternoon of the same day."

The syllabus of Opinion No. 623, is as follows:

"Sections 5056, 4925 and 5976, General Code, are unaffected by House Bill No. 10, passed by the 87th General Assembly amending Section 5979, General Code, and the polls should be opened at five-thirty forenoon and be kept open until five-thirty o'clock central standard time in the afternoon of the same day, as prescribed by the three sections above enumerated."

In the opinion, after quoting House Bill No. 10, passed by the 87th General Assembly on February 15, 1927, and effective on and after June 6, 1927, in which Section 5979, General Code, was amended to read:

"The standard of time throughout this state shall be that of the seventy-fifth meridian of longitude west from Greenwich and shall be known as 'eastern standard time.' Courts, banks, public offices, and legal official proceedings shall be regulated thereby; and when, by a law, rule, order or process of any authority, created by or pursuant to law, an act must be performed at or within a prescribed time, it shall be so performed according to such standard of time.

All clocks maintained in or upon public buildings shall be set and run according to the provisions of this act,"

it was said as follows:

"Sections 5056, 4925 and 5976, supra, relating to the time of holding elections were not expressly referred to in House Bill No. 10, and remain unchanged, unless it can be said that by the amendment of Section 5979 in House Bill No. 10 the legislature has by implication clearly and unmistakably manifested an intention to amend such sections."

The opinion then refers to the cardinal rule of construction that a statute is presumed to be enacted by the legislature with a full knowledge of the existing condition of the law and with reference to it, and quotes from 36 Cyc. another fundamental rule of construction to the effect that:

"So far as reasonably possible the several statutes, although seemingly in conflict with each other, should be harmonized and force and effect given to each, as it will not be presumed that the legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so by express terms; nor will it be presumed that the legislature intended to leave on the statute books two contradictory enactments."

The opinion also quotes from 36 Cyc. 1151 a statement of that well established principle that to the extent of any necessary repugnancy between two statutes, a special statute will prevail over a general statute, and that where a general act is later, a

special will be construed as remaining an exception to its terms unless repealed by express words or necessary implication. The opinion then continues as follows:

"Sections 5056, 4925 and 5976, supra, are all statutes relating to a special subject, namely, the time elections are to be held. Section 5976, supra, is a statute applying generally to a general subject, namely the standard of time by which courts, banks, public offices and legal official proceedings shall be governed generally. It is apparent that the provisions of Sections 5056, 4925 and 5976 will be in conflict with Section 5979 as amended by House Bill No. 10. In view of the fact that the legislature did not see fit to amend these sections relating to elections, and since in amending Section 5979, by the simple substitution of the word 'eastern' for the word 'central', it cannot be said that the legislature has by express words or by necessary implication indicated an intention to amend Sections 5056, 4925 and 5976, it must be held that even though the general act is later, the special sections must be construed as remaining an exception to its terms.

Moreover, it is manifest that prior to the effective date of House Bill No. 10, the standard of time governing elections is fixed not by Sections 5979, supra, but by Sections 5056, 4925 and 5976, supra. This is true because these latter sections are statutes relating to a special subject, namely, the standard of time governing elections, while Section 5979 is a statute of general application. And while the language of Section 5979 would, in the absence of special statutes on the subject, seem to be broad enough to include the holding of elections, since the legislature has seen fit to make special provision with reference to the standard of time governing elections, we have a legislative interpretation that holding of elections is not a subject included within the scope of Section 5979. Especially is this true when it is remembered that Sections 5056, 4925 and 5976 were all enacted in their present form subsequent to the passage of Section 5979."

I am not unmindful of the fact that Section 5979 as amended in House Bill No. 10, supra, expressly provides that "courts, banks, public offices, and legal official proceedings shall be regulated" by eastern standard time, and that "when, by a law, rule, order or process of any authority created by or pursuant to law, an act must be performed at or within a prescribed time, it shall be so performed according to such standard of time." As above pointed out, however, Section 5976, supra, is a statute having especially to do with elections, making provision for a part legal holiday in order that the electors may participate therein, and such section affects the various banks no more than it does other institutions governed by the statutes of the state declaring legal holidays. Section 5976 must be said, therefore, to constitute an exception to the provisions of Section 5979, which provides the standard of time governing the activities of banks generally.

In so far as the provisions of paragraph 10, Section 8301, supra, to the effect that "any day which may hereafter be made a legal holiday shall for the purpose of this division be holidays" are concerned, it would seem manifest that any statute making a certain day a legal holiday or legal part holiday would have to be looked to in its entirety. That is, where a statute making a certain day a legal holiday expressly provides only that the period of time between certain hours of that day shall be a holiday, and that the standard of time governing these hours shall be central standard time, the standard of time specified must be followed as well as the particular hours specified and the particular day designated.

Specifically answering your question, upon the authority of and for the reasons set forth in Opinion No. 623, a copy of which I enclose, it is my opinion that Section 5976, General Code, is unaffected by House Bill No. 10, 87th General Assembly,

amending Section 5979, General Code, and that the first Tuesday after the first Monday in November between the hours of twelve o'clock noon, central standard time, and five-thirty o'clock p. m., central standard time, is a legal part holiday and that banks observing the provisions of this statute should close at twelve o'clock noon, central standard time.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1159.

BONDS—WHAT CONSTITUTES GENERAL WATERWORKS IMPROVEMENT BONDS UNDER CLASS "C" OF SECTION 2293-9, GENERAL CODE.

SYLLABUS:

Where a city proposes to issue bonds in the sum of Seven hundred thousand (700,000.00) dollars, for the purpose of improving its waterworks system by constructing a storage reservoir, stand pipe, booster stations and laying larger water mains and new mains, where needed, such improvement should be classified as a general waterworks improvement, as provided in Class "C" of Section 2293-9, General Code, and the maturities of such bonds should not extend beyond a period of twenty-five years, as measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments.

COLUMBUS, OHIO, October 17, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication requesting my opinion upon the following:

Section 2293-9, G. C., as amended in House Bill 1, passed at the last session of the general assembly, provides in Class "C" a period of twenty-five years as the life of bonds for certain types of improvements included within which is "general waterworks improvements."

The City of ----- proposes to issue bonds in the sum of \$700,000.00 for the purpose of improving its waterworks system by constructing a reservoir, etc., as follows:

First, a stand pipe to cost approximately \$25,000.00.

Second, a discharge booster station, the building and equipment to cost approximately \$18,000.00.

Third, a booster station, building to cost approximately \$10,000.00, the equipment about \$5,000.00.

Fourth, a new and additional storage reservoir, the entire cost of which, including the site, will be approximately \$580,000.00; the balance of the bond issue to be used in laying larger water mains and new mains where needed.

QUESTION: May the bonds in question be issued for general water works improvement purposes, to mature in twenty-five years or must the