

2788.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WILSON FLOORS COMPANY OF COLUMBUS, OHIO, FOR REPAIRING AND REPLACING OLD FLOORS IN SCIENCE HALL AT KENT STATE COLLEGE, KENT, OHIO, AT AN EXPENDITURE OF \$6,509.34—SURETY BOND EXECUTED BY THE ROYAL INDEMNITY COMPANY OF NEW YORK.

COLUMBUS, OHIO, December 31, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees, Kent State College, Kent, Ohio, and the Wilson Floors Company, of Columbus, Ohio. This contract covers the construction and completion of contract for repairing and replacing old floors in Science Hall at the Kent State College, Kent, Ohio, as set forth in Items Nos. 3, 4, 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 31, 32, 33, 34, 35 and 37, using 16,386 square feet of mastic fill in lieu of cement mortar, in accordance with the form of proposal dated December 29, 1930. Said contract calls for an expenditure of six thousand five hundred and nine and 34/100 dollars (\$6,509.34).

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 shown that the Controlling Board has consented to the expenditure in accordance with Section 11 of House Bill 510 of the 88th General Assembly. In addition, you have submitted a contract bond, upon which the Royal Indemnity Company of New York 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,
GILBERT BETTMAN,
Attorney General.

2789.

MEMBER OF COUNCIL—SURETY BOND FURNISHED TO MUNICIPALITY BY INSURANCE AGENCY OF WHICH COUNCIL MEMBER IS SALARIED PRESIDENT—DEEMED TO HAVE "INTEREST" WITHIN MEANING OF SECTION 3808, GENERAL CODE.

SYLLABUS:

A member of council of a municipality, who is a salaried president of an insurance agency company, has, within the meaning of Section 3808, General Code, an "in-

terest" in any surety bond which such insurance agency company furnishes to the municipality of which he is a member of council.

COLUMBUS, OHIO, January 2, 1931.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads as follows:

"Section 9573-1, General Code, enacted in 112 O. L., page 135, reads:

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe, shall be allowed, and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

Section 3808, General Code, prohibits a member of a municipal council from having any interest in the expenditure of money on the part of the corporation, other than his fixed compensation. Section 4218, General Code, prohibits an interest in a contract by a member of council.

A member of a village council is president of a company which is an agent for a surety company, and the village pays to the agency company the premium on said surety company bonds, given to the village by village officers and employes. The president of the agency receives salary from said company and does not participate in any commission, nor receive any fees.

QUESTION: Is the member of council, who is president of said agency company, subject to the penalty provided in Section 3808, General Code?"

Section 3808 of the General Code, to which you refer, is as follows:

"No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom."

It is natural to suppose that the president of an insurance agency, although on a salary, would be interested in enlarging the business done by his agency both from a personal and from a financial viewpoint. It is a well known fact that the salary a man receives is generally measured by the accomplishments he effects. If an agency doubles its business under his management, the possibility is that his financial remuneration will be increased. Conversely, if the agency diminishes in the amount of its business, the salary may be diminished and possibly if the overhead expenses of the agency are not met his salary would not be paid.

I believe that to limit the application of a statute designed to encourage competition in bidding, in order to check the exertion of undue influence in the expenditure of public money to those cases where it can be shown that the official himself received actual direct financial benefit, would open the gates to the evasion of this salutary section and that such evasion should not be allowed.

In view of these considerations, it would seem that there would be a financial interest on the part of a councilman of a village, who is the president of an insurance agency, in the expenditures of a village for the premiums on surety bonds furnished to the employees of a village by his agency.

Your attention is called to an opinion given to your office and found in Opinions

of the Attorney General for 1929, page 1497, concerning the general subject here included, the syllabus of which reads:

"It is unlawful for a member of a city council who is also agent for a surety company, to execute bonds on behalf of such surety company to secure the performance of contracts entered into with the city upon whose council he serves."

I realize that it would seem to be a harsh rule to hold in some situations that a state of facts such as is here under consideration is in violation of the provisions of Section 3808 of the General Code. Nevertheless, the legislative policy of this state is clearly established to the effect that a municipal officer may not be financially interested, directly or indirectly, in expenditures of money by the municipality.

In view of the conclusion reached, it is not necessary to consider the possible application of Section 12912, General Code.

In specific answer to your inquiry, you are advised that a member of a municipal council may not act as the president of an insurance agency which furnishes surety bonds to such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2790.

TRANSPORTATION OF PUPILS—CONVEYANCE MUST PASS WITHIN A HALF MILE OF RESIDENCE—ELEMENTARY SCHOOL PUPIL REQUIRED TO ATTEND SCHOOL TO WHICH ASSIGNED, UNLESS—A GIRL NOT AUTHORIZED TO DRIVE A SCHOOL WAGON OR MOTOR VAN.

SYLLABUS:

1. *By force of Section 7731-3, General Code, a county board of education is not authorized to issue a certificate authorizing the holder thereof to drive a school wagon or motor van, to a girl.*

2. *In the absence of an abuse of discretion on the part of the board of education making the assignment, an elementary school pupil is required to attend the school to which he is assigned by the board of education of the district of his residence, unless the school is more than one and one-half miles from his home and there is a nearer school either within or without the district, or pay his own tuition in the school of another district which he chooses to attend and which is willing to receive him.*

3. *If circumstances are such that a board of education is required, under the law, to furnish transportation for a pupil attending the public schools the board is required, in furnishing such transportation, to cause the conveyance to pass within one half mile of the residence of each of the pupils to be transported, or the private entrance to such residence, else transportation as the law contemplates, is not being furnished, and the parent or person in charge of the pupil may furnish transportation for the pupil and recover from the board of education for such transportation in accordance with Section 7731, General Code.*

COLUMBUS, OHIO, January 2, 1931.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows: