

OPINION NO. 70-160**Syllabus:**

1. Section 153.03, Revised Code, does not prohibit the awarding of two or more contracts in each class designated as (A) plumbing and gas fitting, (B) steam and hot-water heating, ventilating apparatus, and steam power-plant, and (C) electrical equipment.

2. The Ohio Building Authority may employ construction experts and managers to plan and supervise the construction of the new state office building.

To: Lawrence A. Ramey, Chairman, Ohio Building Authority, Columbus, Ohio
By: Paul W. Brown, Attorney General, December 11, 1970

You have presented for my consideration a proposal by the Turner Construction Company of Cleveland, Ohio, whereby it will undertake the responsibility of general supervision of construction of the new state office building, and have requested my opinion as follows:

"In view of the provisions of Section

153.03 of the Revised Code, I respectfully inquire if it is legally proper that more than one contract be let for each item of work as referred to in Section 153.02 of the Revised Code, for the construction and as provided in Section 152.08 A (6) of the Revised Code, as mentioned in your Opinion dated September 29, 1970."

Since 1877, the law of Ohio has required the construction of public buildings by the state and all political subdivisions to be constructed by the lowest bidders upon the separate branches of work represented by "each separate and distinct trade or kind of mechanical labor," (74 Ohio Laws, 186).

Section 152.26, Revised Code, reads in pertinent part as follows:

"In the process of inviting bids and awarding contracts, the Ohio building authority shall be guided by the procedures set forth in sections 153.01 to 153.20, inclusive, of the Revised Code."

Section 153.03, Revised Code, reads as follows:

"Every department, board, bureau, commission, body, or person charged with the duty of awarding or entering into contracts for the erection, alteration, or repair of any building in the state, by the state, and every officer or person designated by such department, board, bureau, commission, or body to act for it, and charged with the duty and empowered to award and enter into such contracts, which provide for the installation of plumbing and gas fitting, steam and hot-water heating, ventilating apparatus, steam-power plant, or the electrical equipment, and all work kindred thereto, shall, when the entire cost of the erection, alteration, or repair of the plumbing and gas fitting, steam and hot-water heating, ventilating apparatus, steam-power plant, or the electrical equipment, and all work kindred thereto, is to exceed one thousand dollars, award the respective work specified in divisions (A), (B), and (C) of section 153.02 of the Revised Code separately to responsible and reliable individuals, firms, or corporations."

Section 153.02 (A), (B), and (C), Revised Code, include:

"(A) Plumbing and gas fitting;

"(B) Steam and hot-water heating, ventilating apparatus and steam-power plant;

"(C) Electrical equipment.

"Such plans, specifications, and blueprints must be so prepared and drawn as to permit separate and independent proposals and bids upon each of the classes of work set forth in divisions (A), (B), and (C) of this section."

This does not mean that one contractor may not be awarded all separate contracts for that is the customary practice and it has never been questioned. Furthermore, as in building highways in sections of size to make bidding more advantageous to the taxpayer, I can find no prohibition to letting each type of labor as specified in Section 153.02, supra, to more than one separate contractor in separate sections in the construction of a large public building.

Considering the power of the Building Authority to employ a firm to manage the construction work, I find ample legislation in Section 153.08, Revised Code, as follows:

"(A) The Ohio building authority may:

* * * * *

"(4) Enter into contracts and execute all instruments necessary in the conduct of its business;

* * * * *

"(6) Employ financial consultants, appraisers, consulting engineers, architects, superintendents, managers, construction and accounting experts, attorneys-at-law, and other employees and agents as are necessary, in its judgment, and fix their compensation;

* * * * *

"(15) Do all other acts necessary to fulfillment of its purposes."

The proposal of the Turner Construction Company is generally acceptable, however, no part of it may be interpreted to abrogate or supersede any part of Chapter 153, Revised Code, or to usurp the statutory responsibilities and duties of the Ohio Building Authority and the legislative office building committee as set out in Section 152.23, Revised Code.

It is therefore my opinion and you are advised that in the construction of a building:

1. Section 153.03, Revised Code, does not prohibit the awarding of two or more contracts in each class designated as (A) plumbing and gas fitting, (B) steam and hot-water heating, ventilating apparatus, and steam power-plant, and (C) electrical equipment.

2. The Ohio Building Authority may employ construction experts and managers to plan and supervise the construction of the new state office building.