

This contract covers the construction and completion of Contract for Metal Book Stacks, New Library Equipment, Kent State Normal School, Kent, Ohio, and calls for an expenditure of sixteen thousand four hundred and forty dollars (\$16,440.00).

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 furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which The Aetna Casualty and Surety 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.*

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2852.

APPROVAL, BONDS OF THE VILLAGE OF PORT CLINTON, OTTAWA COUNTY—\$54,000.00.

COLUMBUS, OHIO, November 9, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2853.

EXECUTION—SUSPENSION OF SENTENCE IN FELONY CASES—FILING OF PETITION IN ERROR IN SUPREME COURT AS OF RIGHT—AUTOMATICALLY SUSPENDS SENTENCE.

**SYLLABUS:**

*Where, under the provisions of Section 2, Article IV of the Constitution of Ohio, a person convicted of murder in the first degree and under sentence to death, files as of right a petition in error in the Supreme Court of Ohio in a case involving a question arising under the Constitution of the United States or of the State of Ohio, by the express terms of Section 13757, General Code, the execution of such sentence to death is suspended upon the filing of such petition in error.*

COLUMBUS, OHIO, November 9, 1928.

HON. P. E. THOMAS, *Warden, Ohio Penitentiary, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of November 8th, which reads as follows:

“Stanley Hoppe, was on the 16th day of July, 1928, sentenced to be electrocuted by the Court of Lucas County, and the date they set for electrocution was October 26th. On October 19th the Court of Appeals of Lucas County suspended said execution until November 2, 1928. On November 1, 1928, the Supreme Court suspended said sentence until November 9th.

Today, November 8th, I received notice of the filing of a ‘Petition in Error, as of right, alleging constitutional questions, and that the said cause is now pending in our Supreme Court.’ This notice is attached.

The attorney for Stanley Hoppe makes the claim, ‘This automatically suspends the execution of Stanley Hoppe.’

I am asking whether I should, or should not execute Stanley Hoppe on November 9, 1928.”

It appears that Stanley Hoppe, the person referred to in your communication, has filed a petition in error as a matter of right in the Supreme Court of Ohio, under Section 2 of Article IV of the State Constitution, alleging the deprivation by the courts below of certain alleged rights granted to him by the Constitution of the United States and by the Constitution of the State of Ohio.

The question presented in your communication is whether the filing of this petition in error automatically suspends the mandate of the Supreme Court, which Court on November 1, 1928, suspended the execution of the sentence imposed until November 9, 1928.

Touching the question you have presented, Section 13757, General Code, provides that “upon filing such petition in error in the Supreme Court the execution of sentence, in cases of felony, shall be thereby suspended and in cases of misdemeanor, the court or judge, allowing the motion, shall order such suspension.”

In the case of *George J. J. MacKay vs. The State of Ohio*, the same being Case No. 20683, in the Supreme Court of Ohio, that court by an order entered on its journal under date of December 8, 1927, apparently held that the effect of the filing of a petition in error in the Supreme Court on constitutional grounds had the effect of suspending the sentence imposed upon the plaintiff in error in the case.

By way of specific answer to the question presented in your communication I am therefore of the opinion that the filing of the petition in error by said Stanley Hoppe in the case above referred to has the effect of automatically suspending the execution of the previous order of the Supreme Court fixing November 9, 1928, as the date for the execution of the sentence imposed upon him.

With respect to the further disposition of this case, and to the execution of the sentence imposed upon said Stanley Hoppe, it will be noted that Section 13755, General Code, provides in part as follows:

“ \* \* \* In capital cases, when the judgment is affirmed, and the date fixed for the execution of the sentence is passed, the court shall appoint a day therefor, and the clerk thereof shall issue a warrant, under the seal of such court, to the sheriff of the proper county, commanding him to carry the sentence into execution at the day so appointed. Such sheriff shall execute and return such warrant, and such clerk shall record such warrant and return as provided in this title.”

The provisions of Section 13755, General Code, above quoted, should be read in connection with those of Section 13728, General Code, which provides that in the execution of a death sentence the warden of the Ohio Penitentiary, or in case of his death, inability or absence, a deputy warden shall be the executioner.

In this case, therefore, if the Supreme Court should affirm the judgment of the Court of Appeals in the case now before the Supreme Court upon the petition in error above referred to, it will be the duty of the latter court to fix and appoint a later date for the execution of said sentence by the Warden of the Penitentiary.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2854.

APPROVAL, BONDS OF WAYNE COUNTY, OHIO—\$124,000.00.

COLUMBUS, OHIO, November 9, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2855.

APPROVAL, BONDS OF THE CITY OF MARIETTA, WASHINGTON COUNTY  
—\$3,500.00.

COLUMBUS, OHIO, November 9, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2856.

CONTRACT—HIGHWAY DEPARTMENT MAY RECOGNIZE ASSIGNMENTS  
OF MONEYS DUE FROM THE STATE AND ISSUE VOUCHER TO  
ASSIGNEE.

**SYLLABUS:**

*The Director of Highways may recognize a valid assignment of amounts due from the state upon a contract executed by him and issue a voucher upon the Auditor of State in favor of the assignee of such amount.*