

approved form of the proposal, but which can be eliminated without affecting in any way the competitive character thereof, is not invalid because of such addition, within the contemplation of Section 2317, General Code."

In the case of a county as heretofore pointed out, there is no requirement that a form of proposal be prepared, by the county commissioners, and also no provision making any change, alteration or addition to a proposal illegal. Consequently, it would appear to me to be a much stronger case here for the validity of the bid than the case involved in the 1928 Opinion above, in which it was held that a similar bid to the one involved here, was legal, despite the fact that an addition was there made to the approved form of proposal.

Based on the foregoing discussion, I am of the opinion that the bid submitted by the Standard Electric Service of Middletown, Ohio, is a legal bid under the laws of Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3163.

APPROVAL, LEASE TO LANDS OF K. E. MITCHELL AND L. J. MITCHELL IN MERCER COUNTY, OHIO, FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, April 20, 1931.

HON. JOHN W. THOMPSON, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form, a lease wherein K. E. Mitchell and L. J. Mitchell grant to the State 211.49 acres situated in Franklin Township, Mercer County, Ohio, to be used for State Game Refuge purposes under the provisions of Section 1435, of the General Code. Said lease is for the term of three years.

Upon examination, I have found said lease to be in proper legal form and have accordingly endorsed my approval thereon, and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3164.

INSTITUTIONS OF LEARNING—WHEN RIGHT TO GRANT DEGREES MAY BE RESCINDED BY SUPERINTENDENT OF PUBLIC INSTRUCTION.

SYLLABUS:

1. *The Superintendent of Public Instruction, upon being advised that an institution of learning, which had previously been furnished a certificate that its course of study had been filed in the office of the Superintendent of Public Instruction and that its equipment as to faculty and other facilities for carrying out that course are proportionate to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof, in accordance with Section 9923, General Code, is not maintaining its course of study and the facilities for carrying out that course, so as to warrant it conferring degrees, should cancel*

his former certificate with reference thereto and notify the Secretary of State of such cancellation.

2. When the Superintendent of Public Instruction cancels his certificate which had been issued to an institution of learning by authority of section 9923, General Code, and notifies the Secretary of State of that fact, the power of the institution to confer academic or collegiate degrees is suspended until such time as the Superintendent of Public Instruction again files a certificate with the trustees of the institution that its course of study has been filed in his office and that the equipment of the institution as to faculty and other facilities for carrying out such course are in proportion to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof, and that certificate is filed by the president or board of trustees of the institution with the Secretary of State.

COLUMBUS, OHIO, April 20, 1931.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Your opinion is respectfully requested as to whether the State, after authorizing an institution of higher learning to grant a degree, under the provisions of Sections 9922 and 9923, General Code of Ohio, may rescind that authorization.”

Sections 9922 and 9923, General Code, read as follows:

Sec. 9922. “When a college, university, or other institution of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, has acquired real or personal property, of twenty-five thousand dollars in value, has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of its trustees, such trustees may appoint a president, professors, tutors, and any other necessary agents and officers, fix the compensation of each, and enact such by-laws consistent with the laws of this state and the United States, for the government of the institution, and for conducting the affairs of the corporation, as they deem necessary. On the recommendation of the faculty, the trustees also may confer all the degrees and honors conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they deem proper.”

Sec. 9923. “But no college or university shall confer any degree until the president or board of trustees thereof has filed with the secretary of state a certificate issued by the superintendent of public instruction that the course of study in such institution has been filed in his office, and that the equipment as to faculty and other facilities for carrying out such course are proportioned to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof.”

The term “degree” as used in statutes such as the above, is generally understood to mean any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression com-

posed in whole or in part of words recognized as indicative of academic rank, alone or in combination with other words, so that there is conveyed to the ordinary mind the idea of some collegiate, university or scholastic distinction. The apparent purpose of the enactment of laws regulating the conferring of academic degrees by institutions of learning is to prevent an abuse of the conferring of these degrees and to protect the public against the evils that would grow up, if the power to confer such degrees were not regulated in some manner.

An examination of the legislative history of these statutes shows that when provisions were first enacted regulating the incorporation and establishment of institutions of learning of the character spoken of, in 1852, (50 O. L., 128), certain property qualifications were set up for these institutions which, upon meeting the qualifications, were empowered to elect a board of trustees, and power was thereby conferred to grant degrees upon the recommendation of the board of trustees of the institution. From this first enactment until the present time there has been a gradual increase in the property qualifications required by these statutes, as well as a gradual limitation on their power to confer degrees. This history indicates that it has been the purpose of the legislature not only to require proper educational facilities and training commensurate with the progress of the times but also to require such substantial financial resources in the institution as to reasonably guarantee its perpetuation as an institution of learning.

The provision with reference to the certificate of the Superintendent of Public Instruction, then the Commissioner of Common Schools, that must be filed before an institution of learning may confer degrees was first incorporated in the statute in 1908, (99 O. L., 262).

The purpose and object of this class of legislation is well stated by the Supreme Court of Massachusetts in the case of *Commonwealth v. New England College of Chiropractic* 221 Mass., 190. In that case a statute of the State of Massachusetts was under consideration, which statute made it a penal offense for anyone, without the authority of a special act of the General Court granting such power, to offer or grant academic or collegiate degrees. In the course of the opinion the court said with reference to the statute:

"Its obvious purpose is to suppress the kind of deceit which arises from the pretense of power to grant academic degrees and to protect the public from the evils likely to flow from that variety of misrepresentation and imposition. * * *

The section as a whole is an effort to punish the issuing and holding of sham degrees from colleges and other educational institutions. It aims to insure to the people of the commonwealth freedom from deception when dealing with those who put forward professions of educational achievement such as ordinarily is accompanied by a collegiate degree from an institution authorized to grant it and to make certain that those who use such symbols have had the opportunity of being trained according to the prevailing standards in some school of recognized standing under teachers of reputation for learning. *Wright v. Sanckton*, 19 Pick. 288-291. The statute should be interpreted in the light of its design to effectuate its purpose so far as words used reasonably construed permit of this result."

It is a well recognized principle of law that in construing legislative acts to discover their application the purpose of the legislature is an element which must be taken into consideration. *Cleveland Trust Company v. Hickox*, 32 App., 69. It has been said with reference to the construction of a statute:

"It is one of the most familiar duties of a court to consider its object, scope, end, the form of its remedy and the evils that lead to its adoption, so that it may receive that interpretation that will give it due effect. *Van Matre v. Buchanan*; Wright 233, 235."

This rule is stated in Lewis Sutherland on Statutory Construction as follows: (Section 490),

"In construing an act of the general assembly, such a construction will be placed upon it as will tend to advance the beneficial purposes manifestly within the contemplation of the general assembly at the time of its passage; and courts will hesitate to place such a construction upon its terms as will lead to manifestly absurd consequences, and impute to the general assembly total ignorance of the subject with which it undertook to deal."

See also Sections 471 and 488.

So far as the strict wording of these statutes is concerned, an institution of learning having once complied with their terms as to property qualifications, following which a certificate of the Superintendent of Public Instruction had been filed in accordance with Section 9923, supra, as a result of which it became authorized to confer degrees, might continue to confer degrees forever after, regardless of how much its property, equipment, personnel of its faculty and other facilities for carrying out its course of study may have deteriorated after its schedule of property and the certificate of the Superintendent of Public Instruction was first filed. To so interpret the statute, however, would, in my opinion, lead to absurd consequences, open the door to the grossest kind of fraud and completely defeat the purposes of the enactment of the law. In my opinion, an institution of learning, to be qualified to confer degrees, must not only bring itself within the qualifications fixed by the legislature but should continue to meet those standards, else its authority to exercise the privilege thus conferred by the statute ought to end.

In a recent case decided by the Supreme Court, *Hill v. Micham*, 116 O. S., 549, at page 553, it is said:

"It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent. *Moore v. Given*, 39 O. S., 661."

The legislature has seen fit to repose in the Superintendent of Public Instruction the duty to examine the courses of study of institutions of learning and to determine whether or not the equipment of an institution as to faculty and other facilities for carrying out those courses are proportioned to its property and the number of students in actual attendance, and thereupon if his determination with reference thereto is favorable, to so certify to the board of trustees of the institution who must file the certificate with the Secretary of State before it is permitted to confer academic or collegiate degrees.

If the Superintendent of Public Instruction should learn, at any time thereafter, that the institution is not maintaining its course of study and the facilities for properly carrying out that course of study, it is my opinion that the Super-

intendent of Public Instruction is not only empowered to cancel his former certificate but it is his duty to do so, and upon notifying the Secretary of State of that fact the power of the institution to confer degrees is suspended until a new certificate is filed.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3165.

APPROVAL, NOTES OF GOODHOPE TOWNSHIP RURAL SCHOOL DISTRICT, HOCKING COUNTY, OHIO—\$2,500.00.

COLUMBUS, OHIO, April 20, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3166.

APPROVAL, WARRANTY DEED TO LAND IN THE VILLAGE OF FORT JEFFERSON, OHIO.

COLUMBUS, OHIO, April 20, 1931.

The Ohio State Archaeological and Historical Society, Ohio State University, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a certain warranty deed executed by the trustees of Neave Township, Darke County, Ohio, conveying to the State of Ohio a certain parcel of land in the village of Fort Jefferson, in said county, which parcel is more particularly described as being Lot No. 42 in the Village of Fort Jefferson, as laid out and designated on the recorded plat of said village.

Upon examination of said warranty deed, I find that the same has been properly executed and acknowledged and that the form of said deed is such that it is sufficient to convey the above described property to the State of Ohio, free and clear of all encumbrances whatsoever.

No abstract of title or other record showing the proceedings by which the above described property was sold to the State of Ohio has been submitted to me; and, in approving said deed, I assume that in the sale of said property the provisions of Section 3281, General Code, were complied with. This section, you will note, provides among other things that when the township has real estate which it does not need for township purposes, the trustees may sell and convey any such real estate; that such sale must be had by public auction and upon thirty (30) days notice thereof in a newspaper published, or of general circulation, in said township.

Said warranty deed is herewith returned to you with the suggestion that the same be recorded at once.

Respectfully,
 GILBERT BETTMAN,
Attorney General.