

2080.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, May 11, 1928.

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

2081.

CONTRACT—AMOUNT AWARDED EACH TRADE INVOLVED IN CON-
STRUCTION OF PUBLIC BUILDING MUST NOT EXCEED ESTI-
MATED COST OF EACH TRADE.

SYLLABUS:

Where in the construction of a public building for the use of the state, or an institution supported in whole or in part by the state, bids are received for the individual trades involved in the construction of such building, the amount of the contract for each such trade must not exceed the estimated cost of the work covered by such trade.

COLUMBUS, OHIO, May 12, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Recently you submitted for my examination and opinion four contracts covering "Additions to Museum and Library Building and Equipment," Ohio State Archaeological and Historical Society. The four contracts submitted cover the general contract, plumbing and heating, electrical work, and marble and terrazzo respectively. The general contract and that for the electrical work have been approved by this department, but the contracts for plumbing and heating and for marble and terrazzo present a question as to the proper interpretation of Section 2323, General Code, and have been retained for further consideration and investigation.

The question presented was considered by this department in an opinion under date of March 5, 1928, addressed to you, being Opinion No. 1812, in which a contract for marble, tile and terrazzo for the new chemistry building at Ohio State University was disapproved, but inasmuch as you have requested a reconsideration of that opinion, and inasmuch as the question is constantly recurring, I deem it advisable to consider the matter generally and render a formal opinion thereon for future guidance.

The facts with reference to the contracts above referred to present the question directly and will be used in this discussion. The following table showing the trades, the cost of the work covered by the trades, as estimated by the architect, and the amount of the contract awarded for each trade, contains all the necessary facts:

<i>Grade</i>	<i>Estimated Cost</i>	<i>Contract</i>
General Contract -----	\$98,555 00	\$77,376 00
Plumbing and Heating-----	10,035 00	10,907 00
Electrical -----	2,949 00	1,933 00
Marble and Terrazzo-----	6,556 00	10,208 00
Totals -----	<u>\$118,095 00</u>	<u>\$100,424 00</u>

An examination of the above table reveals that while the total of all the contracts is less than the total estimated cost, the amount of the plumbing and heating contract is \$872.00 more than the estimated cost of that item or trade, and that of the marble and terrazzo contract is \$3,652.00 more than the estimated cost of that item or trade.

The question presented by the above state of facts may be stated as follows: Where in the construction of a building for the use of the state, or an institution supported in whole or in part by the state, bids are received for the individual trades involved in the construction of such building, may contracts for the respective trades be awarded in the event the total amount of all the trades does not exceed the total estimated cost, even though one or more of the respective contracts exceeds the estimated cost of that particular trade, or must the amount of the contract for each trade be within the estimated cost of such trade?

Section 2323, General Code, provides:

“No contract shall be entered into pursuant to Section 2317 at a price in excess of the entire estimate thereof. Nor shall the entire cost of the construction, improvement, alteration, addition or installation, including changes and estimates of expenses for architects or engineers, exceed in the aggregate the amount authorized by law for the same.”

In Lewis' Sutherland on Statutory Construction, Section 366, it is said:

“It is beyond question the duty of courts in construing statutes to give effect to the intent of the law-making power, and seek for that intent in every legitimate way. But * * * first of all in the words and language employed; and if the words are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation.’ The statute itself furnishes the best means of its own exposition; and if the sense in which words were intended to be used can be clearly ascertained from its parts and provisions, the intention thus indicated will prevail without resorting to other means of aiding in the construction. Very strong expressions have been used by the courts to emphasize the principle that they are to derive their knowledge of the legislative intention from the words or language of the statute itself which the Legislature has used to express it, if a knowledge of it can be so derived.”

In my opinion the language of Section 2323, General Code, *supra*, is clear and unambiguous. The first sentence of the section clearly provides that a contract shall (not) be entered into at a price in excess of the entire estimate thereof. The word “thereof” modifies and refers to “contract.” Had the Legislature intended a different meaning it could very easily have provided that no contract or contracts shall be entered into at a price in excess of the estimated cost of the entire building. I am

unable to read that construction into the first sentence of Section 2323, General Code. The second sentence of the section strengthens the above conclusion, for in that sentence the Legislature has provided that the *entire cost of the construction*, which is an entirely different thing from the estimated cost of a contract, shall not, together with estimates of expenses for architects or engineers, exceed in the aggregate the amount authorized by law for the same.

In your letter of transmittal in which you request a reconsideration of Opinion No. 1812 above referred to, you make reference to data submitted by the university architect to the effect that the matter was considered informally in 1921 by the then Attorney General and that the conclusion reached at that time was directly opposite to the conclusion I have reached above. The following is taken from a portion of the statement of the university architect, as quoted in your letter :

"The question raised was—'should each item entering into the building be less than the architect's estimated cost for that item'? Obviously, this was an impossibility. Contractors themselves differed so widely that it was decided that as the appropriation was for a completed building or completed unit of a building, the estimated cost and the bid or bids should be considered in the aggregate. It was not the individual items entering into the building but the aggregate of all items necessary to complete the structure.

This whole question was considered by the Auditor of State, Attorney General of the state, the Ohio State University, and the State Architect and Engineer, and until this recent ruling the aggregate bid or bids was required to be within the amount of the appropriation and within the architect's estimated cost."

I agree with the conclusion reached by my predecessor that the law does not require that the cost of each individual item entering into a building be less than the architect's estimated cost for that particular item. Section 2323, General Code, does not require any such construction. That section provides that "no contract," which may be a contract for the entire building or a contract for each trade represented in the construction of the building, shall be entered into at a price in excess of the entire estimate of such contract.

It may be that the conclusion I have reached may, in some instances, result in a rather anomalous situation. That is to say, it is entirely possible that if a single contract were awarded for the entire building, such contract, although within the estimated cost for the entire building, might be considerably in excess of the cost of such building, if separate contracts were entered into representing the various trades involved in the construction; and yet the conclusions I have reached would require the disapproval of any one or more of such individual contracts, if the contract price were in excess of the estimated cost of the work included in that particular trade. To illustrate, in the case under consideration, the estimated cost of the entire building is \$118,095.00, the total amount of the contracts awarded is \$100,424.00, or \$17,671.00 less than the total estimated cost. Under the conclusion I have reached it would, of course, be possible to award a single contract if bids had been received on that basis at a cost not in excess of \$118,095.00, which would be considerably in excess of the cost of the building, as fixed by the contracts which have actually been awarded.

Granting the truth of the above statement I see no reason for altering my present conclusions. To hold that the estimated cost of the completed building is the criterion rather than the estimated cost of each particular contract would seem to me to open the door to fraud and collusion among the bidders, which would defeat the very purpose of the law. If the statute in its present form be unworkable or lead to anomalous situations, the remedy lies with the Legislature.

In view of what has been said above, I am of the opinion that where in the construction of a public building for the use of the state, or an institution supported in whole or in part by the state, bids are received for the individual trades involved in the construction of such building, the amount of the contract for each such trade must not exceed the estimated cost of the work covered by such trade.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2082.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE HUFFMAN-WOLFE COMPANY, COLUMBUS, OHIO, FOR HEATING AND PLUMBING ON THE ADDITIONS TO MUSEUM AND LIBRARY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO.

COLUMBUS, OHIO, May 12, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted, for my examination and approval, a contract between the State of Ohio, acting by the Department of Public Works, for and on behalf of The Ohio State Archaeological and Historical Society, and The Huffman-Wolfe Company of Columbus, Ohio, which contract calls for the heating and plumbing on Additions to Museum and Library Building.

The consideration named in the contract is the sum of ten thousand, nine hundred and seven (\$10,907.00) dollars. An examination of the estimate of cost reveals that the estimated cost of the plumbing and heating is the sum of ten thousand thirty-five (\$10,035.00) dollars. It is apparent, therefore, that the amount of the contract awarded is in excess of the estimated cost.

Under date of March 5, 1928, this department rendered an opinion addressed to you, being Opinion No. 1812, in which, under similar circumstances, a contract with The Wege Marble & Company, of Columbus, Ohio, calling for the marble, tile and terrazzo work on the new chemistry building at the Ohio State University was disapproved. In accordance with the holding of that opinion, I am compelled to disapprove the contract now under consideration.

I am returning the contract and other papers submitted without my approval noted thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2083.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WEGE MARBLE AND TILE COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF MARBLE AND TERRAZZO WORK ON THE ADDITIONS TO THE MUSEUM AND LIBRARY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO.

COLUMBUS, OHIO, May 12, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted, for my examination and opinion, a contract