

It will be noted that the Attorney General in the above opinion does not pass on the question of when the fiscal officer may certify that the money is in the treasury or in process of collection but limits the opinion to the question asked, that is whether or not notes may be issued in installments, and says that when the plan of construction is such that the contract therefor must necessarily be let as a whole, notes may be issued for future delivery at a near future date when the resolution authorizing the notes set out different dates in the future "provided they *have been sold at a bona fide sale* and are *in process of delivery* at the time the certificate of the fiscal officer is furnished."

The opinion presupposes a bona fide sale and process of delivery of notes to be delivered in the future before the fiscal officer can furnish the certificate required by Section 5660, *supra*.

I am in accord with the opinion above referred to, so far as it goes, but it does not go so far as to answer your inquiry. It is clear that a bona fide sale must be made of the notes, and when this is done the requirement of being in process of delivery is met if a binding agreement is made with someone to take up the notes as issued in accordance with the terms of the resolution authorizing their issue and the sale made in pursuance thereof. The only question therefore to determine is whether, after a bona fide sale has been made, a letter from a bank or other person to the effect that they will take up the notes and advance the money thereon when the notes are delivered is a binding agreement. It is my opinion that unless the letter be backed up with proper and sufficient security, it would not be such a binding agreement as to justify the saying that the notes were in process of delivery. If, however, the resolution authorizing the issuing of the notes provided for their issuance for future delivery and a bona fide sale was made of the notes in accordance with the terms of the resolution, a letter in such terms as to constitute a binding contract accompanied with proper and sufficient security to guarantee the performance of the contract as made by such letter would be sufficient to justify the conclusion that the money to meet a contract, agreement or other obligation would be deemed to be in the treasury or in process of collection, and the fiscal officer might so certify.

Respectfully,

EDWARD C. TURNER,
Attorney General

349.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE MIDDLE STATES CONSTRUCTION COMPANY, COLUMBUS, OHIO, FOR STACK FOUNDATIONS FOR STATE SCHOOL FOR THE DEAF, COLUMBUS, OHIO, AT EXPENSE OF \$32,790.00—SURETY BOND EXECUTED BY THE FIDELITY AND CASUALTY COMPANY OF NEW YORK.

COLUMBUS, OHIO, April 20, 1927.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works for the Department of Public Welfare, and The Middle States Construction Company, of Columbus, Ohio. This contract covers the construction and completion of General Contract for NEW BUILDING FOR HOT WATER HEATING SYSTEM, including Stack Foundations, (exclusive of Brick Stack, Plumbing, Heating and Ventilating and Electrical

Contracts), State School for the Deaf, Columbus, Ohio, and calls for an expenditure of \$32,790.00.

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.

There has been further submitted a contract bond upon which the Fidelity and Casualty 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 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.

350.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE CAPITOL PLUMBING AND HEATING COMPANY, COLUMBUS, OHIO, FOR PLUMBING FOR STATE SCHOOL FOR THE DEAF, COLUMBUS, OHIO, AT EXPENSE OF \$1,045.00—SURETY BOND EXECUTED BY THE AMERICAN GUARANTY COMPANY.

COLUMBUS, OHIO, April 20, 1927.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works for the Department of Public Welfare, and The Capitol Plumbing and Heating Company, of Columbus, Ohio. This contract covers the construction and completion of Plumbing Contract for NEW BUILDING FOR HOT WATER HEATING SYSTEM, (exclusive of Heating and Ventilating), State School for the Deaf, Columbus, Ohio, and calls for an expenditure of \$1,045.00.

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.

There has been further submitted a contract bond upon which The American Guaranty 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 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.