

Upon examination of the abstract of title submitted, I find that the Licking County Building and Savings Company has a good and merchantable fee simple title to the real property here in question, free and clear of all incumbrances whatsoever except the undetermined taxes for the year 1928, which are a lien. Some adjustment of this matter should be made at the time the transaction relating to the purchase of this property is closed.

I have examined the corrected warranty deed submitted and find that the same has been properly executed and is in form sufficient to convey to the State of Ohio a fee simple title to said premises, free and clear of all incumbrances whatsoever.

Encumbrance Estimate No. 3182 referred to and disapproved in said former opinion has been corrected. As corrected, I find said encumbrance estimate to be in proper form, and that the same shows a sufficient balance in a proper appropriation account to pay the purchase price of this property.

The certificate of the Controlling Board showing proper authorization for the purchase of this property was approved in the former opinion and the same is not a part of the files submitted to me at this time.

I herewith enclose said abstract of title, warranty deed, encumbrance estimate and the other papers relating to the purchase of said property.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2765.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE THOMAS MOULDING FLOOR COMPANY, COLUMBUS, OHIO, FOR FLOORING FOR "REMODEL AND COMPLETE OLD CHEMISTRY BUILDING FOR LIBERAL ARTS BUILDING", OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$18,808.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, October 19, 1928.

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

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of the Ohio State University, Columbus, Ohio, and the Thomas Moulding Floor Company, of Columbus, Ohio. This contract covers the construction and completion of Flooring Contract, Item 21, as set forth in Article 1 of the specifications for "Remodel and Complete Old Chemistry Building for Liberal Arts Building", Ohio State University, Columbus, Ohio, and calls for an expenditure of Eighteen thousand eight hundred and eight dollars (\$18,808.00).

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 Globe Indemnity 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.

2766.

ABSENT VOTER'S BALLOT—DUTIES OF CLERK OF BOARD—APPLICATION FOR BALLOT—CLERK HAS REASONABLE TIME TO INVESTIGATE—WHEN MANDAMUS MAY BE ISSUED.

SYLLABUS:

1. Under provisions of Section 5078, General Code, an elector found by the clerk of the board of deputy state supervisors of elections to be properly qualified in all other respects, is entitled to receive an absent voter's ballot upon the applicant's own statement that he finds that he will be unavoidably absent from his own precinct on the day of election.

2. The clerk of a board of deputy state supervisors of elections, to whom application is made for an absent voter's ballot and supplies, is entitled to a reasonable time, in view of the facts of the case, to satisfy himself upon the qualifications of the person making such application.

3. Where an application for an absent voter's ballot is filed with a clerk of a board of deputy state supervisors of elections, and the clerk has failed or refused to act on such application, mandamus will lie to compel the clerk to act and pass judgment upon the right of the applicant to the absent voter's ballot. Mandamus will not lie, however, to review or control the discretion vested in the clerk to determine whether or not the applicant is a duly qualified voter in the precinct in which he desires to vote. Nor may mandamus be employed so as to substitute the discretion and judgment of the court for the discretion and judgment of the clerk.

4. In an action in mandamus to compel the clerk of a board of deputy state supervisors of elections to deliver an absent voter's ballot to an applicant therefor, an alternative writ should in all cases first be issued, unless facts, showing that the applicant is entitled to the ballot, are admitted, or unless it is clear that the applicant is entitled to the ballot, and it is apparent that no valid excuse can be given for refusing to deliver such ballot.

5. An absent voter's ballot and accompanying supplies may and should be delivered to an applicant entitled thereto in person, or by sending same by registered mail, as the facts in the case warrant.

COLUMBUS, OHIO, October 19, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of the 16th instant requesting my opinion as follows:

“Section 5078-1 of the General Code of Ohio, provides:

“It shall be lawful for any qualified elector who finds that he will be unavoidably absent from his home precinct on the day of any general, special or primary election to apply to the clerk of the board of deputy state supervisors of elections of his home county in writing or in person not earlier than thirty days and not later than three days prior to election day, stating the fact of his unavoidable absence from his precinct on election day and making application in writing for an absent voter's ballot. After such clerk shall have satisfied himself that the applicant is a duly qualified voter in such precinct and is the person representing the name in which such application is made and that in precincts where registration is required the applicant has