

505.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND J. C. CHAPMAN, SPRINGFIELD, OHIO, FOR CONSTRUCTION OF NEW WING TO LAUNDRY, INSTITUTION FOR FEEBLE-MINDED, ORIENT, OHIO, AT AN EXPENDITURE OF \$25,679.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, June 11, 1929.

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 Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and J. C. Chapman, of Springfield, Ohio. This contract covers the construction and completion of general contract for construction of new wing to laundry, Institution for Feeble-Minded, Orient, Ohio, and calls for an expenditure of twenty-five thousand, six hundred and seventy-nine dollars (\$25,679.00).

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 also been 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 Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1, 1929, and that the original appropriation lapsed before such contract was approved by the Attorney General. However, it will be further noted that the 88th General Assembly, in Amended House Bill No. 203, reappropriated such funds and authorized the expenditure of money for such purposes with the consent and approval of the Controlling Board, which has been obtained.

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,  
GILBERT BETTMAN,  
*Attorney General.*

506.

WARRANTS—ISSUED BY ZANESVILLE MUNICIPAL COURT OR CLERK TO ASSOCIATION ORGANIZED UNDER SECTIONS 10200 TO 10206, GENERAL CODE—ILLEGAL.

SYLLABUS:

*Neither the municipal court of Zanesville, Ohio, nor the clerk thereof, can legally*

*issue a warrant directed to a member or an officer of an association organized under the provisions of Sections 10200 to 10206, inclusive, of the General Code.*

COLUMBUS, OHIO, June 11, 1929.

HON. L. M. SOLIDAY, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“Certain members of an organization formed in this county, which is a branch of the Ohio State Protective Association and which organization has been licensed by the Ohio State Protective Association, have consulted me regarding the authority and the rights under this license. They have informed me that the police department of the city of Zanesville have refused to recognize them and to permit them to serve warrants from the municipal court.

Will you kindly advise me as to what authority the members of the Ohio State Protective Association have and as to whether or not the clerk of the municipal court of the city of Zanesville is authorized to issue warrants to members of the Ohio State Protective Association for service?”

I assume from the facts set forth in your letter that the association to which you refer was organized under Sections 10200 to 10206, inclusive, of the General Code. Sections 10200 et seq. of the General Code, were enacted on April 29, 1902, amending an act passed March 21, 1887, found in 84 O. L. page 169. The act as originally passed provided for the organization of associations for the apprehension and conviction of horse thieves and other felons. The section of the act of April 29, 1902, pertinent to your inquiry is Section 10204, which is as follows:

“An officer or member of such an association, under such certificate of authority may apply for and obtain a warrant for the arrest of a person accused of felony or misdemeanor, which shall be issued to him by any justice of the peace or police magistrate of a city or village under the same conditions as warrants are issued to constables. Under such warrant he shall have the same power to arrest and detain offenders as is vested in constables.”

You will note that a member or officer of an association organized under the provision of Sections 10200 et seq. may obtain a warrant for the arrest of a person accused of a felony or misdemeanor from a justice of the peace or police magistrate under the same conditions that warrants are issued to constables, and under the warrant so issued they have the same powers to arrest and detain offenders as are vested in constables.

Section 3345 of the General Code, provides in part that constables may execute all writs and process in criminal cases throughout the county in which they reside and in which they were elected or appointed and may pursue and arrest any fugitive from justice in any other county of the State and convey such fugitive before any justice of the peace of the county where such crime or offense is committed. So a member or officer of such an association as is referred to herein may obtain a warrant from a justice of the peace or police magistrate and serve it anywhere in the county in which the warrant is issued or may pursue and arrest a fugitive anywhere in the State of Ohio.

Section 13496 of the General Code of Ohio provides as follows:

“When an affidavit charging a person with the commission of an offense

is filed with a justice of the peace, mayor or police judge, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused."

Section 4594, General Code, provides in part as follows:

"When an affidavit is filed with him for a peace warrant, search warrant, or charging any person with the commission of an offense, the clerk of the police court shall have power to issue a warrant under the seal of such court to arrest the accused or search the place described. \* \* \* "

In the case of *Rosanski vs. State*, 106 O. S. 442, the Supreme Court held that the issuance of a warrant was a ministerial act and could be done by the clerk without any action on the part of the court. It follows, therefore, that under the general statutes pertaining to arrest, the clerk of the police court may issue warrants to officers and members of such an association as is referred to herein, in the same manner as a justice of the peace or police magistrate. Section 1579-332 of the Municipal Court Act of Zanesville, Ohio, provides in part as follows:

"Said municipal court herein established shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors, or violations of ordinances as heretofore had by the police court of Zanesville and any justice of the peace. \* \* \* "

Up to this point it seems that the Municipal Court of Zanesville, Ohio, or the clerk thereof, is required to issue warrants to members and officers of an association organized under the provisions of Sections 10200 et seq. However, Section 1579-357, General Code, provides that the bailiff of the municipal court of Zanesville, Ohio, shall perform for the municipal court services similar to those usually performed by the sheriff for the Courts of Common Pleas, and by the constables of the courts of justice of the peace, and Section 1579-356, General Code, provides that every police officer of the city of Zanesville shall be ex officio a deputy sheriff of the municipal court.

From the provisions of Sections 1579-356 and 1579-357, of the General Code, it seems that the Legislature limited the municipal court and the clerk thereof to issuing warrants directed only to the bailiff or police officers of the city.

Sections 1579-330, et seq., constitute a special act establishing a municipal court of Zanesville, Ohio. (107 O. L. 722).

Applying the rule of statutory construction that the provisions of a special act will control over the provisions of a general act, it appears to me that the Municipal Court Act supersedes the provisions of the Act of April 29, 1902 (95 O. L. 298).

In an opinion rendered by the Attorney General, and published in the Opinions of the Attorney General for 1925 at page 550, the then Attorney General held as reported in the syllabus as follows:

"The municipal court of Portsmouth may not legally issue warrants directed to the sheriff of the county or the constable of a township.

Such warrants should be issued to the bailiff or a deputy bailiff provided for said court."

While I am not entirely clear as to your question, I have assumed that you desire to know the authority of members of Protective Associations only in relation to the municipal court of Zanesville, Ohio, and I have confined my discussion to that inquiry.

I am of the opinion that neither the municipal court of Zanesville, Ohio, nor the clerk thereof, can legally issue a warrant directed to a member or an officer of an association organized under the provisions of Sections 10200, et seq., of the General Code of Ohio.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

507.

ROADS—STATE, COUNTY AND TOWNSHIP—DETERMINING STATUS—  
WHERE DUTY TO MAINTAIN RESPECTIVE ROADS LIES.

SYLLABUS:

1. *In determining the status of a road as to whether it is a state, county or township road, the provisions of the law creating the state system of highways and the county system of highways, as set forth in Section 7464 and its related sections of the General Code, superseded other classifications made by earlier legislative enactments.*

2. *Inter-county highways were first authorized by the 79th General Assembly in 102 O. L. 333, and main market roads were first authorized by the 80th General Assembly, 103 O. L. 155. Under Sections 1189 and 7464 of the General Code, unless a highway has heretofore been designated as an inter-county highway or a main market road or has been designated as a part of the highway system by the Director of Highways, it is not a part of the state highway system.*

3. *A road which is not a part of the state highway system and has not been designated as a part of the county system of highways under Sections 6965, et seq., of the General Code, is a township road.*

4. *Under the provisions of Section 7464 of the General Code and its related sections, it is the duty of the state, county and township to maintain their respective roads, as defined by Section 7464 of the General Code.*

COLUMBUS, OHIO, June 11, 1929.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“On August 2, 1904, under the provisions of Section 4615 of the Revised Statutes, as it then provided, a state road was petitioned for to the board of county commissioners of Fayette County and the board of county commissioners of Clinton County. The necessary statutory proceedings were had on this petition, so that on April 25, 1905, the board of county commissioners of this county made a finding establishing said road as a public highway 40 feet in width, and further ordered the auditor of the county to draw his warrants upon the county treasurer for payment of claims for compensation, which had been filed and passed upon. This road was constructed and opened, and is still open for public use. It connects what is known as the Sabina-Plymouth road with the Sabina and Washington road now the Three C Highway.

As above stated it was created as a state road. During the past ten or fifteen years it has received no attention whatsoever; particularly is this true in Clinton County, and it is now practically impassable. The county