In conclusion, I am of the opinion, and you are advised, in answer to your first question, that the original contract price, in contracts let upon the basis of unit price bids, is to be determined from the unit price bid based upon the estimated quantities of the various items going into the project; and in answer to your second question, you are advised that the provisions referred to by you only apply to extra work in connection with projects which may, under the provisions of the section, be let by private contract.

Respectfully,
C. C. CRABBE,
Attorney General.

1444.

BOARD OF BUILDING STANDARDS—AUTHORITY OF BOARD UNDER SECTION 12600-288 AND 12600-289 G. C.

COLUMBUS, OHIO, May 8, 1924.

SYLLABUS:

1. *Sections* 12600-288 *and* 12600-289 *of the General Code, as enacted in* 110 *O. L.* 351, *when construed together, authorize the Board of Building Standards to declare an equivalent of a fixture, device, material, system, etc., specified in the sections mentioned in Section* 12600-299, *irrespective of whether such sections provide for such an equivalent.*

2. *Such board after publication of a notice of a proposed rule under the provisions of Section* 12600-290, *after the hearing may not legally adopt any rule differing in any material respect from the proposed rule or regulation as published.*

3. *The Board of Building Standards are required to make such publication, and when such publication is made it is believed that there is no valid objection to a petitioner paying for such publication when there are no public funds available for such purpose.*

Department of Industrial Relations, Board of Building Standards, Columbus, Ohio.

Gentlemen:—

You have recently requested my opinion as follows:

"The Ohio Board of Building Standards would appreciate your opinion on the following points of law:

Under the provisions of section 12600-288—Powers and Duties of Board of Building Standards—the board is authorized to determine equivalents for present requirements of the General Code. Has the board the authority to declare an equivalent where the General Code does not specifically mention equivalents?

Has the board authority to make minor corrections and changes in the wording of rules or regulations after their publication and before final adoption?

The advertising of these proposed rules in five newspapers is expensive and has taken the greater part of the fund set aside for this purpoes. The petitioners in several cases have offered to pay the cost of the advertising, and the board desires your opinion as to the legality of permitting the petitioner to pay such cost."

Under the provisions of the act creating your board, as found in 110 O. L. 350, one of the duties as set forth in section 12600-288, or section 5 of the act is:

> "(3) To determine by rule or regulation on application to it made in the manner herein provided, that any particular fixture, device, material, system or method of construction is equivalent, having regard to its adaptability for safe and sanitary construction, to that described in any section of the General Code, wherever the use of a fixture, device, material, system or method of construction which is equivalent, as regards such standards, to that described in such section of the General Code, is permitted by law; and on like application to amend or annul any such rule or regulation.
>
> No department, officer, board or commission of the state government other than the board of building standards hereby created shall have power to determine such equivalents in any case, nor to permit the use of any fixture, device, material, system or method of construction at variance with what is described in any such section of the General Code."

Under the specific provisions of the language above quoted it would seem that your board is limited to prescribing the equivalent of a fixture, device, material, etc., designated by statute wherever an equivalent is permitted by law. If there were no other provisions of the act than the language heretofore mentioned, it would seem that your board would have no power to declare an equivalent where the General Code does not specifically mention equivalents. However, it becomes necessary to construe the whole act together, and all of the sections mentioned therein are in *pari materia;* and it is necessary to further consider the provisions of section 12600-299, or section 16 of the act, which provides:

> "Wherever in sections 12579 to 12592, both inclusive, and 12600-1 to 12600-282, both inclusive, of the General Code, particular fixtures, devices, materials, systems or methods or manners of construction or installation are described, such description shall be deemed to prescribe minimum standards of safety and sanitary condition exemplified by such particular fixtures, devices, materials, systems or methods or manners of construction or installation. Where the use of another fixture, device, material, system or method or manner of construction or installation is desired at variance with what is so described, such use shall be permissible, anything in any of said sections to the contrary notwithstanding, if such fixture, device, material, system, method or manner of construction be the equivalent of that described in such section as measured by the standard of safety, or sanitary condition so indicated, and the equivalence thereof be determined by rule or regulation adopted and promulgated by the board of building standards as provided in this act."

From the provisions of the section above quoted, it would seem clear that your board is permitted to declare an equivalent to any such fixture, device, material, system or method, etc., specified in the sections of the General Code therein mentioned, irrespective of whether provisions are made in such statutes for the use of such an equivalent.

Coming to your further question as to the authority of your board to change the wording of rules or regulations after publication before final adoption, it is noted that section 12600-290, or section 7 of the act in part provides:

> "If the board, after hearing, shall deem it advisable to adopt the rule

or regulation or amendment or annulment thereof petitioned for, it shall give at least thirty days' notice of the time and place of a public hearing thereon, which notice shall state in full the proposed rule or regulation to be adopted, amended or annulled, or the proposed amendment, and shall be advertised in at least five newspapers published in different counties and of general circulation in the state."

From the foregoing it will be observed that before your board has authority to pass upon a given petition, the question of adoption, amendment or annulment of a rule or regulation, that notice required by law is mandatory The purpose is that the public shall have full information of the nature of the proposed rule or regulation, and that the same shall be stated in full.

From this it follows that any material change in such a notice after publication would be in violation of this law. There could be no useful purpose served in requiring such a notice if after the hearing your board could adopt a rule or regulation which is unlike the published regulation. Of course, it is possible that minor corrections could be made which would in no wise change the character or nature of the rule. However, if such proposed alteration or change is of an immaterial nature, the question will suggest itself as to the necessity for any such change. In any event, any material change in the rule could not legally be made after publication of the same.

You further inquire whether the petitioners may pay the cost of advertisement when there are no funds available by your department for such purpose. While the law contemplates that such expenditure shall be made by the Department of Industrial Relations, the important requirement is that your board shall give such notice by such required publication. If the notice is given and published as required by law, it is believed that no objection could be raised in the event that the costs of such publication should be paid by the petitioners.

In the conclusion herein in response to your first inquiry, the decision in the case of State ex rel. Myers vs. Industrial Commission, 105 O. S., 103, has not been overlooked. In this case it was held that Section 12600-277 did not authorize the Industrial Commission to substitute special requirements which were specified in Sections 12600-1 et seq, although it was a general attempt to do so. It was decided upon the rule that a general statute will not control over a special one. However, the statutes now specifically state that the Board of Building Standards shall have such power with regard to certain sections. The legislature will be presumed to have known of the interpretation made by the Supreme Court, and it would seem that it was the definite purpose of the legislature in the recent enactment to make possible that which the Supreme Court had said could not be done under the former statute. This would seem to remove all doubt as to the intent of the legislature, which of course is the sole guide.

Respectfully,
C. C. CRABBE,
Attorney General.