

2915.

APPROVAL, BONDS OF THE VILLAGE OF SHAKER HEIGHTS, CUYA-HOGA COUNTY, OHIO—\$23,000.00.

COLUMBUS, OHIO, November 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2916.

ELECTRICITY—BOARD OF TRUSTEES OF OHIO STATE UNIVERSITY HAS NO AUTHORITY TO SELL CURRENT TO BATTELLE MEMORIAL INSTITUTE.

COLUMBUS, OHIO, November 22, 1928.

SYLLABUS:

The Board of Trustees of the Ohio State University has no power to enter into any contract for the sale and delivery of electricity produced at the Ohio State University to the Battelle Memorial Institute.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, which reads as follows:

“At a meeting of the Board of Trustees of the Ohio State University held November 10, 1928, the following communication was received from the Secretary of the Battelle Memorial Institute:

‘November 8th, 1928.

Hon. Carl E. Steeb,
Business Mgr. and
Secretary, Board of Trustees,
Ohio State University,
Columbus, Ohio.

Dear Mr. Steeb:

It has been called to our attention, that it might be possible for the University to furnish electric power for the research laboratory, which we are constructing on King Avenue.

As you perhaps know, the interests of our organization have much in common with those of the University. We sincerely believe that as we grow, many ways of mutual co-operation will develop.

Battelle Memorial Institute is incorporated under the laws of Ohio as a corporation, 'not for profit' and ranks as an educational institution.

As near as we can estimate at the present time, our maximum demand load for power and light will be in the neighborhood of 200 K. W. and using this as a basis, we estimate that our monthly consumption of electricity for power and light will be roughly 25,000 K. W. hours. We will require 220-A. C. single and three phase current.

If the University would look with favor upon an arrangement whereby they would supply us with power, we would be glad to go into details with you to determine whether such an arrangement could be worked out advantageously.

Very truly yours,

(Signed) G. B. Fenton,
Secretary.

The Board of Trustees took the following action relative to the above request:

Upon motion of Mr. Laybourne, seconded by Mr. Atkinson, the Secretary was directed to secure an opinion from the Attorney General as to the power of the Trustees to sell electrical current, and if such power rests with the Board of Trustees then the Secretary is directed to go into the details with the Battelle Memorial Institute to determine whether such an arrangement could be worked out advantageously. The above motion, upon roll call was unanimously adopted.

It is therefore respectfully requested that the Attorney General submit an opinion as to the power of the Board of Trustees to sell electric current to the Battelle Memorial Institute."

The question presented in your communication is one involving the powers of the Ohio State University represented by and acting through its Board of Trustees.

Section 7942, General Code, provides that the government of the Ohio State University shall be vested in a board of seven trustees, who shall be appointed by the Governor with the advice and consent of the Senate.

Section 7943, General Code, provides as follows: .

"The trustees and their successors in office shall be styled the 'board of Trustees of the Ohio State University,' with the right as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering it at pleasure."

By Section 7948, General Code, it is provided that the Board of Trustees may adopt by-laws, rules and regulations for the government of the University, and Section 7950, General Code, provides that "the board of trustees shall have general supervision of all lands, buildings and other property belonging to the University, and the control of all expenses therefor, but shall not contract a debt not previously authorized by the General Assembly of the state."

In the case of *Neil vs. Board of Trustees*, 31 O. S. 15, later followed in the case of *Thomas vs. University Trustees*, 195 U. S. 207, it was held that the Ohio State University, then known as the Ohio Agricultural and Mechanical College, was a state institution or a branch of the state government, and was not in any way an independent corporation.

The court in its opinion in the case of *Neil vs. Board of Trustees*, supra, referring to the act providing for the establishment of the Ohio Agricultural and Mechanical College, now the Ohio State University, said:

"It creates a board of trustees to be appointed by the governor by and with the advice and consent of the senate, and commits to said board the government, control and general management of the affairs of the institution; and while the statute authorizes the board to make contracts for the benefit of the college, and to maintain actions, if necessary, to enforce them, and to exercise other powers similar to those conferred on bodies corporate, it does not assume to, nor does it in fact, create or constitute such board of trustees a corporation; and hence does not clothe it with corporate functions or powers. The State ex rel., *The Attorney General vs. Davis*, 23 O. S. 434. The college is a state institution, designed and well calculated to protect public educational interests, established for the people of the whole state, to be managed and controlled by such agencies as the Legislature in its wisdom may provide."

It follows from what has been said above that the question herein presented is to be approached from the standpoint of the powers of the Ohio State University and its Board of Trustees as a state institution, and not from the standpoint of the powers of a corporation exercising ordinary corporate functions.

Under the provisions of Section 7943, General Code, above noted, the Board of Trustees of this institution has the power of contracting and being contracted with, but this power, as I view it, extends only to matters pertaining to the regulation and maintenance of the University as an educational institution. Under the statutory power given to it, the Board of Trustees of this institution may, undoubtedly, make or authorize the making of contracts providing for the sale and disposition of university farm and dairy products, or of the products of any other activity carried on by the University as an educational institution, which products would otherwise go to waste.

Touching the precise question submitted in your communication, it may be observed that the Board of Trustees of this institution has the power and authority to provide for the establishment and maintenance of a plant for the production of electricity for light and power purposes for use in carrying on the various activities of the University, and for such use as may be afforded by the production and distribution of electricity as a means of education to students interested in this subject. There is nothing, however in the statutory provisions above quoted, or in any other, touching the powers and authority of the Board of Trustees of this institution authorizing it to produce electricity in excess of the requirements of the University and its activities, for the purpose of disposing of the same to private users.

Nothing is stated in your communication with respect to the nature and status of the Battelle Memorial Institute other than that it is an institution of an educational nature, incorporated and organized as a corporation not for profit. I assume, however, that the Battelle Memorial Institute is in no way connected with the Ohio State University as an activity thereof, and that the conduct and operation thereof is a matter concerning which the Board of Trustees of the University has nothing to do. In this situation any proposed sale of electricity for light and power purposes to the Battelle Memorial Institute would be governed by the same rules applicable to the sale of electricity produced at the University to any other private user.

By way of specific answer to the question submitted in your communication I am of the opinion that the Board of Trustees of the Ohio State University has no power to enter into any contract for the sale and delivery of electricity to the Battelle Memorial Institute.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2917.

APPROVAL, AGREEMENT BETWEEN HIGHWAY DEPARTMENT AND COUNTY COMMISSIONERS OF ATHENS COUNTY FOR RECONSTRUCTION OF A BRIDGE OVER HOCKING RIVER, ATHENS COUNTY.

COLUMBUS, OHIO, November 22, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication submitting a proposed agreement between your department and the commissioners of Athens County relative to the reconstruction of a bridge situated partly within the City of Athens over which said Highway No. 159 crosses the Hocking River.

I have carefully examined said contract and finding the same to be in proper legal form, I hereby approve the same and return it herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2918.

OFFICES—VACANCY—COUNTY COMMISSIONER—NO ELECTION FOR UNEXPIRED TERM—APPOINTEE HOLDS OVER FOR UNEXPIRED TERM OF DECEASED PREDECESSOR.

SYLLABUS:

Under the provisions of Section 2397, General Code, where a county commissioner was duly appointed to fill a vacancy which occurred more than thirty days before a regular election and at said regular election no one was elected for the remainder of the unexpired term of his predecessor in office, said appointee is entitled to hold his said office during the remainder of the unexpired term.

COLUMBUS, OHIO, November 22, 1928.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows: