

2803.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,
OHIO—\$52,000.00.

COLUMBUS, OHIO, June 8, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2804.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,
OHIO—\$86,000.00.

COLUMBUS, OHIO, June 8, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2805.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE
GIBBONS-GRABLE COMPANY OF CANTON, OHIO, FOR THE GEN-
ERAL WORK IN CONNECTION WITH THE CONSTRUCTION OF A
GARAGE FOR THE HIGHWAY DEPARTMENT AT DIVISION NO. 4,
RAVENNA, OHIO.

COLUMBUS, OHIO, June 8, 1934.

HON. T. S. BRINDLE, *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 Department of Highways, and the Gibbons-Grable Company of Canton, Ohio, for the general work in connection with the construction of a Garage for the Highway Department at Division 4, Ravenna, Ohio.

The papers submitted with the contract show that an application was made to the Controlling Board for its consent to the publishing of the advertisement for bids for this project for one time, in accordance with section 7 of House Bill No. 699 of the 90th General Assembly, which bill appropriates the money by which the improvement is constructed. Such section 7 provides in so far as pertinent here, as follows:

“* * * The Controlling Board may upon similar application in cases of emergency or when the interests of the state require, permit the ad-

vertisement for bids to be published once, not more than ten days nor less than eight days preceding the day of the opening of the bids. Such consent shall be certified to the auditor of state and the director of finance and the provisions of section 2318 of the General Code shall be deemed not to apply to that portion of the improvement for which such method of advertising is authorized."

Section 2318, General Code, requires that the advertisement for bids for the construction of state buildings "be published once each week for four consecutive weeks, the last publication to be at least eight days next preceding the day for opening the bids."

In other words, section 7 of House Bill 699, authorizes a shorter form of advertising than is required by section 2318, General Code.

Pursuant to the authority granted by the Controlling Board under section 7 of House Bill No. 699, it appears from the papers submitted that the Director of Public Works inserted an advertisement in three newspapers on two different dates, viz., April 28, 1934, and May 5, 1934, and stipulated that bids would be received on May 10, 1934, at 2 P. M.

It seems clear that if the first advertisement is taken as the single authorized publication of the Controlling Board, the advertisement is not in accordance with statute, as there is in such case twelve days between April 28, 1934, and May 10, 1934, contrary to section 7 which states that the single advertisement shall not be *more than ten days* preceding the date for opening the bids.

Likewise, if the second advertisement is taken as the single authorized publication of the Controlling Board, the advertisement is not in accordance with statute, as there is in such instance only five days between May 5, 1934, and May 10, 1934, contrary to section 7 which states that the single advertisement shall not be *less than eight days* preceding the date of opening the bids.

It has been held by the Supreme Court in recent cases that the provisions of statutes regulating advertising of public contracts are mandatory and that a contract entered into based on a bid pursuant to advertising not in accordance with statute is invalid. See *State vs. Kuhner & King*, 107 O. S. 406; *Cowen vs. State*, 101 O. S. 387-390; and *State ex rel. Dackek vs. Cleveland Trinidad Paving Co.*, 35 App., 118, 128, motion to certify record overruled by the Supreme Court on May 8, 1929, rehearing denied, June 3, 1929. Hence, it would appear that no valid contract can be entered into based on a bid submitted pursuant to the advertisement made for this project.

I am cognizant of the fact that April 29, 1934, and May 6, 1934, fell on Sunday and that if Sundays may be excepted from the time set forth in section 7, House Bill No. 699, April 28, 1934, there would not be more than ten days preceding May 10, 1934, the date for opening bids. However, the language of section 7, nowhere excepts Sundays from the computation of time and there is no authority to read such an exception into the statute.

In view of the foregoing, I am unable to approve this contract, and am herewith returning it, together with all papers submitted therewith, without my approval endorsed thereon.

Respectfully,
JOHN W. BRICKER,
Attorney General.