

acting by the Department of Highways and Public Works, and the Ohio Elevator & Machine Company, of Columbus, Ohio. This contract covers the construction and completion of an elevator and accessories in new kitchen and equipment, Ohio Soldiers' and Sailors' Home, Sandusky, Ohio, and calls for an expenditure of \$2,450.00.

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 further been submitted a contract bond upon which the Fidelity and Deposit Company of Maryland 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,

C. C. CRABBE,

Attorney General.

1680.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN THE FOLLOWING COUNTIES: 3 IN HIGHLAND, MUSKINGUM, WYANDOT AND JEFFERSON.

COLUMBUS, OHIO, August 8, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1681.

DISAPPROVAL, BONDS OF VILLAGE OF COLDWATER, MERCER COUNTY, \$9,000.00.

COLUMBUS, OHIO, August 9, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of Village of Coldwater, Mercer County, \$9,000.00.

Gentlemen:—

I have examined the transcript furnished this department in connection with the foregoing issue of bonds and find that I cannot approve the same for the following reasons:

The affidavits of the publishers giving notice of the sale of these bonds state that the first publication giving said notice of sale was made on April 18 1924, and that the bonds would be sold on May 12, 1924. It is therefore observed that only twenty-four days elapsed from the first publication and the date of sale.

Section 3924 G. C. provides as follows:

"Sale bonds, other than to the trustees of the sinking fund of the city or to the board of commissioners of the sinking fund of the city school district as herein authorized, by any municipal corporation, shall be to the highest and best bidder after publishing notice thereof for four consecutive weeks in two newspapers printed and of general circulation in the county where such municipal corporation is situated. * * *"

In the case of State of Ohio vs. Kuhner and King, 107 O. S., 406, the court held as follows:

"The requirement of Section 1206, General Code, that 'the state highway commissioner shall advertise for bids for two consecutive weeks' is mandatory, and a contract entered into on June 14, after advertisement in two weekly newspapers of the county on June 6 and June 13, is invalid."

Applying the same construction to the meaning of "consecutive weeks" in advertising, it is apparent that these bonds have not been advertised for the sale as required by law.

The transcript shows that the property owners to be assessed have by agreement attempted to waive any and all defects which may exist in the legislation or proceedings had or acts done thereunder pertaining to improvement and the issuance of bonds and the levying of assessments under said legislation.

This agreement contains a statement that it is "in consideration of the mutual promises of each other, and for other good and valuable considerations." The good and valuable consideration is not disclosed in the agreement, and the validity of such consideration is not considered in this opinion for the reason that the failure in carrying out the statutory provisions for the advertisement of the bonds would at least invalidate the bonds to the extent of making them general obligations of the village in case of default in payment of any of the assessments.

Furthermore, even in case the assumption can be taken that these bonds will most probably be paid by the assessments made in process of collection, nevertheless, the bonds cannot be passed as legal and valid obligations, and I cannot see my way clear to approve bonds that have been issued in non-compliance with statutory provisions. You are therefore advised not to accept said bonds.

Respectfully,

C. C. CRABBE,

Attorney General.