

of competitive bids. The statute says the work "shall be done by contract let after the taking of competitive bids as provided by law". If in certain instances the law does not provide for the taking of competitive bids as a condition precedent to entering into a contract, it does not follow that the requirement of a contract shall be nullified.

It follows therefore that under Sections 5537 and 6309-2, General Code, as amended by the 88th General Assembly, a municipality may expend its portion of the gasoline and motor vehicle license tax, as therein provided, only pursuant to contract.

Based upon the foregoing and in specific answer to the inquiry propounded, it is my opinion that any proportion up to fifty per cent (50%) of the funds available to municipalities from the gasoline tax and motor vehicle license tax, as amended by the 88th General Assembly, may be expended for the purpose of construction and repaving of public streets, but the same may be expended only pursuant to contract. If the amount involved for a given improvement is less than five hundred dollars (\$500.00) a contract is nevertheless required but it may be entered into without competitive bidding.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1801.

EXAMINATION OF DEED TO LAND OF IDA AND PETER SARNO IN
CITY OF CANTON, STARK COUNTY, WHERE REQUEST IS MADE
FOR EXECUTION OF DEED BY GOVERNOR TO CORRECT DEFECT.

COLUMBUS, OHIO, April 21, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—A communication has been received by me from Lynch, Day, Pontius & Lynch, attorneys at Canton, Ohio, enclosing an abstract of title relating to lot No. 14804 in J. R. Mathews subdivision of Out Lots No. 173 and 174 in the City of Canton, Ohio, as the same is recorded in Volume 7, page 78, in the office of the Recorder of Stark County, Ohio, which property is now owned of record by Ida Sarno and Peter Sarno, of said city.

In the communication of the attorneys above named, a request is made for the execution of a deed by the Governor, under authority of the provisions of Section 8528, General Code, for the purpose of correcting a defect in a deed executed by Governor Lucas, conveying to one Adam Kimmell and to one Joseph Kimmell, a tract of 74.80 acres of land which included the land now owned and held of record by said Ida Sarno and Peter Sarno as lot No. 14804 in the subdivision above mentioned.

The land here in question, was originally a part of Section No. 16, school lands in Township No. 10, Range No. 8; and it appears that on November 20, 1830, the trustees of said section leased to Benjamin Jones and Adam Kimmell, "The West division of the North West Quarter of Section No. 16, Township No. 10, Range No. 8, containing 74.80 acres, for 99 years, renewable forever." Therefore, said Benjamin Jones assigned his interest in said lease to one James Gaff, Jr., after which said James Gaff, Jr., assigned said interest to Joseph Kimmell.

Thereafter, said Adam Kimmell and Joseph Kimmell, being the owners and holders of the lease for said school lands, obtained the deed for said lands from Robert Lucas, then Governor of Ohio. This deed which was dated January 16, 1836, was so executed under the authority of the provisions of Section 16 of the Act of January 29,

1827, 25 O. L., pages 56, 64. The deed executed by Governor Lucas was defective in that the same was not countersigned by the Secretary of State, as required by said Act. A part of the lands covered by this conveyance later passed by mesne conveyances to one Impertus Martin and to one George D. Platt, who, as tenants in common, of the property owned and held by them, in the year 1866, laid out and filed for record, a plat of Out Lots in Canton Township, Stark County, Ohio. Thereafter, in 1892, when the Out Lots in the City of Canton, Ohio, were renumbered, Lots Nos. 4 and 5, in Martin and Platt's Addition, became Out Lots Nos. 173 and 174, of said City of Canton.

In 1909, one J. R. Mathews, being the owner of Out Lots No. 173 and 174, divided the same as an addition to said city, and said lot No. 14804 is one of the lots in said addition.

Section 8528, General Code, provides as follows:

"When, by satisfactory evidence, it appears to the Governor and Attorney General, that an error has occurred in a deed executed and delivered in the name of the state, under the laws thereof, or in the certificate of any public officer, upon which, if correct, a conveyance would be properly required from the state, the Governor shall correct such error by the execution of a correct and proper title deed, according to the intent and object of the original purchase or conveyance, to the party entitled to it, his heirs, or legal assigns, as the case may require, and take from such party a release in due form, to the state, of the property erroneously conveyed."

After a careful examination of the records and other evidence submitted, I find that an error occurred in the deed executed by Governor Lucas to Adam Kimmell and Joseph Kimmell, predecessors in title of Ida Sarno and Peter Sarno to the property here in question; and inasmuch as under the provisions of Section 8523, General Code, it is made the duty of the Auditor of State to draft deeds to be executed by the Governor in cases of this kind, it is suggested that you prepare in proper form a deed to be executed by the Governor, conveying to Ida Sarno and Peter Sarno said lot No. 14804, in J. R. Mathews' subdivision of Out Lots Nos. 173 and 174 in the City of Canton, Ohio, as the same is recorded in Volume 7, page 78, Stark County Recorder's Office, Canton, Ohio. Said deed, when so prepared, will of course contain the proper recitals in the usual form as to the purpose and intended effect of said deed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1802.

APPROVAL, BONDS OF MORROW COUNTY—\$17,800.64.

COLUMBUS, OHIO, April 21, 1930.

Industrial Commission of Ohio, Columbus, Ohio