

Welfare, and The Huffman-Wolfe Company, Columbus, Ohio. This contract covers the construction and completion of Plumbing Contract for Cottage—Male (exclusive of Heating and Ventilating Contract), Massillon State Hospital, Massillon, Ohio, and calls for an expenditure of five thousand five hundred and nine (\$5,509.00) dollars.

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. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained, as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have 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,
EDWARD C. TURNER,
Attorney General.

2140.

APPROPRIATION—HOUSE BILL NO. 502, 87TH GENERAL ASSEMBLY,
DISCUSSED—APPROPRIATION FOR COMPLETE BUILDING—USE
OF UNUSED BALANCE—MANSFIELD ARMORY.

SYLLABUS:

1. *By the terms of Section 12, page 180, House Bill No. 502, 87th General Assembly, any appropriation made in such appropriation act for a building or structure is for a complete operating unit ready for use and occupancy except furnishings, including complete heating, lighting, ventilating and plumbing systems, when such systems are authorized or necessary, unless otherwise specifically provided in the item of appropriation.*

2. *Where a sum certain is appropriated by the Legislature to cover the cost of constructing a designated building and a contract to construct such building is let at a price less than the amount of the appropriation, the difference between the contract price and the amount of the appropriation, cannot be expended for the purpose of constructing a building other than the one authorized in the appropriation item, even though such additional building is to be used in connection with the one authorized in the item.*

COLUMBUS, OHIO, May 19, 1928.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date reading as follows:

"I herewith submit for your official opinion, the question of the legality of combining G-2 Special appropriation with G-2 regular appropriation, for the payment of building contracts. The specific case at issue is the Mansfield State

Armory, for which there has been made a special appropriation of \$60,000. Bids received in regular form will permit us to award this contract at a sum of approximately \$52,000. In order to complete this plant, it will be necessary to erect on the same site, a stable, which will cost approximately \$13,000. The question at issue is, can the \$8,000.00 balance from the special appropriation be supplemented by the sum of \$5,000.00 from G-2 regular appropriation for the purpose of erecting the stable?

Under present conditions with limited finances to complete the projects now under construction, it is necessary that we take advantage of every opportunity to save our funds, and curtail expenses wherever possible."

The "G-2" appropriation to which you refer is contained on pages 147 and 149 of House Bill No. 502, passed by the 87th General Assembly on April 21, 1927, entitled "An act—To make general appropriations" and is as follows:

"OHIO NATIONAL GUARD.

* * *

ARMORY FUND.

* * *

G. Additions and Betterments—

G-2. Buildings \$128,975 10"

This appropriation was apparently made in conformity with the provisions of Sections 5247, 5248 and 5249, General Code, which respectively provide as follows:

Section 5247. "The auditor of state shall credit to the 'state military fund' from the general revenues of the state, a sum equal to ten cents for each person who was a resident of the state, as shown by each last preceding federal census. Such fund shall be a continuous fund and available only for the support of the national guard and naval militia. It shall not be diverted to any other fund or used for any other purpose."

Section 5248. "The general assembly shall appropriate annually, and divide into two funds, the amount authorized by the preceding section. Such funds shall be respectively known as the 'state armory fund' and 'maintenance Ohio national guard fund.'"

Section 5249. "From the 'maintenance, Ohio national guard fund' the adjutant general shall pay all expenses incident to the maintenance of the various units of the national guard and Ohio naval militia, except such as are provided for from the 'state armory fund.' From the 'state armory fund' the adjutant general shall provide grounds, armories and other buildings for military purposes by leasing, purchasing or constructing the same."

The appropriation referred to by you as the "G-2 Special appropriation" is a reappropriation of funds appropriated by the 86th General Assembly and is contained on page 174 of House Bill No. 502. This item reads:

"ADDITIONAL ARMORIES.

G-2. Buildings—

* * *

Armory at Mansfield, Ohio (H. B. 517)..... \$60,000 00"

The original appropriation as set forth on page 149 of House Bill No. 517, 86th General Assembly, read:

"ADDITIONAL ARMORIES.

G. Additions and Betterments—

G-2. Buildings—

* * *

Armory at Mansfield, Ohio..... \$60,000 00"

As I understand your letter, the bids on the contract to build the armory at Mansfield were low enough to permit you to award the contract for \$52,000.00, i. e., for an amount \$8,000.00 less than the amount appropriated by the Legislature to construct this building, and your question is, may this balance of \$8,000.00 be combined with \$5,000.00 from the appropriation of \$128,975.10, designated "G-2. Buildings."

It is my opinion that your question must be answered in the negative. By the appropriation of \$60,000.00 for the armory at Mansfield the Legislature clearly indicated that a sum not exceeding this amount might be expended for the armory in question. By the express terms of Section 12 of House Bill No. 502 (p. 180), the appropriation of \$60,000.00 was for "a complete operating unit ready for use and occupancy". This section reads in part as follows:

"* * * The appropriations made herein for buildings or structures, including remodeling and repairs, shall be for a complete operating unit ready for use and occupancy except furnishings, and shall include complete heating, lighting, ventilating and plumbing systems, when such systems are authorized or necessary, unless otherwise specifically provided in the item of appropriation."

When the provisions of this section are considered it is clear that, if the stable which you desire to build be a part of the armory at Mansfield, the total cost of the armory and stable must be kept within the appropriation of \$60,000.00. That is to say, not over \$60,000.00 may be expended for the armory at Mansfield as a complete operating unit, including the stable, if the stable be a part of such unit. On the other hand, if the stable be not a part of the armory, you would not be authorized to expend any part of the appropriation of \$60,000.00, made by the Legislature to cover the cost of the armory, for a building not a part of the armory, even though such building were to be used in connection therewith. The appropriation of \$60,000.00 was made by the Legislature to cover the cost of constructing an armory at Mansfield and for no other purpose, and you would not be authorized to expend any part of this appropriation for a different purpose, simply because the State was fortunate enough to secure a contract for the construction of the armory at a price less than the amount appropriated. As above stated, the Legislature, when appropriating the sum of \$60,000.00 for the purpose in question, expressed its intention that not more than this amount should be expended, at the same time intending that the building should be built for less than this amount if possible. In other words, an appropriation item of the kind here involved simply means that a sufficient amount of money, not exceeding the amount specified, is appropriated for the purpose indicated in the item.

For these reasons, it is my opinion that the difference between the amount appropriated, viz., \$60,000.00, and the amount for which the contract is let, to-wit, \$52,000.00, to construct the armory at Mansfield cannot be augmented by funds from the appropriation to the Adjutant General, "Armory Fund * * * G-2. Buildings, \$128,975.10" and expended for the purpose of building a stable to be used in connection with the Mansfield Armory.

Respectfully,
EDWARD C. TURNER,
Attorney General.