

accordingly, I would feel that it would not come within the purview of Section 13393, *supra*.

In any event, if the general public be permitted to dance within the same building or enclosure where the so-called marathon dance is in progress, there can be no question but what the whole may be properly termed as a public dance, and, hence, subject to the licensing requirements of the section.

In view of the lack of detail in the description of the so-called marathon dance, I am unable to give you a more categorical answer to your question.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2605.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WESTERMAN CONSTRUCTION COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF POWER HOUSE AND EQUIPMENT AT LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT AN EXPENDITURE OF \$63,446.00.

COLUMBUS, OHIO, November 29, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a certain contract entered into by and between the State of Ohio through you, as the Director of the Department of Public Works, and the Westerman Construction Company, of Columbus, Ohio, the successful bidder for the construction of power house and equipment at Longview State Hospital, Cincinnati, Ohio, which contract calls for an aggregate expenditure of sixty-three thousand, four hundred forty-six dollars (\$63,446.00). With said contract, there have likewise been submitted files of the various proceedings had preliminary to entering into said contract and relating to the same.

Upon an examination of said files submitted, I find from a certificate over the signature of the Supervisor of Plans and Contracts, that plans, specifications, bills of material, estimate of cost and copy of notice to bidders with respect to said proposed improvement have been filed in the office of the Auditor of State as required by law.

There has also been submitted as a part of said files an encumbrance estimate and a certificate over the signature of the Director of Finance as President of the Controlling Board, that the moneys necessary to meet said contract have been released by said board.

There has further been presented to me in the files submitted, evidence showing that notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded.

Finally, the files indicate that the laws relating to the Workmen's Compensation have been complied with.

There is, however, a step in the statutory procedure which will require disapproval of this contract. It seems that the bond which must accompany the proposal when it is filed under the terms of Section 2319, General Code, is valueless, because of the fact that the attorney in fact who signed the bond for the Globe Indemnity Company had no power to execute a bond in a sum equal to the total amount of the proposal, as required by said Section 2319. The power of attorney which is enclosed in the files, discloses that the said attorney in fact had power

only to execute a bond in the sum of \$50,000.00 or less, while the face of the bond shows that it is in the penal sum of \$66,000.00.

Since the bond filed under the terms of said Section 2319, General Code, is both a bid bond and contract bond, it is essential that the agent who executes it must have had authority at the time it is filed to bind the company in an amount at least equal to the penal sum of the bond.

The bid which was accompanied by said bond was not a legal bid and therefore should not have been considered by your department.

For the foregoing reason, I am compelled to disapprove the contract submitted to me, and am returning to you herewith all the papers submitted in connection with the contract.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2606.

PROBATE JUDGE—RE-ESTABLISHMENT OF SUCH OFFICE BY ELECTORATE—TERM FOR WHICH ELECTED.

*SYLLABUS:*

*The election for the office of probate judge held on November 4, 1930, in Paulding County was for a full term of four years.*

COLUMBUS, OHIO, November 29, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This acknowledges your letter of November 13th requesting my opinion as follows:

“The following situation has arisen upon which I would like your legal opinion.

“In Paulding County, Ohio, in 1924 the electors of the county voted for the combination of the Common Pleas and Probate Courts with one judge serving as the judge of both courts. In 1928 another vote was taken upon the proposal of separating the same courts and establishing separate courts again. This proposal was adopted by the vote of the people and following certification of said election the governor of Ohio appointed a probate judge who was commissioned ‘For a term beginning February 9, 1929, and ending when a successor is elected and qualified.’

“The gentleman appointed judge was a candidate at the November 4, 1930, election for probate judge and was elected thereto. Today he presented a certificate of election from the Paulding County Board of Elections certifying that he was duly elected judge of the Probate Court of said county for the term of four years.

“Before issuing a commission the question thereof arises in my mind as to whether or not the gentleman elected is entitled to a commission for a four year term beginning February 9, 1931, or whether or not he is only entitled to a commission as probate judge to fill the period of time between the time his certificate of election was issued and February 9, 1933.

“In submitting this question I respectfully call your attention to the fact