

The question presented in your communication does not, in my opinion, call for any extended discussion. The provisions of Section 486-23, General Code, in stating what a person holding a position in the classified civil service may do, quite effectually states what he cannot do so far as your question is concerned. This section specifically provides that such person may vote as he pleases and that he may express freely his political opinions. It is quite evident that a person standing as a candidate for a public office or holding a public office is doing something more than voting and expressing his political opinions. The office of village councilman is an elective public office in no wise removed from politics in any sense of the word.

By way of specific answer to your question, therefore, I am of the opinion that a person in the classified civil service of the state cannot be a candidate for the office of village councilman or hold said office by election or appointment without violating the provisions of Section 486-23, General Code, above quoted.

In connection with the question presented in your communication, the provisions of Section 4218, General Code, should be noted. This section reads as follows:

“Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office.”

It will be observed that this section of the General Code provides that “no member of the council shall hold any other public office or employment, except that of notary public or member of the state militia.” You do not state the nature of the employment of the employe referred to in your communication but it is quite certain that he is holding some kind of public employment within the meaning of those terms as used in Section 4218, General Code. The inhibition contained in the provisions of this section against a member of the council of a village holding other public office or employment is not limited to an office in or employment by such municipality, but such inhibition extends to all public offices and employments. *State ex rel. vs. Gard*, 8 O. C. C. (n. s.) 599; 75 O. S. 606. Irrespective of the provisions of Section 486-23, General Code, above discussed, in the consideration of the particular question which you present, it is quite clear that under the provisions of Section 4218, General Code, above quoted, a person holding a position of public employment in the service of the state cannot, at the same time, legally hold the office of village councilman.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2061.

SPECIFICATIONS—PUBLIC BUILDINGS—LEGALITY AND ILLEGALITY DISCUSSED.

SYLLABUS:

Where specifications for a building, for use by an institution supported by the state, specify the products of certain manufacturers to the exclusion of all others, and

without providing that where such products are specified bids will be received based upon such products or their equal, such specifications are illegal. Where, however, the purpose of specifying the products of certain manufacturers is to inform the bidders of the type, style or class of the articles desired, and permit bidding upon articles of equal quality and utility, such specifications are legal.

COLUMBUS, OHIO, May 4, 1928.

HON. B. R. BUCKINGHAM, *Director, Bureau of Educational Research, Ohio State University, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“On April 6, 1928, the board of trustees of the Kent State Normal School authorized a survey of that institution, the same to be made by the Bureau of Educational Research of Ohio State University. One of the phases of this survey has to do with a Teachers Training School for which bids were opened on March 6, 1926. In the specifications for this building are certain items about which questions have been raised as to their legality. Copies of typical cases of these items have been made from the specifications and are attached hereto with the request for an opinion from your office.

Inasmuch as I am desirous of completing this survey before May 15, I shall appreciate this opinion at your earliest convenience.”

With said communication you have submitted excerpts from the specifications for a training school building at Kent State Normal School, Kent, Ohio, the following being the items submitted:

I. Page 64, Section 17A—

All unit ventilators shall be Model “SD” Univents as illustrated and described in the 1925 Univent catalog of the Herman Nelson Corporation of Moline, Illinois, and shall be installed in strict accordance with the manufacturer’s instructions.

II. Page 70, Section 7d—

All hot and cold water piping shall be insulated with Johns-Manville wool felt pipe insulation “Standard” one (1) inch thick, with an inner lining of asbestos paper.

III. Page 70, Section 9b—

Furnish and install Wirt and Knox unlined linen hose, nozzle, valve and rack, hose to be seventy-five feet in length and one and one-half inch in diameter with the Underwriter’s label.

IV. Page 76, Section 10b—

All catalog numbers mentioned are taken from the Edwin F. Guth Company, Catalog 15, unless otherwise noted. The following fixtures shall be furnished and installed complete in locations indicated, with Mazda lamps of the wattage shown.

V. Alternate I, Page 83—

This alternate includes the furnishing and installing of seats and desks for the entire building, same to be as manufactured by the American Seating Company and described in their catalog 225, as follows:

Furnish and install six hundred and fifty (650) American Universal Desks, movable, adjustable, pattern with book box, as directed.

Furnish and install twenty (20) Moulthrop Movable Chair Desks, Model A-X in Art Room, as directed.

Furnish and install sixty (60) American Universal Tablet Arm Chairs in Chemical and Physics Laboratories on the third floor, as directed.

Furnish and install two hundred and twenty-five (225) American Theatre Chairs 9012 in Assembly Room 100 as directed."

Upon investigation I find that the contract referred to in your communication was approved by this department on April 19, 1926, the approval opinion appearing in the Opinions of the Attorney General for 1926, at page 178. It is therefore assumed that this opinion is requested for future guidance rather than with a view of attacking the legality of the contract in question.

Inasmuch as Kent State Normal School is an institution supported by the state, Sections 2314, et seq., General Code, relating to the construction, alteration or improvement of public buildings are applicable and must be followed whenever it is determined or becomes necessary to construct, alter or improve any building or buildings for use in connection with said institution.

Sections 2314, et seq., General Code, prescribe a course of procedure to be followed in awarding contracts for the construction, alteration or improvement of public buildings, the aggregate cost of which exceeds three thousand dollars, and provide for the awarding of such contracts to the lowest bidders, after bids on a competitive basis have been received. Such competitive bids are invited through the medium of newspaper advertising, and Section 2314 requires the preparation in advance of such advertising of:

"definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needful information."

The purpose of requiring contracts to be let upon competitive bidding, after due advertisement, is to preclude favoritism on the part of public officials, in whom authority to make contracts is vested and to whom supervision of the execution of such contracts is intrusted, and to procure for the public the best possible price for the object sought.

Similar provisions are found in the law pertaining to school buildings, and the Supreme Court said in the case of *Perkins vs. Bright*, 109 O. S. 14, at page 17:

"The purpose of the statute is doubtless to enable school boards to have the school houses and other structures under their control erected and maintained at the lowest cost to the public consistent with the best material and workmanship."

In the case of *Ampt. vs. Cincinnati*, 17 O. C. C. 516, it was said:

"The first object of the law was to afford to the people who were to pay the cost of this work the assurance that it should be done for the least amount of money and these provisions were placed there to bring about that result. Of course, the law is founded upon the theory that the people are to get work which is the best possible to be had."

You have not submitted a complete set of the specifications from which the above excerpts were taken, and from all that appears therein it seems that bids based upon articles other than those specified would not be considered. If this be the fact, it seems clear that where, for instance, as in Alternate 1, page 83, supra, the specifications provide for seats and desks manufactured by the American Seating Company, the manufacturer of that particular article would have a distinct advantage over all other bidders and would have a virtual monopoly on that particular class of the work. The obvious result of such provisions in the specifications is clearly to destroy all competition, would defeat the very purpose of the law, and such specifications are therefore illegal.

In most of the specifications that have come to my attention, where the products of particular manufacturers are specified, the specifications also contain a general clause to the effect that where a particular product is specified bids will be received based upon furnishing that particular product or its equal. In other words, where the specifications permit bidding on equals, the purpose of specifying the product of a particular manufacturer is to inform the bidder of the type or style or class of the article desired rather than to limit the bids to that particular article. As stated above, I do not have before me a complete set of the specifications referred to in your communication and am, therefore, unable to determine whether or not the same contain a clause similar to that above referred to. If it appears that there is such a clause in the specifications and that the primary object in specifying the products of particular manufacturers is only to inform the bidders of the type, style or class of the articles to be furnished, then it is my opinion that such specifications are not illegal.

Summarizing and answering your question specifically, it is my opinion that where specifications for a building, for use by an institution supported by the state, specify the products of certain manufacturers to the exclusion of all others, and without providing that where such products are specified bids will be received based upon such products or their equal, such specifications are illegal. Where, however, the purpose of specifying the products of certain manufacturers is to inform the bidders of the type, style or class of the articles desired, and permit bidding upon articles of equal quality and utility, such specifications are legal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2062.

APPROVAL, BONDS OF THE VILLAGE OF WESTERVILLE, FRANKLIN
COUNTY—\$57,000.00.

COLUMBUS, OHIO, May 4, 1928.

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