

Code. The four issues, together with the bond dates, aggregate amounts, maturity dates and interest rates are as follows:

Issue Nos.	Bond Dates	Aggregate Amounts	Maturities	Interest Rates
9	1/1/39	\$12,000	1/1/69	3—3½—4%
10	1/1/39	24,000	1/1/69	3—3½—4%
11	1/1/39	12,000	1/1/69	3—3½—4%
12	1/1/39	9,000	1/1/69	3—3½—4%

The interest on each issue is payable semiannually on January 1 and July 1 in each year until the principal sum is paid, and the bonds are subject to call in whole or in part upon any interest paying date.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

757.

STATIONARY BOILER OR ENGINE—MORE THAN THIRTY HORSE POWER—“DULY LICENSED ENGINEER DIRECTLY IN CHARGE”—TEMPORARY ABSENCE—FACTS DETERMINE REASONABLE OR UNREASONABLE TIME—APARTMENT HOUSES—SECTION 1047 G. C.

SYLLABUS:

1. *Section 1047, General Code, requires a duly licensed engineer to be at all times directly in charge of any boiler of more than thirty horsepower, such as are used in apartment houses, during the time said boiler is in operation.*

2. *Such engineer may be temporarily absent from said boiler if such absence is not for an unreasonable time, the reasonableness of the time absent to be determined from the facts of each particular case.*

COLUMBUS, OHIO, June 13, 1939.

HON. GEORGE A. STRAIN, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR: This is to acknowledge a recent request from your office for an opinion, which reads as follows:

“We have in the state of Ohio certain apartment houses that have more than one boiler or unit for heating purposes.

Under the reading of Section 1047 of the General Code, state of Ohio, we would like to have a formal opinion as to whether such apartment houses require more than one licensed fireman or engineer, and if so under what circumstances?”

On March 1, 1900 (94 v. 33), the legislature passed an act entitled “An Act—For the better protection of life and property against injury or damage resulting from the operation of steam boilers and engines by incompetent engineers and others and to repeal an act therein named.” This act became Sections 1039 to 1057, both inclusive, of the General Code. These sections have been amended from time to time and Section 1047, General Code, in so far as pertinent to your inquiry, now provides:

“No person shall operate a stationary boiler or engine of more than thirty horsepower without obtaining a license to do so, as provided in this chapter * * *. No owner or user or agent of an owner or user of any such steam boiler or engine shall permit it to be operated *unless it is directly in charge of a duly licensed engineer.*” (Italics the writer’s.)

Although your request does not specifically say so, I am assuming that your question arises where boilers of more than thirty horsepower are in use.

In Opinion No. 652 for the year 1919, found in Volume II, page 1187, Opinions of the Attorney General for the said year, the then Attorney General made the following ruling, as is disclosed by the third branch of the syllabus:

“Whether such a boiler or engine is being operated ‘directly in charge of a duly licensed engineer,’ as required by said section 1047, General Code, depends upon the question whether such engineer is in such relation to the boiler or engine that he can give it the care and attention necessary to its operation for entire safety to life and property.”

The question whether a steam boiler or engine is directly in charge of a licensed engineer is a question of fact and no definite answer available for any and all circumstances can be given. The law does not expressly require that each separate boiler be in charge of a different licensed engineer.

The test to determine whether or not a steam boiler or engine is directly in charge of a duly licensed engineer is to be found in a consideration of the safety to life and property. The licensed engineer must be in

such a relation to the boiler so that he can give it the care and attention necessary to its operation with entire safety to life and property; then it can be properly said that the boiler is "directly in charge of a duly licensed engineer," as provided by Section 1047, supra. The phrase "directly in charge" is not an established legal formula, but a phrase whose meaning is to be sought under the circumstances of each individual case. This was the view taken in the case of *Soeder v. State*, 14 O. L. Abs. 212. The following ruling was made as is disclosed by the second branch of the syllabus:

"While the mere temporary absence of a licensed engineer in charge of the operation of a steam boiler would not be a violation of § 1047 G. C., the absence of such engineer for forty-five minutes while a boiler within the limits fixed by this statute is in operation, is beyond the permissible absence contemplated by the statute."

The court went on to say that "directly in charge" means that such employe would be within such convenient reach as to reasonably superintend the operation of the steam boiler and that therefore an absence of forty-five minutes is beyond the reasonable limit contemplated by the statute.

Thus it is apparent that with regard to such boilers the law contemplates that at all times they shall be attended, supervised and managed by a duly licensed engineer. As stated above, the meaning of the phrase "directly in charge" must be determined from the facts of each individual case. Section 1047, supra, being penal must be strictly construed in the light of the circumstances.

In Opinion No. 2475 for the year 1928, Vol. 3, p. 1990, the then Attorney General made the following ruling:

"The only requirement of the law is that such boilers shall constantly be in the actual custody, supervision and management of a licensed operator. As long as a licensed operator is on actual duty, supervising and caring for such boiler or boilers, it is my opinion that no prosecution will lie.

In order that I may not be misunderstood, it is my opinion that the law requires more than mere physical presence of a duly licensed operator on or about the premises. Such an operator must be present and actually have charge of such boilers, even though the manual labor in connection therewith be carried on by persons not licensed to operate such boilers."

It thus appears in the light of the above authorities that it is impossible for me to definitely say as to the period of time an engineer may remain

away from a boiler, and at the same time be considered to be in attendance and being directly in charge of said boilers.

The circumstances of each individual case must be considered and it is definitely a question of fact, one on which different minds might reach different conclusions. The only measuring stick available is the case of *Soeder vs. State*, supra, where the court held that the absence of an engineer for a period of forty-five minutes was beyond the permissible absence contemplated by the statutes.

Therefore, in answer to your question, I am of the opinion that an apartment house will require more than one licensed engineer when from the circumstances of a particular case it is disclosed that the engineer is not in actual custody, supervision and management as is contemplated by Section 1047, General Code, and life and property are thereby endangered.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

758.

CONTRACT—STATE WITH THE SUPERIOR ELECTRIC ENGINEERING COMPANY, ELECTRICAL WORK, FACULTY ASSEMBLY UNIT, OHIO STATE UNIVERSITY, COLUMBUS.

COLUMBUS, OHIO, June 13, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, the contract between The Superior Electric Engineering Company, an Ohio corporation, and the State of Ohio, acting through you as Director of the Department of Public Works for the Board of Trustees of the Ohio State University, Columbus, Ohio, for the construction and completion of Electrical Contract (Division 4, Item XVII) for the Faculty Assembly Unit on the campus of the Ohio State University as set forth in the General Conditions and supplement to specifications for same, and as covered by revised form of proposal dated May 22, 1939, submitted by said party of the first part, which form of proposal is made a part of this contract. This contract calls for an expenditure of \$5,790.00.

You have submitted the following papers and documents in this connection: Form of proposal containing the contract bond signed by the Indemity Insurance Company of North America; its power of attorney for the signer; its certificate of compliance with the laws of Ohio relating to surety companies; revised estimate of cost; notice to bidders; proof of publication; division of contract; tabulation of bids; Workmen's Com-