

2312.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HELLER-MURRAY COMPANY, OF YOUNGSTOWN, OHIO, FOR CONSTRUCTION AND COMPLETION OF A STATE ARMORY BUILDING AT YOUNGSTOWN, OHIO, AT COST OF \$89,784.00—SURETY BOND EXECUTED BY THE NEW YORK INDEMNITY COMPANY.

COLUMBUS, OHIO, March 24, 1925.

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

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Adjutant General, and the Heller-Murray Company, of Youngstown, Ohio. This contract covers the construction and completion of a state armory building at Youngstown, Ohio, and calls for an expenditure of \$89,784.00.

You have submitted the certificate of the director of finance to the effect that there is \$55,000 of state funds available to apply on said contract, together with \$45,000 contributed by the citizens of Youngstown, which fund is on deposit in the Commercial National Bank of Youngstown to the credit of the Adjutant General. There has further been submitted a contract bond upon which the New York Indemnity Company 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,

C. C. CRABBE,

Attorney General.

2313.

CITY SCHOOL DISTRICT—BOARD OF EDUCATION HAS NO AUTHORITY TO PAY TRAVELING EXPENSES OF MEMBERS AND OFFICIAL REPRESENTATIVES WHERE NO SERVICE FUND EXISTS.

SYLLABUS:

In view of the provisions of section 7704 General Code, payment of claims for traveling expenses of members of a board of education, or their "official representatives," in a city school district where no "service fund" has been established as required by said section, could not be justified and is illegal. Such payment being illegal, subsequent action of the board of education by a resolution, as set forth in the instant case, attempting to validate same, would be of no effect.

COLUMBUS, OHIO, March 24, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of recent date, in which you submit a statement and request for the opinion of this department con-

cerning findings made by your department in connection with the affairs of the board of education of a certain city school district.

Your statement reveals that the findings made were for expenses of certain officers and employes of said board of education, for various trips. These trips you classify under two general heads:

First, trips made in connection with the business of the district, such as to purchase material and equipment and to investigate school buildings in other cities, in connection with a building program; and

Second, expenses of trips in attending conventions of school officers.

You further designate these findings with reference to the provisions of section 7704 General Code, and also with reference to the amendment on September 18, 1921, of that section.

Your statement further indicates that the attention of the board of education in question was called to the matter of the findings made and that said board, under date of January 3, 1925, passed the following resolution:

"Whereas, certain employes of the board of education of the city school district of the city of Toledo, Lucas county, Ohio, by and with the knowledge and consent of the board, incurred certain expenses necessarily incident to attendance at educational meetings and to trips made in connection with the business of the board; and

"Whereas, authority to incur expenses was given said employes respectively by the board, but no record of such authority was made by the clerk; and

"Whereas, the names of said employes, the trips by them made and the expenses by them incurred respectively are as follows:

(Here appears the list.)

"Now, therefore, Be it resolved by the board of education that the minutes of the meetings of the board held next prior to the various dates upon which said expenses were incurred as above set forth be amended so as to show that the board authorized said expenses to be incurred; and

"Be it further, Resolved, that the act of the treasurer of the board in reimbursing such employes for the expenses by them respectively incurred, as authorized by the board, be and the same is hereby approved.

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"JULIAN H. TYLER,

"Clerk Pro Tempore.

"W. E. WRIGHT,

"Vice President and Acting President."

Your question is as follows:

"You are respectfully requested to render this department your opinion as to the authority of the board to correct its records by this resolution and to what extent the action of the board should be considered to affect the findings of the examiner above referred to."

It is believed your inquiry may be properly determined by application of the provisions of section 7704, General Code, and without giving particular consideration to the effect of the resolution of January 3, 1925, as above set forth. Section 7704, General Code, reads as follows:

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city

school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such city school district may by resolution set aside from the contingent fund a sum not to exceed five cents for each child so enrolled, such sum of money to be known as the 'service fund' to be used only in paying the expenses of such members actually incurred in the performance of their duties, (or of their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge); such payments to be made only on statement of the several members, or their official representatives furnished at the last meeting held in each month."

Examination of this section discloses that its provisions apply only to city school districts and authorize the establishing of a service fund in city school districts; such service fund, in the language of the section, to be used only in paying the expenses of such members actually incurred in the performance of their duties, and after September 7, 1921, the date of the amendment, wherein the language set forth in parentheses in the above quotation was added to the section, the provisions of the section were then such as permitted the use of said service fund in paying such expenses incurred by not only the members of the board of education but their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge.

It will also be noted in this connection that the provision permitting payment of the expenses of the official representatives of the board of education is limited to expenses incurred when such official representatives are sent out of the city school district.

Further attention is directed to the provision whereby the service fund is limited to a sum not to exceed five cents per pupil enrolled and the provision that the clerk of such board shall each year certify the number of pupils enrolled in such district.

In view of these provisions, it is believed the amount of such fund is strictly limited and should be established anew each year.

The last clause of the section also provides payment of such claims for such expenses is to be made only on statement furnished at the last meeting of the board held each month. This provision was doubtless intended to prevent the accumulation for periods longer than one month of such claims, and also to insure prompt presentation by those incurring the same.

In the statement you submit it appears that no service fund was established at any time during the period covered by the examination, either before the effective date of the amendment (September 7, 1921), or thereafter.

In view of this fact, it is not believed that the payment of any of the expense claims incurred either by the members of the board or their official representatives would be valid.

It is believed the provision by the legislature establishing a service fund would be an inhibition against payment of such expenses other than from such service fund and would also prohibit the expenditure in any year of a greater amount than five cents for each child enrolled.

Therefore, in view of the fact that in the case you present no service fund was at any time established and because of the failure of the board to establish a service fund, such fund could not be properly limited as provided in section 7704,

I am of the opinion that the payment of the claims for traveling expense as recited in your inquiry was illegal.

Respectfully,
C. C. CRABBE,
Attorney General.

2314.

CLASSIFIED SERVICE—SCHOOL JANITOR IS NOT EXEMPTED UNDER PROVISIONS OF SECTION 486-8 G. C.

SYLLABUS:

A school janitor may not be exempted from the classified service under the provisions of paragraph 12 of section 468-8 of the General Code.

COLUMBUS, OHIO, March 24, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgement is made of your communication inquiring whether a municipal civil service commission may legally exempt the position of school janitor from the classified service, and provide for the appointment without competitive examination, under the provisions of paragraph 12 of section 486-8.

The section to which you refer, in so far as your question is concerned, provides that "such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service" shall be in the unclassified service. However, that section provides that such exemptions shall be by order of the commission, duly entered on the records of the commission with the reasons for such exemption.

It would seem that in the first instance, whether or not such a position is an unskilled labor position, would be a question of fact to be determined by the commission. However, it has been brought to my attention that it has been the policy of the state civil service commission to consistently hold that a school janitor is within the classified service, and cannot be exempted under this provision.

You are further referred to the case of *State ex rel. Bartholomew vs. Witt, Treas.*, 3 Ohio App. Reps., 414, wherein the status of a janitor employed by the board of education of Cincinnati was considered. The court held, as evidenced by the second branch of the syllabus, that:

"Such janitor of a public school building is within the classified service, but those who were legal incumbents of the position at the time of the passage of the civil service act are entitled to hold over, subject to a noncompetitive examination."

In the body of the opinion it was clearly pointed out that such a position did not fall within the exceptions of the section to which you refer.

In view of the foregoing you are specifically advised that a school janitor may not be exempted from the classified service under the provisions of paragraph 12 of section 486-8 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney General.