

to Article XII thereof of Section 13. HERBERT S. DUFFY,
Attorney General.”

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1162.

BOARD OF TRUSTEES—KENT STATE UNIVERSITY—MAY
EXPEND DORMITORY FUNDS, WHEN.

SYLLABUS:

The Board of Trustees of Kent State University, under Section 7923-1, General Code, is authorized to expend dormitory funds for the building, maintenance and equipment of dormitories, subject to the duty imposed by Section 154-40, General Code, upon the Department of Public Works.

COLUMBUS, OHIO, September 15, 1937.

HON. J. O. ENGLEMAN, *President of Kent State University, Kent Ohio.*

DEAR SIR: I am in receipt of your recent request for my opinion, which reads as follows:

“The growth of the University is being hampered seriously by the inadequacy of its dormitory facilities and the fact there is a scarcity of rooms in private homes in the University district. To meet this urgent housing need the Board of Trustees are proceeding under Section 7923-1, G. C., to borrow funds to build additional dormitories and to issue notes evidencing such indebtedness and is pledging such part of the receipts of the operation of such dormitories under their control to secure the payment of such indebtedness.

The Board of Trustees has secured the services of an architect, as provided under Section 2314, G. C., who is preparing plans, estimates, etc. The Board has also proceeded to borrow funds under Section 7923-1, G. C., to finance such additional dormitories. To have these buildings ready for occupancy by September, 1938, in order to meet our great housing need, and in order to secure the revenues from such additional

dormitories necessary to provide funds to meet our sinking fund requirements, it wishes to do everything possible to expedite the matter of advertising for bids, the awarding of contracts, and all other necessary steps in order that these dormitories will be ready for occupancy in September, 1938.

If these buildings are not ready by September, 1938, it will be somewhat difficult to fill them in the middle of the school year.

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Question: Has the Board of Trustees authority under Section 7923-1 to make contracts for and supervise the construction of additional dormitories and the right to receive bids and award contracts; provided, however, that all steps as outlined in Section 2314 to 2332 both inclusive are complied with."

Section 7923-1, General Code, enacted by Senate Bill 348, effective August 12, 1937, reads as follows:

"That the boards of trustees of Kent State University, Miami University and Ohio State University are hereby authorized to construct, equip, maintain, and operate upon sites within the campuses of the above universities respectively as their respective boards may designate therefor, buildings to be used as dormitories for students and members of the faculty and servants of said state universities, and to pay for same out of any funds in their possession derived from the operation of any dormitories under their control, or out of funds borrowed therefor, or out of funds appropriated therefor by the general assembly of Ohio, or out of funds or property received by gift, grant, legacy, devise, or otherwise, for such purpose, and to borrow funds for such purposes upon such terms as said boards may deem proper, and to issue notes or other written instruments evidencing such indebtedness, provided, however, that such indebtedness shall not be a claim against or a lien upon any property of the State of Ohio or any property of or under the control of said boards of trustees excepting such part of the receipts of the operation of any dormitories under their control as the said board of trustees may respectively pledge to secure the payment of any such indebtedness."

Section 154-40, General Code, relative to the powers and duties of the Department of Public Works, reads in part as follows:

“In addition to the powers so transferred to it, the department of public works shall have the following powers:

(1) To prepare, or cause to be prepared, general plans, specifications, bills of materials, and estimates of cost for the public buildings to be erected by the state departments, offices and institutions. Nothing in this section shall be so construed as to require the independent employment of an architect or engineer as provided by G. C. §2314, in the cases to which said section applies.

(2) To have general supervision over the erection and construction of public buildings erected for the state government, or any department, office or institution thereof, and over the inspection of all materials previous to their incorporation into such buildings or work.

(3) To make contracts for and supervise the construction and repair of buildings under the control of the state government, or any department, office or institution thereof.”

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Your inquiry is concerning the compliance with Sections 2314 et seq., General Code, in accordance with the provisions of Section 7923-1. A reading of Section 7923-1, in the light of the fact that in the past there were various dormitory funds in the hands of the various state universities, the status of which was questionable, shows a legislative intent to expressly release these dormitory funds for expenditure in the construction, equipment, maintenance and operation of dormitories for students and members of the faculty.

Under the provisions of Section 154-40, General Code, the Director of Public Works is vested with general supervisory powers over the erection and construction of public buildings erected for any state institution and to make the necessary contracts for and on behalf of the state institution in connection with the construction of such buildings.

Sections 2314, et seq., General Code, provide generally for the procedure in obtaining architects' and engineers' drawings and estimates on proposed state buildings, the form of proposal, form of bond and how contracts are entered into with a low bidder. It is provided that the forms shall be prescribed by the state building commission and shall be to the satisfaction of said commission.

Section 154-40 is one of many sections enacted at the same time, all of which comprise what is now termed the administrative code. This sweeping enactment specifically abolished the old state building commission, among others, and vested its powers and duties in the

new department of public works. Among the powers and duties of this new department are those set forth above in Section 154-40, General Code, which was effective January 4, 1928.

It will be noted that the special powers enumerated in Section 154-40, General Code, repeal the provisions of Sections 2314, et seq., General Code, insofar as such provisions are inconsistent with the provisions of Section 154-40, General Code.

A study of the provisions of Section 7925-1, General Code, reveals that the language is insufficient to take the same out of the operation of the provisions in the Administrative Code, namely, Section 154-40, General Code, providing for the Director of Public Works entering into such contracts and his supervision thereover during construction.

It has been the administrative practice since the enactment of the Administrative Code to have the department of public works complete the routine work in connection with state building contracts, other than highway, such as advertising the project, opening up the bids and entering into the contracts upon the approval by the institution or department for whom the work was to have been done. Inasmuch as Section 154-40, General Code, operates directly upon Sections 2314, et seq., General Code, you are unable to comply with the last mentioned sections without the department of public works doing this routine and supervisory work for you.

It should be noted that Section 2314, General Code, provides for the employment of an architect or engineer to prepare plans, specifications, etc., for the improvement or the construction, and Section 154-40, General Code, provides that the provision in Section 2314 is not a requirement that the services of a private architect or engineer be procured, because under subsection 1 of Section 154-40, General Code, the department will prepare or cause to be prepared plans and specifications, etc. The state architect and engineer might complete this work, but it can be readily seen that in such cases it would be physically impossible for the state architect and engineer to do this work, and therefore it would be necessary to contract with a private architect or engineer to perform this work under separate contract.

I am of the opinion, therefore, that the contract for the services of an architect required in connection with the new dormitory for your institution must be entered into by the Director of Public Works as representing the State of Ohio and acting on behalf of the trustees of the Kent State University, and the employ of such architect under the circumstances must be to the satisfaction of the Department of Public Works.

I am further of the opinion that the steps necessary to enter into a contract for the construction and equipment of the dormitories you have

in mind must be entered into by the Director of Public Works on behalf of the State of Ohio, acting for the Board of Trustees of the Kent State University. The Director of Public works will then, in his general supervisory capacity, supervise the construction of the dormitories and materials going into the buildings. This conclusion, of course, calls for the formal entering into these contracts to be made by the Director of Public Works. The contract for the services of the architect which you already have hired will be entered into by the Department of Public Works if the employment is satisfactory to said department.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1163.

TWENTY-FIRST AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES—STATE MAY PROHIBIT OR REG-
ULATE THE IMPORTATION OF INTOXICATING LIQUOR
—WINE MAY BE IMPORTED, WHEN.

SYLLABUS:

1. *By reason of the Twenty-first Amendment to the Constitution of the United States, the State of Ohio may prohibit or regulate the importation of beer or intoxicating liquor into the State of Ohio, even though said transportation is in interstate commerce.*

2. *The holder of an A-3 permit issued by the Department of Liquor Control may only import wine or spirituous liquor for "blending or other manufacturing" purposes.*

COLUMBUS, OHIO, September 16, 1937.

HON. J. W. MILLER, *Director, Department of Liquor Control, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows :

"May I have your opinion on the following question :

Can the holder of a Class A-3 permit, a rectifier, who is permitted to import wine for manufacturing and blending purposes, import wine and brandy for sale outside the State of Ohio and carry such a stock in his place of business in Ohio?"