

1565.

## PUBLIC BUILDINGS—PLANS FILED IN STATE AUDITOR'S OFFICE BECOME STATE PROPERTY AND MAY NOT BE WITHDRAWN.

*SYLLABUS:*

*When plans are prepared and approved, in pursuance of the provisions of Sections 2314, et seq. of the General Code, they shall be deposited, and safely kept in the office of the Auditor of State, as the property of the State, and there is no provision of law authorizing the Auditor of State to permit said plans to be withdrawn.*

COLUMBUS, OHIO, February 27, 1930.

HON. JOSEPH T. TRACY, Auditor of State, Columbus, Ohio.

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

“When a set or sets of plans, specifications, estimate of cost, bill of materials, form of proposal, copy of advertisement, or other papers pertaining to a contemplated improvement have been filed in the Department of the Auditor of State in accordance with Section 2314 et seq., General Code of the State of Ohio, said plans etc., duly approved by the originating department, the Division of Workshops and Factories of the Department of Industrial Relations and the Department of Health, has the originating department, division, commission or officer legal authority for withdrawing the same?”

Does the Adjutant General of the State of Ohio have authority to withdraw plans, etc., approved, filed and accepted by this Department for contemplated armory construction, the same according to Opinion No. 1507 not being of interest or moment to the Director of Public Works who normally has charge of the public buildings of the State of Ohio?”

Opinion No. 1507 issued to the Adjutant General under date of February 8, 1930, held, as disclosed by the syllabus:

“The Adjutant General may employ an independent architect under the provisions of Section 2314 of the General Code, to perform the services as required in said section in connection with the construction of an armory.”

In said opinion it was pointed out that the authority of the Adjutant General to construct armories was never transferred to the Department of Public Works but that in the construction thereof the said Adjutant General was governed by the provisions of Section 2314 of the General Code. Section 2314, General Code, is applicable to all officers of the State who construct any building or structure for the use of the State or any institution thereof, the aggregate cost of which exceeds \$3,000. The section further provides:

“ \* \* \* the owner shall make or cause to be made, by an architect or engineer \* \* \* full and accurate plans.”

Section 2315, General Code, provides that the plans, details, bills of material, specifications of work, etc., shall be submitted to the building commission, which consists of the Governor, Secretary of State and Auditor of State, for its approval. However, in this connection, it will be noted that by the express provisions of Section 154-40, General Code, the Director of Public Works now performs the duties of said

building commission. Said Section 2315, General Code, with reference to said plans, specifications, etc., further provides :

“ \* \* \* If so approved the same shall be deposited and safely kept in the office of the Auditor of State as the property of the state.”

Section 2316, General Code, relates to the giving of bond to be submitted by the bidder, conditioned to the effect that he will enter into a contract within ten days if the contract is awarded to him and that he will complete the contract in accordance with the terms thereof.

Section 2317, General Code, relates to the giving of public notice, the form of proposals, etc.

Section 2319 relates to the opening of bids, and the awarding of the contract.

Section 2320 relates to the procedure in re-advertising the contract, in the event that all bids are rejected.

Section 2321, which it is believed is material to consider in connection with your inquiry, provides :

“After they are so approved and filed with the Auditor of State, no change of plans, details, bills of material or specifications shall be made or allowed unless the same are approved by the state building commission. When so approved, the plans of the proposed change, with detail to scale and full size, specifications of work and bills of material shall be filed with the Auditor of State as required with original papers. If such change affects the price, the amount thereof shall likewise receive such approval.”

Section 2322, General Code, provides :

“Whenever such change is approved by the state building commission, accepted in writing by the contractor and filed with the Auditor of State, the same shall be considered as being a part of the original contract, and the bond theretofore executed shall be held to include and cover the same.”

Analyzing the provisions of Sections 2321 and 2322, last above quoted, it would appear that these sections have no direct application to your inquiry for the reason that they have reference to a change of plans after the contract has been awarded. While undoubtedly, if the owner determined not to proceed with the construction of the building under a given set of plans he would not be required to do so, especially prior to the awarding of the contract, I find no authority to completely withdraw a set of plans when they have once been approved and filed.

By the express terms of Section 2314, General Code, such plans, when approved, are to be deposited and safely kept in the office of the Auditor of State as the property of the State.

While no doubt the owner could refuse to proceed further after said plans were filed, and file an entirely different set of plans, it is believed that in your capacity of Auditor of State, there is not legal authority to surrender said plans. When they are once filed they become a part of the public records of the State, and it is one of your duties to safely keep them until such time as the Legislature expressly authorizes some other disposition of them.

From what has been said, it is obvious that the conclusion is the same, irrespective of whether it is the Director of Public Works or the Adjutant General, because both of said officers, in the construction of public buildings, are governed by the provisions of Sections 2314, et seq. of the General Code.

You are therefore specifically advised that when plans are prepared and approved, in pursuance of the provisions of Sections 2314, et seq., of the General Code, they shall be deposited and safely kept in the office of the Auditor of State, as the property of the State, and there is no provision of law authorizing the Auditor of State to permit said plans to be withdrawn.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1566.

ELECTION LAW—HOW COMPENSATION OF DEPUTY CLERK AND ASSISTANTS IN BOARD OF ELECTIONS PAID BY COUNTY—HOW EXPENSES OTHER THAN SALARIES CERTIFIED AND PAID—REGISTRATION EXPENSES PAID BY COUNTY AND CHARGED BACK AGAINST SUBDIVISION.

SYLLABUS:

1. *The entire compensation of the deputy clerk and other assistants and employes in the office of the board of elections must, under the provisions of Section 4875-20, General Code, be paid by the county in the manner therein provided.*
2. *The expenses of the board of elections in each county shall be paid from the county treasury and payments made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk upon warrants of the county auditor.*
3. *Such registration expenses as are chargeable to subdivisions under the provisions of Section 4785-20, General Code, should be paid by the county and the amount so paid withheld by the county auditor from the moneys payable to such subdivisions at the time of the next tax settlement.*

COLUMBUS, OHIO, February 28, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“I would appreciate very much your opinion on the following matters:

In Ashtabula County, the board of elections has for many years elected a deputy clerk and an assistant known as a deputy registration clerk, both the deputy and deputy registration clerk having headquarters in the office of the board in the city of Ashtabula, a registration city. Last May, H. K. Brainard was elected deputy clerk and Helen G. Humphrey was elected as Deputy Registration Clerk, each to serve for one year. Their compensation was at the time of their election, fixed by the board as follows: H. K. Brainard to receive \$400.00 a year and Helen G. Humphrey \$200.00 a year. By virtue of Section 4877 of the old Code, this compensation was equally divided between the city and the county. The appointments were also made by virtue of Section 4877 of the old Code. On January 1, 1930, this section was superseded by the new election code and particularly by Sections 4785-15 and 4785-20.

Under the old Code, all other election expenses except salaries were certified by the board to the board of county commissioners for their approval and then paid by warrants of the auditor. The old sections of the Code,