

in the chain of title which, although executed in a very anomalous manner, is nevertheless legally valid. I refer to the deed dated April 20, 1898 (page 5, Abstract), in which the four executors of Josiah Sibley made a conveyance to William H. Dodds. It appears that although this deed was signed by, and properly witnessed as to, each of the four executors, it was acknowledged by only one of them. However, it further appears that each one of the other three executors signed the instrument in the state of Georgia; that the signature of each of these three was witnessed by *two persons* and that one witness for two of the remaining three executors was a *justice of the peace*, while one of the witnesses for the third of the three remaining executors was a *notary public*. At the time this instrument was made, according to the laws of Georgia, deeds executed in Georgia, conveying Georgia lands, were not required to be acknowledged, if attested before at least *two* witnesses, one of whom was a judge of a court of record, *justice of the peace*, *notary public*, or clerk of the superior court of the county (Gaugue's Notary's and Conveyancer's Manual, Second Revised Edition, 1897, page 316). At the same time, section 4111 of the Revised Statutes of Ohio provided:

“ * * * and all deeds, * * * and other instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments situate within this state, executed and acknowledged, or proved, in any other state, * * * in conformity with the laws of such state * * * or in conformity with the laws of this state, shall be as valid as if executed within this state, in conformity with the foregoing provisions of this chapter.”

It therefore results that this deed having been executed in the state of Georgia in accordance with the laws of Georgia is validated by the express terms of an Ohio statute declaring that deeds executed in another state for the conveyance of lands in Ohio are valid if executed in conformity with the laws of the state where the execution occurred.

Encumbrance estimate No. 819 is in proper form and shows that there remains in the proper appropriation account a sufficient balance to pay the purchase price of said land.

The warranty deed executed by Volney S. Taylor and Carl W. Miller to the state of Ohio is in proper form, with the release of dower interests, and conveys a fee simple title to the state of Ohio.

Enclosed please find all of the papers, enumerated above, which you submitted to me.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3189.

CITY COUNCIL—UNAUTHORIZED TO DESIGNATE PERSONS WITH WHOM CONTRACT, FOR PREPARING PLANS AND SUPERVISING CONSTRUCTION OF SEWAGE DISPOSAL PLANT, SHALL BE MADE.

SYLLABUS:

The council of a city which is about to construct a sewage disposal plant, may

authorize a contract for the purchase of the services of engineers for the purpose of preparing plans and supervising such undertaking, but may not, in view of the provisions of section 4211, of the General Code, designate the persons with whom such contracts shall be made.

COLUMBUS, OHIO, April 29, 1931.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, requesting my opinion upon a question presented in a letter directed to you from the Solicitor of the city of Delphos. It appears that the city of Delphos has issued notes in the sum of \$99,000.00 in pursuance of an order made by the Director of Health, in accordance with Sections 1259 and 1259-1 of the General Code, in anticipation of the issuance of bonds, for the purpose of constructing a proper sewage disposal plant in order to prevent the pollution of certain streams. The following, which is quoted from the Solicitor's letter, in view of what has heretofore been stated, will be sufficient to indicate the question presented:

“ * * * the Council passed an ordinance authorizing the Director of Public Service to enter into a contract with G. A. R., consulting engineer of Canton, Ohio, for the preparation of the necessary detailed plans and specifications for said plant. This ordinance was duly approved by the Mayor and the Director of Public Service now refuses to carry out the order for the reason that he maintains that the City Council exceeded its authority in naming the engineer. Mr. R. has had charge of the preliminary investigation on this job and by reason thereof, is, in the opinion of the Council, in better shape to proceed with the completion of the project than a person who would now come in as a stranger, and for that reason the Council unanimously directed the employment of Mr. R.

As the City Solicitor and legal advisor for the Council and other municipal offices and officers, I have advised that, inasmuch as competitive bidding is not a requirement when professional services are involved, in my judgment, the Council had a right to designate the employment of a certain engineer.”

The practice of a municipality contracting with engineers for special purposes is so universal as to scarcely require any citations of authority. It is likewise established that a firm of engineers may be employed because it is a contract for the furnishing of a certain service, as contradistinguished from the creation of an official position or employment. See Opinions of the Attorney General for 1928, page 2660. It is also well established that such services are non-competitive in their nature, and therefore the laws requiring contracts to be let in pursuance of competitive bidding do not have application.

In connection with the inquiry submitted, there is an opinion found in Opinions of the Attorney General for 1923, page 164, which will be noted. On page 167 thereof, the following is stated:

“From the foregoing it would seem that inasmuch as council must make the appropriation for the necessary fund it will be within the power of such council to attach such conditions to the expenditure of the same as in its judgment is necessary and proper.”

And again, the following appears in said opinion :

"It would follow that if council appropriates a certain sum for the employment of an engineer to prepare plans undoubtedly it would be authorized to designate what engineer or firm of engineers should be employed. It would further appear that the adoption of any plans which would involve an expenditure of money would be a proper matter upon which council should act. Likewise, the selection of a site and the purchase of land would be a matter which the council undoubtedly should control in its action authorizing such purchase, and it would further appear that in its action providing for such improvement, subject to the approval of the board of health, such council could determine the source from which such water supply should be taken."

However, in examining said opinion it will be observed that the same was based upon statutes which pertain to villages rather than those relating to cities. It appears that in the case at hand, a city is involved and it therefore becomes pertinent to consider Section 4211, General Code, which reads :

"The powers of council shall be legislative only, and it shall perform no administrative duties whatever and it shall neither appoint nor confirm any officer or employe in the city government except those of its own body, except as is otherwise provided in this title. All contracts requiring the authority of council for their execution shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate, and after authority to make such contracts has been given and the necessary appropriation made, council shall take no further action thereon."

A great many opinions have been rendered by this office construing the provisions of the section last above mentioned. The conclusion seems to be that in case of a city, the council may only authorize a contract and make an appropriation therefor, and the actual entering into the same must be done by the Director of Public Service.

In an opinion found in Opinions of the Attorney General for the year 1916 at page 297, it was indicated that council could not in the absence of a request by the city solicitor employ special counsel to assist him. It further indicated that when such request is made by the solicitor "the exclusive power of selection or appointment rests with such solicitor." Also on page 125 of the same volume it was held as disclosed by part of the syllabus :

"An engineer employed on such an improvement is a 'person' employed within the department of public service and his salary must, therefore, be fixed by council under the provisions of section 4314, G. C., before he can be employed. Council in fixing such salary is not authorized to direct the employment of a certain engineer."

In an opinion found in Opinions of the Attorney General for 1918, page 1542, the following is stated :

"Without going into detail, it is familiar statutory law that the council of a village possesses the power to enter into contracts to a much greater degree than does the council of a city. Indeed, it may be safely

asserted, as a general proposition applicable to the facts now under consideration at any rate, that the council of a city has no contractual power. Nowhere is this better expressed than in General Code Section 4211, which provides that

'The power of council shall be legislative only, and it shall perform no administrative duties whatever * * * . All contracts requiring the authority of council for their execution shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate, and after authority to make such contracts has been given and the necessary appropriation made, council shall take no further action thereon.'"

Also in the same volume at page 1645 is an interesting opinion which indicates that persons may be employed by the council for legislative purposes. There are other opinions which have expressly held that consulting engineers may be employed by council for the purpose of furnishing information to them in connection with contemplated legislation with reference to an improvement. However, those opinions do not have application to a case such as you present because the ordinance under consideration clearly contemplates preparation of plans and supervision of the entire work.

Without undertaking to review the many opinions relating to the subject, it is believed the foregoing are sufficient to disclose that the council of a city may not undertake to designate with whom a given contract shall be made without violating the provisions of section 4211 of the General Code, which provides that the duties of council shall be legislative only.

As pointed out in the 1923 opinion, hereinbefore referred to, the power of the council of a village with reference to contracts is much broader than that of the council of a city and it will be noted that there is no such inhibition as is contained in section 4211, *supra*, with reference to the village council.

In specific answer to your inquiry, it is my opinion that the council of a city which is about to construct a sewage disposal plant, may authorize a contract for the purchase of the services of engineers for the purpose of preparing plans and supervising such undertaking, but may not, in view of the provisions of section 4211, of the General Code, designate the persons with whom such contracts shall be made.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3190.

APPROVAL, LEASE TO OFFICE ROOMS IN ZANESVILLE, OHIO, FOR
USE OF THE DEPARTMENT OF INDUSTRIAL RELATIONS.

COLUMBUS, OHIO, April 29, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a certain lease, as hereinafter set forth, granting to you as Superintendent of Public Works, for the use