

1103.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE
GALENA SHALE, TILE AND BRICK COMPANY, GALENA, OHIO, FOR
THE CONSTRUCTION OF AN UNDERGROUND PASS ACROSS THE
CCC HIGHWAY AT GALENA, OHIO.

COLUMBUS, OHIO, October 4, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between The Galena Shale, Tile and Brick Company, as first party, and the State of Ohio, acting by and through George F. Schlesinger, as Director of Highways and Public Works, as second party, providing for the construction of an underpass across the CCC highway at Galena, Ohio.

An examination of said contract reveals that there is no provision therein requiring the first party to maintain the structure constituting the underpass after the same has been constructed. Said contract should also provide that the first party will remove said underpass from within the limits of the highway and restore said highway to its former condition, upon proper notice first being given to said first party by the Director of Highways and Public Works.

The contract has been executed by the president and secretary. There is nothing among the papers submitted to show the authority of said president and secretary to execute said contract on behalf of The Galena Shale, Tile and Brick Company. A copy of the resolution of the board of directors authorizing the president and secretary to enter into the contract, on behalf of the corporation, should be furnished.

In connection with the above, you have also submitted a bond in the sum of three thousand (\$3,000.00) dollars, in which The Galena Shale, Tile and Brick Company is principal and The American Surety Company of New York is surety, which is evidently intended to be the bond referred to in the contract. Said bond provides that no suit, action or proceeding, by reason of any default, shall be brought against the principal or surety after the thirteenth day of March, 1928, nor shall recovery be had for damages accruing after that date. There being no such date mentioned in the contract, nor any provision therein to the effect that no suit shall be brought against The Galena Shale, Tile and Brick Company after said date, I am compelled to disapprove the bond on this ground alone.

I also find that the bond is executed on behalf of The Galena Shale, Tile and Brick Company by B. L. Shultz, General Manager. Proper evidence of Mr. Schultz's authority to execute said bond, on behalf of The Galepa Shale, Tile and Brick Company, should be furnished. The bond should also have been accompanied by a certificate of the Superintendent of Insurance to the effect that the surety on said bond is authorized to do business in the State of Ohio.

For the above reasons I am unable to approve said contract and bond and am returning the same to you herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.