

2488.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND JOHN V. DALE & SONS, GALLIPOLIS, OHIO, FOR CONSTRUCTION OF ICE PLANT AND STORAGE TANK, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT AN EXPENDITURE OF \$9,800.00.

COLUMBUS, OHIO, August 24, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and John V. Dale & Sons, of Gallipolis, Ohio. This contract covers the construction and completion of General contract for Ice Plant and Storage Tank, including electrical work, at the Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of nine thousand eight hundred and no/100ths (\$9,800.00) dollars.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which John C. Rue, Arthur Miller and C. R. Niday, of Gallipolis, Ohio, appear as sureties, 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,  
EDWARD C. TURNER,  
*Attorney General.*

2489.

POLLING PLACE—EXPENSE OF RENTING.

SYLLABUS:

1. *The expenses incurred in renting a polling place for the use of the electors of a township at the April and August Primaries 1928, must be paid from the county treasury.*

2. *There is no provision of law authorizing such expense to be deducted by the county auditor in making his next settlement with such township.*

COLUMBUS, OHIO, August 24, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your request for my opinion as follows:

"You will find enclosed a letter from Mr. F. D. C., requesting information relative to the interpretation of Sections 5052 and 5053 of the Ohio General Code, in connection with certain obligations incurred by the Board of Elections at the Presidential Preference Primary election of April 24th and the recent primary of August 14th."

The letter to which you refer reads as follows:

"In the April Presidential Preference Primary, it was necessary to rent a polling place of a private party, the clerk of the township arranging for same. Like conditions prevail at the August 14th Primary.

Under Section 5052, Election Expenses, how paid, and Section 5053, Apportionment of Expenses. I have advised the Board of Deputy State Supervisors of Election here that it is my opinion, this being an even numbered year, and the nature of the election being of more than local scope, that in both cases the expense of the voting place is a 'proper and necessary expense' under Section 5052, and 'shall be paid from the county treasury, as other county expenses', and cannot be charged back against the township in which such expense was incurred.

I shall appreciate that you secure from the Attorney General's office an opinion as to what is proper to be done, and advise me at your earliest convenience."

It is the duty of the township trustees of any township to determine the polling place to be used by the voters in said township. Section 4844, General Code, relative thereto, provides as follows:

"Elections shall be held for each township precinct at such place within the township as the trustees thereof shall determine to be most convenient of access for the voters of the precinct. Elections shall be held for each municipal or ward precinct at such place as the council of the corporation shall designate. In registration cities, the deputy state supervisors shall designate the places of holding elections in each precinct."

It will be noted that by the terms of this section it is incumbent upon the trustees of the township to determine what place is "most convenient of access for the voters of the precinct." It does not require said trustees to furnish the place. If it becomes necessary to expend rental for a voting place by virtue of said act on the part of the trustees, such expenditure is a proper and necessary expense.

Your inquiry relates to the expenses incurred at the presidential primary held in April and the primary election held in August, of this year. Section 4991, General Code, relates to the payment of expenses incurred at primary elections and reads as follows:

"All expenses of primary elections, including cost of supplies for election precincts and compensation of the members and clerks of boards of deputy state supervisors, and judges and clerks of election, shall be paid in the manner provided by law for the payment of similar expenses for general elections except that the expenses of primary elections in political divisions less than a county shall be a charge against the township, city, village or political division in which said election was held, and the amount so paid by the county shall be retained by the county auditor, from funds

due such township, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor. In municipalities situated in two or more counties, the proportion of expense charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors.

County commissioners, township trustees, councils, boards of education or other authorities, authorized to levy taxes, shall make the necessary levy to meet such expenses."

Each of the primary elections in question included a political subdivision which was not "less than a county" so that the exception found in the section has no application to the question under consideration. It follows therefore, that the provisions of said section are to the effect that all expenses at such primary election shall be paid in the manner provided by law for similar expenses for general elections.

The provisions relative to the payment of the expenses of general elections are contained in Section 5052, General Code, which provides as follows:

"All expenses of printing and distributing ballots, cards of explanation to officers of the election and voters, blanks and other proper and other necessary expenses of any general or special election, including compensation of precinct election officers, shall be paid from the county treasury, as other county expenses."

This section provides that all of the expenses which are proper and necessary "shall be paid from the county treasury." There is no other provision relative thereto save and except Section 5053, General Code, which provides as follows:

"In November elections held in odd numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such township, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisor to the several political divisions and certified to the county auditor. In municipalities situated in two or more counties, the proportion of expenses charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors."

It will be noted that this section relates to the November elections held in "odd numbered years" and authorizes the county auditor to withhold from the settlements the expenses of such election, which have been paid from the county treasury, when he makes his settlement with the various subdivisions in which such elections were held. Since the elections in question were not November elections held in an odd numbered year, and since the primaries in question were elections looking forward to the November election of this year, said section has no application to the question involved.

The conclusions reached in this opinion are in accord with those of Judge Rockel, as stated, at page 193 of Rockel's Complete Guide for Ohio Township Officers, as follows:

"When the township does not own the place where an election is held, the board of elections pays the rent; however, in the odd-numbered years, it is certified back to the township. \* \* \* "

It is therefore my opinion that:

1. The expenses incurred in renting a polling place for the use of the electors of a township at the April and August Primaries 1928, must be paid from the county treasury.
2. There is no provision of law authorizing such expense to be deducted by the county auditor, in making his next settlement with such township.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2490.

TRUSTEE—PUBLIC INSTITUTION—CONTRACT IN WHICH TRUSTEE IS INTERESTED—DISCUSSION AS TO FINDING AND RECOVERY.

*SYLLABUS:*

*Purchases of supplies made by a state institution from a corporation, a stockholder of which is at the time one of the trustees of said institution, are contrary to law. However, no findings should be made for the recovery of moneys paid as the purchase price of such supplies in the absence of facts showing actual fraud in the transactions relating to the purchase of the same, or that the purchase price of the supplies was substantially in excess of the reasonable value thereof.*

COLUMBUS, OHIO, August 25, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you call my attention to certain purchases of coal made by Ohio University, through its business manager, from the Norris-Poston Coal Company and the Poston Consolidated Coal Company, and my opinion is asked with respect to the question of the legality of such purchases arising from the fact that one T. R. B., then and now a trustee of Ohio University, was a stockholder in said companies.

It appears from certain correspondence attached to your communication that the sale made by the Morris-Poston Coal Company was one transaction in the year 1919 and that the sales to said institution made by the Poston Consolidated Coal Company were made at various times during the years 1921, 1922 and 1923, and that no purchases of coal have been made by Ohio University from either of said companies since June, 1923. This correspondence further shows that the sales in question were made at the request of the University officials and for the accommodation of the University. They were emergency purchases, made when a coal shortage prevailed and at times when it was extremely difficult, if not impossible, to obtain coal elsewhere.