

It, therefore, is apparent that the civil service law supersedes any earlier legislation which is in conflict with its provisions.

It appears from a reading of Section 203, General Code, that it was the intention of the legislature to empower the director of health to summarily remove a local registrar, that is, to remove him forthwith. This was the primary purpose of this section; it is, therefore, in conflict with the provisions of the civil service law which prohibit the removal of employes summarily but provide for the filing of charges, a hearing and an appeal.

In view of the apparent purpose and obvious policy and intent of the General Assembly in enacting the civil service statutes to prevent the summary removal of employes, I am led to the conclusion that these statutes supersede the provisions of Section 203, *supra*, making the provisions of that section inoperative; therefore, the appointing authority authorized to remove a local registrar of a city, under the civil service statutes, is the district board of health of a municipality.

In view of the discussion herein and in specific answer to your inquiries, I am of the opinion that (1) the district board of health of a municipality is authorized to remove a local registrar of a city in accordance with the provisions of the civil service laws; and (2) a local registrar of a city is included in the classified civil service of the State of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2259.

APPROVAL, CONDITIONALLY, OF CONTRACT BETWEEN STATE OF OHIO AND THE DAYTON MORGAN ENGINEERING COMPANY FOR SURVEYS OF BED AND BANKS OF THE MUSKINGUM RIVER IN MUSKINGUM AND TUSCARAWAS COUNTIES AT AN EXPENDITURE OF \$2,500.00.

COLUMBUS, OHIO, August 23, 1930.

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

DEAR SIR:—You have submitted for my examination a certain contract form of a contract to be entered into by and between yourself, as Superintendent of the Public Works of the State of Ohio, and the Dayton Morgan Engineering Company by which, in consideration of the sum of twenty-five hundred dollars to be paid to it, said company contracts and agrees to make surveys of the bed and banks of the Muskingum River and its tributaries between Dresden, in Muskingum County, and Gnadenhutten, in Tuscarawas County, Ohio, and to furnish all the engineers and assistants, and all other services and equipment that may be necessary for the purpose.

By said contract it is provided that such surveys and the data thereby to be collected shall be preliminary to and for the purpose of forwarding improvements in said rivers that will accomplish therein flood protection and slack water navigation, as well as to provide water supplies for municipalities in the territory served by said rivers, and water supplies for industrial and sanitary purposes, as well as the storage water for the development of electrical energy. Among the proposed improvements to be made along the course of said rivers, for which such surveys are to be made, is the construction of impounding dams, storage reservoirs, locks, waste-weirs and wickets.

Whatever authority, express or implied, which the Superintendent of Public Works has to enter into a contract of this kind must be found in the provisions of

the act of the legislature passed April 10, 1919, 108 O. L., Pt. I, page 219, the provisions of which have been carried into the General Code as Sections 412-1 to 412-15, inclusive. This act, which is one for the stated purpose of preventing destructive floods and conserving and preventing waste of the waters of the streams, lakes and public waters of the State of Ohio, and to provide for the sale or lease to the public of such water for agricultural, commercial, manufacturing or other public purposes, conferred upon the Superintendent of Public Works the power and authority necessary to accomplish said purposes. Section 1 of said act, which is now Section 412-1, General Code, provides in part as follows:

“That, in addition to all other powers granted to and duties devolving upon the Superintendent of Public Works, as provided by law, when in his judgment he deems it for the public welfare and the best interests of the citizens of the state, that the surplus, flood and other waters of any of the watersheds, rivers, streams, water courses or public waters should be conserved, impounded and stored in order to insure and promote the public health, welfare and safety, and to encourage and promote agriculture, commerce, manufacturing and other public purposes, he shall proceed as provided by law, and in furtherance of the purposes of this act and the preservation of the use of such waters for navigation in case the same shall be required therefor, to construct such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements as may be necessary for such purposes, or he may make additions to, enlarge and make alterations in and upon such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements, then in existence and constituting a part of the public works, as may be necessary for such purposes; but no rights or privileges herein granted shall in any wise interfere with the control and maintenance of the state reservoirs or public parks which have been dedicated to the public for purposes of recreation and pleasure.

Said superintendent may, subject to the written approval of the Governor of the state, acquire by gift, purchase or by appropriation proceedings, in the name of and on behalf of the State of Ohio, such real and personal property, rights, privileges and appurtenances as may be necessary in his judgment for the construction of such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements, or for the alteration, enlargement or maintenance of such existing reservoirs, dams and other improvements, together with such rights of way, drives and roadways as may be necessary for convenient access thereto.”

It is obvious that before any comprehensive scheme of improvements, such as the Superintendent of Public Works is authorized to construct under the above quoted provisions of Section 412-1, General Code, or such as is contemplated in the present instance, can be carried out, careful and detailed surveys and investigations must be made preliminary to the determination of the nature and character of the specific improvements to be constructed to accomplish the desired purposes, and to afford the necessary information upon which to prepare plans and specifications for such improvements. I find no difficulty, therefore, in reaching the conclusion that the Superintendent of Public Works, in order to accomplish the purposes contemplated and provided for in said act, has authority to contract for such surveying and engineering services as may be necessary to enable him to determine the improvements to be constructed for the purpose of accomplishing the purposes desired by him with respect to said streams within the authority conferred upon him by said act.

In the consideration of the provisions of this proposed contract I am further

inclined to the view that surveying and engineering purposes such as are provided for by this contract are essentially non-competitive in their nature, and that the provisions found in said act and in other statutes relating to contracts of the state, which require contracts calling for an expenditure of money in excess of designated amounts to be let on competitive bids, have no application to contracts of this kind.

The services of a civil engineer are professional in their nature, and it is highly desirable both from the standpoint of public policy and sound business judgment, that the Superintendent of Public Works should have the utmost latitude in selecting such person or persons as he may desire to render such services. In this profession, as in others, there is a wide range in the competency of the persons engaged in such profession; and even as between civil engineers who are equally competent a distinction is drawn which the Superintendent of Public Works should be permitted to take into consideration and that is that engineering services are to some extent a matter of specialization, and that the field of engineers who may have the experience, organization and equipment necessary in order to successfully perform engineering services such as are provided for by this contract may be quite limited. These are the considerations which lead me to the conclusion that the contract here in question is one which is not required to be let upon competitive bids. This conclusion is supported by the reasoning of the court in its opinion in the case of *Cudell vs. the City of Cleveland, et al.*, 16 C. C. (N. S.) 374, which case was later affirmed by the Supreme Court without opinion, 74 O. S. 476.

I am inclined to the view, therefore, that the contract embodied in the contract form submitted to me can and should be approved so far as the power and authority of the Superintendent of Public Works to enter into such contract is concerned.

In reading the provisions of the contracts set out in the contract form submitted to me some doubt has arisen in my mind as to whether said contract is as full and explicit as it should be in defining the specific services to be rendered by the engineering company in making the surveys contemplated by said contract. In this connection, however, it is to be recognized that the nature of the duties to be performed and service to be rendered in a matter of this kind is such that it is a matter of considerable inherent difficulty to specify in complete detail the things to be done and performed by the engineering company in carrying out said contract. In any event I can not say as a matter of law that said contract is so uncertain in its requirements as to be invalid for that reason, and the same is, as to its form, approved.

As above indicated the contract submitted to me has not been executed either by the Superintendent of Public Works on behalf of the State of Ohio or by the Dayton Morgan Engineering Company. Inasmuch as the Dayton Morgan Engineering Company is a corporation there should be attached to said contract, when the same is signed on behalf of said company, a copy of a resolution of the board of directors of the company authorizing the execution of said contract on its behalf by one or more of its officers, and said contract should be signed by such officer or officers.

Before this contract is executed and again submitted for my approval in the usual course there should be likewise procured and submitted to me an encumbrance estimate executed and approved in the manner required by law covering the money to be paid said engineering company for its services under this contract. In this connection I am advised that the board of control has authorized the use of five thousand dollars out of the appropriation made to your department for the purpose of surveys to be made in and along the rivers above indicated for the objects and purposes mentioned in said contract. It will be well to have this fact noted on the encumbrance estimate when the same is submitted for my approval.

Respectfully,

GILBERT BETTMAN,
Attorney General.