only the amount of taxes thus paid at such lowest possible rates are to be credited as against the estate tax provided for by section 5335-1, General Code.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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4219.

MUNICIPALITY—POWER TO LEASE REAL ESTATE NOT NEEDED FOR MUNICIPAL PURPOSES—MAY NOT MODIFY TERMS OF LEASE.

*SYLLABUS:*

*Where a municipality has entered into a contract whereby it leased real estate owned by it and not needed for any municipal purpose, to the highest bidder after authorization and advertisement as required by section 3699, General Code, neither the council nor any other officer of such municipality has the power substantially to modify any of the terms of said lease, or to reduce the amount of the rent therein provided for.*

COLUMBUS, OHIO, April 1, 1932.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

> "At the request of the City Solicitor of Steubenville, Ohio, we are submitting the following question for your opinion:
>
> May the council of a municipality reduce, modify or change a lease, or change the rate fixed by a lease for premises owned by a municipality, before the expiration of such lease, where the lease was executed to the highest bidder after due publication under section 3699 of the General Code?"

I am informed that the modification desired in this case is a temporary reduction of rent. I assume that the lease in question is in accordance with the proposal submitted by the highest bidder, and that it contains no provision for the reduction of rent during the term of said lease.

At common law a city has the same powers with reference to contracts as individuals, but where the statutes of a state provide the manner in which contracts shall be made and entered into by municipalities, they cannot be entered into otherwise than as provided by statute. *Wellston* vs. *Morgan,* 65 O. S. 219.

As stated in *Kerlin Bros. Co.* vs. *Toledo,* 20 C. C. 603:

> "Where the sale of property is to be made by a municipality, certain formalities required by statute must be strictly and carefully observed in order to insure the validity of the transaction."

Section 3698, General Code, reads as follows:

> "Municipal corporations shall have special power to sell or lease real estate or to sell personal property belonging to the corporation, when

such real estate or personal property is not needed for any municipal purpose. Such power shall be exercised in the manner provided in this chapter."

Section 3699, General Code, provides as follows:

"No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and readvertise until all such real estate is sold or leased."

It is clear that no contract for the lease of real estate can be entered into by a municipality in this state, unless these statutory provisions are followed. Such a contract could perhaps be rescinded or annulled with the consent of the lessee. In *Newark* vs. *Fromholtz,* 102 O. S. 81, the following is said:

"Now, as before stated, there is no authority conferred by statute upon a director of public service or a board of control, or both, to rescind a contract. Neither is there any specific authority for council so to do. There is, however, a general fundamental rule of law that between principals the power to make a contract carries with it the general power to unmake it. This general principle is sound, and we can conceive no reason why it cannot be applied to municipalities, if properly applied."

However, the question presented does not involve the right to rescind a lease but rather to modify it by providing for a different rental than that specified both in the lessee's bid and in the lease which, in effect, would be to substitute a new contract or lease without any competitive bidding for the one which was entered into in accordance with the statutory requirements.

A modification of a contract is in itself a contract, and the statutes prescribing the manner in which contracts may be entered into by a city must be followed. *Gano* vs. *Shelby,* 10 O. D., Reprint 442, affirmed by the Supreme Court without opinion, 29 Bull. 287; *Ottumwa Railway & Light Company* vs. *Ottumwa,* 173 N. W. 270 (Ia.); *Auditor General* vs. *Stoddard,* 147 Mich. 329; *McIntyre* vs. *Los Angeles,* 23 Calif. App. 681; *Dockett* vs. *Old Forge Borough,* 240 Pa. 98.

In the case of *Ottumwa Railway & Light Company* vs. *Ottumwa, supra,* it was held that:

"Where statute requires ratification (by the electors) of a city's contract, city council cannot without such ratification modify a contract entered into before enactment of such statute at a time when no ratification was necessary."

In the case of *Capital City Brick & Tile Company* vs. *Des Moines,* 127 N. W. 67, it was held that:

"Under statutes requiring contracts to be let to the lowest bidder, the city council cannot substantially vary the terms and conditions of a contract entered into under competitive bid; since it would destroy the advantage intended to be secured by such method of entering into the contract."

In the case of *Chicago* vs. *Duffy,* 117 Ill. App. 261, the following was held:

"The mayor and other officers of the city of Chicago have no authority to enter into a supplemental contract substantially modifying a previous one let (as it was required by statute to be) to the lowest responsible bidder."

In this case the court said that to hold otherwise would nullify the statute and "would open wide the door to fraud, destroy competition, and enable city officials to do indirectly what in express terms they are forbidden from doing by the statute."

In the case of *Gano* vs. *Eshelby, supra,* Taft, J., said:

"In the case at bar, the board in fact, * * * abolished the one requirement of the law more important than all others, in securing economy and honesty in public works, i. e., competitive bidding."

I am of the opinion, therefore, that where a municipality has entered into a contract whereby it leased real estate owned by it and not needed for any municipal purpose, to the highest bidder after authorization and advertisement as required by section 3699, General Code, neither the council nor any other officer of such municipality has the power substantially to modify any of the terms of said lease, or to reduce the amount of the rent therein provided for.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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4220.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE GENERAL ELECTRIC COMPANY OF SCHENECTADY, NEW YORK, FOR SWITCHBOARD AND BUS-TIE TRANSFORMER FOR OHIO PENITENTIARY, COLUMBUS, OHIO, AT AN EXPENDITURE OF $29,027.00—SURETY BOND EXECUTED BY THE NEW YORK CASUALTY COMPANY OF NEW YORK, N. Y.

COLUMBUS, OHIO, April 1, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare, and the General Electric Company of Schenectady, New York. This contract covers the construction and completion of Switchboard and Bus-Tie Transformer Equipment for the Ohio