

in Section 2314. Under the terms of Section 154-40, General Code, your department is given the power to have general supervision over the erecting and constructing of public buildings erected for an institution of the State, and to make contracts for and supervise the construction of such buildings. Hence, your department is the "owner" who makes the award.

While the facts seem to show that the board of trustees of Miami University has passed a resolution awarding the bid to J. W. and has procured his signature to a contract, yet the facts do not show that your department has actually made the award. Since your department must make the award, as indicated above, it is my opinion that you are at liberty to disregard the action of the board of trustees of Miami University and eliminate the bid of J. W. It is believed that a further discussion is unnecessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2133.

STATE HIGHWAY IMPROVEMENT—CONTRACT BETWEEN STATE
AND COUNTY FOR LATTER'S PROPORTION OF EXPENSES—RIGHT
OF COUNTY AUDITOR TO AMEND FISCAL CERTIFICATE WHEN
ACTUAL COST IS LESS THAN ESTIMATED COST—EXCEPTIONS.

SYLLABUS:

When a board of county commissioners has entered into a contract with the State, agreeing to pay a portion of the cost of a state highway improvement, to which there is attached a certificate of the county auditor as provided by Section 5625-33, General Code, based upon the estimated cost of such improvement, such certificate may be amended so as to cover the county's portion of the actual cost after the State has entered into a contract for the construction of such improvement, and the actual cost has been determined to be an amount less than the estimated cost; provided, however, that the county's portion of the cost of the improvement is not being paid out of a specific permanent improvement fund.

COLUMBUS, OHIO, July 23, 1930.

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

GENTLEMEN :—Your letter of recent date is as follows :

"You are respectfully requested to furnish this department your written opinion upon the following :

The county commissioners of Cuyahoga County are, by cooperation with the Director of Highways, proceeding to improve a certain intercounty highway in that county; the estimated cost of the highest priced type of paving was \$1,048,000.00, this being a brick construction. Of this amount the county's portion was approximately \$314,400.00, and this amount was certified by the county auditor under the provisions of Section 5625-33 G. C. When the contract was let, it was let on concrete construction instead of brick and the amount of the contract was \$618,000.00, of which amount the county's portion was about \$185,000.00.

Question: May the county auditor make an amended certificate as to the funds available for the payment of the county's portion, or must the full \$314,400.00 be considered as obligated by the certificate until the work is completed?"

Section 1200, General Code, provides in effect that when a state highway is improved as a cooperative project between a county and the state, the county commissioners shall enter into a contract with the State of Ohio, providing for the payment by such county of the agreed apportionment of the estimated cost and expense which the county is to bear, and that the provisions of Section 5625-33, General Code, shall apply to such contract to be made by the county commissioners.

Section 5625-33, General Code, provides that "no subdivision or taxing unit shall * * * make any contract or give any order involving the expenditure of money, unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances."

It is necessary to consider, in passing upon your question, the source of the revenue from which the county's share of the cost of the improvement is to be paid. If the money has been raised by the issuance of bonds or by a special levy for the one particular improvement, then under the provisions of Sections 5625-9 and 5625-10, General Code, the money must be in a special fund, which would be a fund for one specific improvement. If the money from which the county's share is to be paid is coming from such a special fund, then even if the county auditor may, after the execution of the contract, amend the certificate heretofore issued under Section 5625-33, the moneys appearing in such special fund would not be available for any other purpose until the completion of the improvement. This for the reason that Section 5625-13, relating to transfers from one fund to another, makes no provision for the transfer of moneys from a bond fund or from a specific permanent improvement fund until all obligations for the payment of which such fund existed, have been paid. Although it may appear that because the contract cost of an improvement is materially less than the estimated cost and, accordingly, no obligations will arise materially in excess of the contract cost, it cannot be said that all obligations have been paid until the improvement is completed. It follows, therefore, that in the event the money appropriated to pay the county portion of the cost of an improvement of the state highway should be in a specific permanent improvement fund, there would be nothing to be gained by a holding to the effect that a county auditor may, after the execution of the contract in a lesser amount than the estimated amount, amend the certificate previously issued under Section 5625-33. It next becomes necessary to consider the situation existing when bonds have not been issued to pay the county's portion of the cost of such improvement and such cost is not to be paid out of a specific permanent improvement fund.

Section 1222, General Code, provides for the levy of a tax for the purpose of providing the general county road improvement fund from which expenditures may be made to pay the county's portion of the cost of cooperating with the Department of Highways and for the purpose of improving county roads. This is not, of course, a fund for any specific permanent improvement such as would be established in the event bonds are issued, and, therefore, if an appropriation has been made out of this general road improvement fund to pay the county's portion of the estimated cost of the state highway improvement, there appears no provision which would seem to require a greater portion of the county road fund being encumbered on any one im-

provement than is necessary to pay the county's portion of the cost of such improvement.

While the statute contains no express provision authorizing an amendment of the certificate required by Section 5625-33, there is no requirement to the effect that the certificate attached to the contract must be for an amount greater than is necessary to meet the contract. After the county commissioners and the state have contracted as to the proportion of the estimated cost of a road improvement that the county will bear, the execution of a contract for the construction of the road for an amount less than the estimated cost, results in the contract between the county and the state being reduced and I see no reason why, under such circumstances, the certificate required by Section 5625-33 should not be amended when the money has been appropriated from the general fund.

In view of the foregoing and in specific answer to your question, it is my opinion that when a board of county commissioners has entered into a contract with the State, agreeing to pay a portion of the cost of a state highway improvement, to which there is attached a certificate of the county auditor as provided by Section 5625-33, General Code, based upon the estimated cost of such improvement, such certificate may be amended so as to cover the county's portion of the actual cost after the State has entered into a contract for the construction of such improvement, and the actual cost has been determined to be an amount less than the estimated cost; provided, however, that the county's portion of the cost of the improvement is not being paid out of a specific permanent improvement fund.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2134.

APPROVAL, ARTICLES OF INCORPORATION OF THE STATE AUTOMOBILE INSURANCE ASSOCIATION OF COLUMBUS, OHIO.

COLUMBUS, OHIO, July 23, 1930.

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

DEAR SIR:—I am returning herewith, approved, certificate of amendment to the Articles of Incorporation of the State Automobile Insurance Association of Columbus, Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2135.

COUNTY AUDITOR—DUTY TO REAPPRAISE ALL REALTY OTHER THAN THAT OF PUBLIC UTILITIES IN 1931, MANDATORY.

SYLLABUS:

The duty imposed on the county auditor by the provisions of Section 5548, General Code, as amended by the act of April 21, 1925, 111 O. L. 418, to assess for the purpose