

1885.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND FOSDICK AND HILMER, CINCINNATI, OHIO, FOR ENGINEERING SERVICES FOR CHEMISTRY BUILDING, MIAMI UNIVERSITY, OXFORD, OHIO, AT AN EXPENDITURE OF \$1,437.50.

COLUMBUS, OHIO, May 20, 1930.

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

DEAR SIR:—You have submitted for my opinion a contract between the State of Ohio, acting by and through the Department of Public Works for and on behalf of the Board of Trustees of Miami University, Oxford, Ohio, and Fosdick and Hilmer, Cincinnati, Ohio, for engineering services in connection with the central unit of chemistry building at said university, and providing for compensation to the engineers in an amount equal to five and three-fourths per cent of the estimated amount of cost of mechanical branches for said improvement.

You have submitted evidence showing that the Controlling Board has duly released the sum of seven thousand five hundred dollars (\$7,500.00) for architects' and engineers' fees in accordance with Section 2 of House Bill No. 513 and Section 11 of House Bill No. 510 of the 88th General Assembly.

You have further submitted encumbrance estimate No. 46, in the estimated amount of one thousand four hundred thirty-seven dollars and fifty cents (\$1,437.50), and bearing the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated sufficient to pay the same, as required by Section 2288-2 General Code.

Evidence is enclosed to show that the Board of Trustees of Miami University has requested you to enter into this contract.

Finding said contract in proper legal form, I have endorsed my approval thereon and hereby return the same to you, together with all other papers submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1886.

BOND—GIVEN TO STATE CONDITIONED FOR SUPPORT OF DEPENDENTS OF OBLIGOR—PROCEEDS FROM SUCH BOND, IF FORFEITED, APPLICABLE FOR MAINTENANCE OF DEPENDENT CHILDREN.

COLUMBUS, OHIO, May 20, 1930.

SYLLABUS:

Where a bond is given under the provisions of Section 13010 of the General Code to secure the furnishings of necessaries to an abandoned child, and the amount of the bond is recovered in an action on such bond, the State of Ohio has no interest in the amount so recovered but the proceeds collected are to be used for the maintenance of the child or children for whose benefit such bond is given.

COLUMBUS, OHIO, May 20, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

"Section 13010 of the General Code of Ohio provides in substance that after a person is convicted of non-support of a minor child, a bond may be given in a sum not less than \$500.00, conditioned that such support will thereafter be furnished.

I would like your opinion as to whether or not there is any way that this bond can be forfeited for the benefit of the minor child or children instead of for the benefit of the State. Many times, situations have arisen here in which the defendant defaulted in payments and possibly disappeared entirely, leaving nothing to be done except to forfeit the bond which apparently availed the defendant's children nothing. Your early advice concerning this matter will be appreciated."

Section 13008 of the General Code provides as follows:

"Whoever, being the father, or when charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under sixteen years of age, or the husband of a pregnant woman, living in this state, fails, neglects or refuses to provide such child or such woman with the necessary or proper home, care, food and clothing, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years."

Section 13010 of the General Code provides as follows:

"If a person, after conviction under either of the next two preceding sections and before sentence thereunder, appears before the court in which such conviction took place and enters into bond to the State of Ohio in a sum fixed by the court not less than five hundred dollars nor more than one thousand dollars, with sureties approved by such court, conditioned that such person will furnish such child or woman with necessary and proper home, care, food and clothing, or will pay promptly each week for such purpose to a trustee named by such court, a sum to be fixed by it, sentence may be suspended."

The character, purpose and intent of Sections 13008, et seq., of the General Code, was considered by the Supreme Court of Ohio in the case of *Seaman vs. The State of Ohio*, 106 O. S. 177, wherein the court said on page 184:

"The intent of this legislation was to compel persons charged by law with the support of designated dependents to meet the full measure of their obligation to such dependents and society. The converse of the proposition may be stated that it was the purpose to relieve society of a burden that properly belonged to one charged by law with its obligation. * * *

The purpose of Section 13010, General Code, is to provide method whereby one who has been adjudged guilty of a violation of Section 13008 shall secure to the dependent the support necessary for its comfort and welfare, and thereby relieve society of the burden that it would otherwise have charged upon it."

While a bond given under the provisions of Section 13010 of the General Code is made in the name of the State of Ohio, it is given for the benefit of the minor child or children who require the support. The State of Ohio has no interest in the bond for if the proceeds of the forfeited bond went to the state the very purpose of Section 13010 of the General Code would be defeated. In such case the child or children would not receive the support which the bond is intended to secure.

In the case of the *State, ex rel, McCloskey vs. McCloskey et al*, decided by the Court of Appeals of the Sixth District on October 21, 1929, which may be found in the Ohio Bar Bulletin of March 11, 1930, the court held, as shown by the second branch of the headnotes, as follows:

“Under Section 13010, General Code, suspending sentence of person convicted for nonsupport of minor children on execution of bond for support of children in accordance with order of court, state has no interest in amount that may be recovered in action on bond, but money recovered goes to person who has furnished such support.”

In the course of the opinion in this case the court says:

“The State of Ohio has no interest in the amount that may be recovered in an action on a bond of the character of that involved in the action below. The intent of Section 13010 is plain. By its terms sentence is suspended after the bond is given, and the convicted person is given an opportunity to earn the money and to support his children in accordance with the order of the court, and security for his doing so is furnished through the bond. Money which is recovered through an action brought in court for breach of the bond goes to the person who has furnished such support.

As the contract evidenced by the bond is made in the name of the state for the benefit of a person who may furnish the support, an action for breach of the bond may be brought either in the name of the person who is entitled to the benefit of the security given or in the name of the State of Ohio, for the use and benefit of such person.”

This case clearly supports the view that the State of Ohio has no interest in the amount recovered in an action on a bond given under the provision of Section 13010 of the General Code, but that the proceeds are to be used for the benefit of the minor children.

This view is also supported by an opinion rendered by my predecessor, found in Opinions of the Attorney General, 1927, Vol. 1, page 785. The syllabus of this opinion is as follows:

“Where a parent, convicted of failure to provide his or her minor children with the necessary or proper home, care, food or clothing in violation of Section 13008, General Code, after conviction and before sentence, enters into a bond to the State of Ohio, conditioned as provided in Section 13010, General Code, and the conditions of said bond are broken and the same is forfeited, the proceeds collected under such forfeiture should be paid to the trustee appointed by the court under the provisions of Section 13010, and should be expended under the court's direction by such trustee, for the maintenance of the children of such parent under sixteen years of age.”

In view of the authorities cited herein and in specific answer to your inquiry, I am of the opinion that where a bond is given under the provisions of Section 13010 of the General Code and the amount of the bond is recovered in an action on such bond, the State of Ohio has no interest in the amount so recovered but the proceeds collected are to be used for the maintenance of the child or children for whose benefit such bond is given.

Respectfully,
GILBERT BETTMAN,
Attorney General.