

The provisions of Section 13755, General Code, above quoted, should be read in connection with those of Section 13728, General Code, which provides that in the execution of a death sentence the warden of the Ohio Penitentiary, or in case of his death, inability or absence, a deputy warden shall be the executioner.

In this case, therefore, if the Supreme Court should affirm the judgment of the Court of Appeals in the case now before the Supreme Court upon the petition in error above referred to, it will be the duty of the latter court to fix and appoint a later date for the execution of said sentence by the Warden of the Penitentiary.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2854.

APPROVAL, BONDS OF WAYNE COUNTY, OHIO—\$124,000.00.

COLUMBUS, OHIO, November 9, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2855.

APPROVAL, BONDS OF THE CITY OF MARIETTA, WASHINGTON COUNTY
—\$3,500.00.

COLUMBUS, OHIO, November 9, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2856.

CONTRACT—HIGHWAY DEPARTMENT MAY RECOGNIZE ASSIGNMENTS
OF MONEYS DUE FROM THE STATE AND ISSUE VOUCHER TO
ASSIGNEE.

SYLLABUS:

The Director of Highways may recognize a valid assignment of amounts due from the state upon a contract executed by him and issue a voucher upon the Auditor of State in favor of the assignee of such amount.

COLUMBUS, OHIO, November 9, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“On August 15, 1927, this department issued its departmental order No. 8178 to the S. A. Corporation then located in the Keith Building, Cleveland, Ohio, for two car loads of bituminous asphalt to be delivered to this department at Columbiana, Ohio.

This material was received and used and in due course an invoice in the amount of \$1,226.64 was presented for payment. In the meantime, however, the S. A. Corporation had under date of October 7, 1927, assigned their claim to the S. R. Company of Louisiana, Inc., from whom the first named company had secured the material for delivery to this department. This department followed its usual custom in drawing its voucher in favor of the company from which the material was purchased, in this case the S. A. Corporation, and mailed the warrant issued thereon to the assignee, the S. R. Company of Louisiana, Inc. This warrant, No. 1701, has now been returned to us by the attorneys of the S. R. Company of Louisiana, Inc., with the advice that they are unable to locate any of the officials of the S. A. Corporation in order to secure endorsement of same and they are requesting us to issue a warrant for \$1,226.64, payable to their clients.

The question is, has this department the legal right to draw its voucher upon the Auditor of State made payable to the S. R. Company of Louisiana, Inc., and does the assignment made by the S. A. Corporation to the S. R. Company of Louisiana, Inc., which assignment is on file in this office protect the department from any liabilities by so doing. For your convenience we are forwarding you all papers with the request that you return same when they have served your purpose.”

Your department originally purchased certain asphalt from the S. A. Corporation and thereby became indebted to the corporation in the sum of \$1,226.64. The amount thus becoming due was thereafter assigned formally by the S. A. Corporation to the S. R. Company of Louisiana, Inc. The assignment need not be set forth in full herein, but I may state that it appears to be executed properly and is in my opinion sufficient to transfer to the S. R. Company the interest of the S. A. Corporation, in the amount of the purchase price of the asphalt. You advise me that this assignment was never recognized by your department following what you state to be the existing practice, and that the voucher or requisition was drawn by you in favor of the S. A. Corporation, and the warrant mailed in care of the assignee, the S. R. Company. Because of the inability of the assignee to locate any of the officers of the assignor, the warrant has never been cashed.

Your inquiry is whether you are authorized to draw a voucher and have a warrant issued in favor of the assignee.

In the Annual Report of the Attorney General for 1915, Vol. III, at page 2334, is found a discussion of the right to assign compensation due from the state highway commissioner for work done or materials furnished in connection with a state improvement. The syllabus of that opinion is as follows:

“An assignment by a contractor on state highway work of all the compensation due or to become due to him under his contract, or all of any particular installment or installments to become due is valid and must be recog-

nized by the state highway commissioner. An assignment of a part of the compensation due or a part of an installment to thereafter become due, may or may not be recognized by the state highway commissioner at his option."

Several cases are cited in this opinion holding assignments of amounts due on public contracts to be valid, but it is to be observed that none of the cases seems to have passed directly upon the right of an assignee to enforce an assignment against the sovereign state. However this may be, I deem it unnecessary specifically to rule at this time upon such right of enforcement, since the only inquiry is as to your authority to recognize such assignment. The prior opinion clearly recognizes the power of the state highway commissioner (Director of Highways) to recognize such an assignment either of a portion of an amount due or all that is due. In this instance I understand that the assignment contemplates all of the amount due to the S. A. Corporation.

Based upon the conclusion in the opinion above referred to, I am clearly of the opinion that you may draw your voucher upon the Auditor of State, payable to the S. R. Company of Louisiana, Inc., for the amount originally due to the S. A. Corporation and by it duly assigned to the S. R. Company of Louisiana, Inc. That is to say, if you are of the opinion that the assignment has been properly executed (and on this point I express the view that the assignment in this instance is legal), then you may draw voucher upon the Auditor of State for such amount, payable to the assignee. It is to be observed that it is the Auditor's duty, by virtue of the provisions of Section 243 of the General Code, to examine each voucher presented to him and determine that it is a valid claim against the state and legally due. The original assignment, together with the original warrant, should accordingly accompany the voucher in order that the Auditor of State may have before him the evidence disclosing that the claim originally payable to the S. A. Corporation has been properly assigned to the payee of the voucher presented.

Specifically answering your inquiry, I am of the opinion that the Director of Highways may recognize a valid assignment of amounts due from the state upon a contract executed by him and issue a voucher upon the Auditor of State in favor of the assignee of such amount.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2857.

DELINQUENT TAXES—ACTION TO FORECLOSE LIEN MAY INCLUDE
PERSONAL JUDGMENT.

SYLLABUS:

In the foreclosure of a lien for taxes by the county treasurer, a personal judgment may legally be taken against the owner of the delinquent land for such amount of taxes as accrued while he was such owner, and, in case the purchase price at the foreclosure sale is insufficient to pay the said taxes and the costs, execution upon said judgment may be levied upon the owner's other property.

COLUMBUS, OHIO, November 9, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads: