

2521.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ASHLAND, MIAMI, MADISON, MEDINA AND UNION COUNTIES.

COLUMBUS, OHIO, August 31, 1928.

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

2522.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY FOR THE CONSTRUCTION OF SIDE TRACK AT LONDON PRISON FARM.

COLUMBUS, OHIO, September 1, 1928.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication under date of August 30, 1928, enclosing a proposed contract between the State of Ohio and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, relating to the construction of an additional side track on and in connection with the London prison farm land and premises.

An examination of said contract and agreement shows that the same is in proper form with the exception of the provisions contained in Paragraph 10 of said contract. In this paragraph it is provided that the State of Ohio shall assume all responsibility for and indemnify said railway company against loss of or damage to property of the state or to property upon its premises arising from fire caused by locomotives operated by the railroad upon said track, regardless of the railroad's negligence in the operation of said locomotives. Said paragraph further provides that the State of Ohio shall indemnify said railroad company for loss, damage or injury to the person or property of the parties to the contract or their employes, and to the person or property of any other person, firm or corporation due to any act or omission upon the part of any agent or employe of the state. Although contracts of this kind are entered into by the state in its proprietary capacity, and you are authorized to enter into a proper contract of this kind relating to the use of premises under the supervision and control of your department, you do not in my opinion have any authority to bind the State of Ohio to the obligations contained in the above noted provisions of Paragraph 10 of this contract, and for this reason I am unable to approve the contract and agreement submitted, and the same is herewith returned.

Respectfully,
EDWARD C. TURNER,
Attorney General.