

legislature intended, but I do not feel that I can disregard the plain meaning of the language used.

In considering the second branch of your inquiry, you are referred to the fifth branch of the syllabus of the opinion above quoted, wherein it is stated in part:

“\* \* When the sum of one thousand dollars has been so used as a part of said basis, the collections from the prohibition law may no longer be considered, irrespective of the amount that has actually been placed in the treasury of such association \* \*”

In the case you present it would appear that the full one thousand dollars has been used as the basis of distribution during the first month and in accordance with the holding in my said opinion, moneys arising from prohibition fines may no longer be considered during any one year. In other words the second inquiry you present should be answered in the negative.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3278.

ARCHITECT—FOR STATE BUILDING—RIGHT TO ADDITIONAL COMPENSATION FOR TIME SPENT IN SUPERINTENDING PROJECT AFTER COMPLETION DATE INCORPORATED IN CONTRACTORS' CONTRACTS, CONSIDERED.

SYLLABUS:

*Discussion of architect's contract with respect to right to additional compensation.*

COLUMBUS, OHIO, June 1, 1931.

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

DEAR SIR:—This acknowledges your letter of recent date as follows:

“I am enclosing herewith copy of letter and statement received from....., Architects, for additional fees in connection with the supervision of the Apple Creek project. This additional fee is asked for on account of extra work and superintendence after the time limit was up, namely January 1st, 1931.

For your information, the date set for completion of the construction contract was determined before bids were taken and there was some delay in getting the contract signed up, which naturally held the contractor back in beginning his work. This would therefore move the completion date ahead. The amount of work to be done after January 1st would not require the full time of the Superintendent, including expenses.

If it is determined that it is necessary to pay..... for these services it will be setting quite a precedent, since practically all

the jobs which have been placed with outside architects have required an extension of time for the completion of the contracts.

If this claim is valid, no doubt we will receive other similar claims from other architects and for that reason, we should like an opinion from your department as to whether or not, according to the specifications and the terms of the contract, it is necessary for us to honor and approve the attached statement of \$1020.75, as rendered by.....”

The claim is for the time and expenses of a superintendent for two months, and its basis must be found, if at all, in section III of the contract between the Department of Public Works and the architect for services in connection with the project in question. This section is as follows:

“At the time of entering into the agreement with a contractor for the construction of said improvement or a part thereof, a reasonable period of time for the completion of the work shall be determined upon by the board or officer having control of the institution at which said improvement is to be made, and the Department of Public Works; and should the services of the party of the second part in superintending the work extend beyond the time so determined, the party of the second part will be compensated for his cost incurred by reason of such additional superintendence.”

Section 2314 of the General Code authorizes the Department of Public Works to employ an architect and engineer in connection with a state building project and, with reference to such employment, merely states that the “contract of employment shall be prepared and approved by the attorney general and filed with the auditor of state.” Since the statute makes no other provision with respect to such employment, it follows that it is proper to incorporate any reasonable terms in such a contract, and I do not feel that the section quoted above can be said to be unreasonable. It follows that there exists authority for the contract entered into in this instance.

There only remains, accordingly, the question as to the meaning of this section and its application to the question which you present. I do not find that provisions of like character have been the subject of judicial interpretation, or that this office has rendered an opinion which has any bearing thereon. Recourse must be had, therefore, to the generally understood meaning of the words employed and to the interpretation given them by parties to similar contracts under similar circumstances.

It is quite evident from a reading of the section that the Department of Public Works obligated itself to determine a “reasonable period of time for the completion of the work” at the time of entering into the agreement with the contractor for the construction of the improvement. It is my understanding from the facts stated in your letter, and from my knowledge of contracts of this character, that the contract entered into between the Department of Public Works and the contractor for this work provided a time limit within which the work should be completed. This is in accordance with the requirements of section 2331 of the General Code, which provides as follows:

“All contracts under the provisions of this chapter shall contain provision in regard to the time when the whole or any specified portion of work contemplated therein shall be completed and that for each and every

day it shall be delayed beyond the time so named the contractor shall forfeit and pay to the state a sum to be fixed in the contract, which shall be deducted from any payment or payments due or to become due the contractor."

It is usual, however, and I assume from your statement that it was done in this instance, to provide for the extension of the time for completion, and apparently the completion date was extended in this instance for a period of sixty days.

In view of this provision of the contract between the Department of Public Works and the contractor, the question arises as to whether such action constituted a determination by your department of the "reasonable period of time for the completion of the work," as provided in section III of the contract with the architect. It is the contention of the architect that this is true, and that it necessarily follows that he is entitled to additional compensation for the superintendence incident to the completion of the work after the date of the original time limit.

On the other hand, your letter states that the date set for the completion of the construction contract was determined before bids were taken. It is further stated that there was some delay in getting the contract signed up which held back the contractor in beginning his work. It would necessarily follow that the work of the architect in superintendence would not begin until the construction work had been initiated.

As I understand your statement, the date set in the construction contract was fixed in view of what was anticipated to be the date when work could be commenced by the contractor. While it is impossible at the time bids are invited accurately to determine the date when all of the details will have been completed and the contract signed so as to permit the contractor to proceed, yet experience has doubtless permitted you to forecast with reasonable accuracy the time when the work can actually commence. In this instance, however, this estimate was incorrect, due to unforeseen delays, since you say that there was "some delay in getting the contract signed up." It seems to me reasonable that the time for completion fixed in the construction contract is not the actual measure of the reasonable time for the performance of the work referred to in the architect's contract. The reasonable time, while unexpressed, would be the period elapsing between the time when you anticipated that the contractor would be ready to commence work and the specific date fixed. Doubtless, in fixing the completion date, your department had in mind the length of time reasonably necessary to complete the work and the time when the work could be commenced. You do not state what this period of time was, and I assume that there is nothing in writing from which it may be determined. Accordingly, it must rest with your statement as to your conclusion reached at the time the construction contract was entered into.

Having determined this period, it was but reasonable for you to extend the time of completion of the contract in the event that the contractor was prevented, through no fault of his own, from initiating the work on the date when it was anticipated he should commence. Your communication does not advise me whether the two months extension granted to the contractor in this instance was in excess of, or less than, the unforeseen delay in starting the work. If the additional time granted was in fact less than, or equal to, such delay, then it is my opinion that no valid claim for additional compensation of the architect exists. On the other hand, if the additional time granted the contractor exceeded this delay, then the claim of the architect is proper with respect to such extension.

Summarizing my conclusion, I am of the opinion that it does not follow necessarily from the fact that an extension was granted to the contractor, that a valid claim exists for additional compensation to the architect. It is only in the event that the work of the architect covers a longer period of time than was within the contemplation of the parties as the period within which the work should be completed that a claim for additional compensation may be paid. In other words, as I view the language used in the architect's contract, the determination to be made with respect to the period as the reasonable time within which the work shall be completed, does not require that specific dates be set, but does require a determination of the number of days, weeks or months reasonably necessary to perform the work. Even though there be delay in commencing the work, no claim for extra compensation of the architect can be sustained if the period of time which elapses between its commencement and the date of completion be not more than originally contemplated.

The architect to whom you refer has submitted to me a statement with respect to the facts which, if true, would seem to indicate that there was no delay in the commencement of the work beyond that which was originally contemplated, and, accordingly, he contends that eight months was within the contemplation of the parties as the period allowed for the completion of the building, whereas as a matter of fact ten months were required.

This statement is somewhat at variance with the statement in your communication in which you say "there was some delay in getting the contract signed up, which naturally held the contractor back in beginning his work." It is of course for you to determine what the true facts are, and I do not feel that I should express any views thereon. In view of what has been said, however, I assume that you will have no difficulty in applying the conclusions herein expressed to the facts as you find them.

Permit me to suggest, however, that in order that no controversy may arise in the future, your department make a record of the period of time within which contracts for state construction should be completed under reasonable conditions. It will then be a matter of no difficulty to determine in each instance whether claims for additional compensation should be allowed, in the event that contracts with architects hereafter entered into by your department contain provisions similar to those contained in section III of the contract here under discussion.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3279.

COUNTY COMMISSIONERS—AUTHORIZED TO PAY THE EXPENSES OF INDIGENT SOLDIERS' INTERMENT CONTRACTED FOR BY SOLDIERS' BURIAL COMMITTEE EVEN THOUGH FACTS SHOW UNDERTAKER WILL ALSO COLLECT THE FEDERAL ALLOWANCE.

SYLLABUS:

1. *A soldier's burial committee is not necessarily precluded from approving and certifying to the county commissioners a statement of expenses incurred in*