

4927.

APPROVAL, BONDS OF CITY OF MASSILLON, STARK COUNTY, OHIO, \$50,000.00.

COLUMBUS, OHIO, November 23, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4928.

APPROVAL, BONDS OF AMITY RURAL SCHOOL DISTRICT, KNOX COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, November 23, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4929.

APPROVAL, BONDS OF VILLAGE OF SHILOH, RICHLAND COUNTY, OHIO, \$9,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 23, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4930.

HIGHWAY DEPARTMENT—UNIT PRICE BASIS—ESTIMATE OF COST PUBLISHED BEFORE ADVERTISING—MUST BE OPEN FOR "PUBLIC INSPECTION."

**SYLLABUS:**

1. *The Director of Highways must, at least three days before advertising for bids for a project to be let on a unit price basis, publish the estimate of cost for such project, which includes the detailed engineer's estimates of*

unit prices, by filing copies of such estimate in the department of highways and in the office of the resident district deputy director.

2. By virtue of the provisions of section 1196, General Code, the estimate of cost in all projects let by the State Highway Department must be open for "public inspection", which includes bidders for the projects and disinterested persons.

3. The Director of Highways is under no legal obligation to publish the total estimated cost of a project to be let on a unit price basis in the form of proposal for such projects.

COLUMBUS, OHIO, November 23, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication, which reads as follows:

"We are confronted with a question relative to the content of unit price bids, upon which we desire to have your formal written opinion.

It has been the practice of the Department of Highways for a number of years to publish the estimated cost of the various items upon which bids were sought. This is set forth in a proposal form in which appear the estimated quantities of the various materials and classes of work required to be performed, together with the engineer's estimate of the cost of each individual item and a footing or total showing the total estimated cost which is arrived at by applying the estimated quantities to the unit price and striking a total.

This Department is in receipt of a request from Mr. W. V. Buck, Senior Engineer, United States Bureau of Public Roads, assigned to Ohio, in which Mr. Buck asks that this Department discontinue the publishing of unit prices.

For your information, it should be stated that although the federal government pays the cost of many of the projects, the cost in the first instance is paid from tax funds appropriated to the Department of Highways, and it is our wish that this question be answered on the basis of the authority of the Department of Highways with respect to its own funds.

In addition thereto, we desire your opinion on the following specific questions:

1. Does the Department of Highways, in awarding contracts to be paid out of state funds, have the authority to discontinue

publishing the engineer's estimates of the unit prices entering into the proposal?

2. Does the Department of Highways have the authority to discontinue publishing the total estimated cost of a project in its proposal or invitation for bids?

3. Does the Department of Highways have the authority to refuse to permit inspection, by contractors or disinterested individuals, of the records showing the estimated cost of items entering into a unit price contract, if proper demand is made, prior to opening of bids?

We are enclosing a typical proposal for your inspection, and will appreciate your early consideration of the above questions, as the letting of a number of important projects awaits a decision with respect to them."

In 1927 the legislature revised the laws relating to the Department of Highways and the state highway system by the passage of an act known as the Norton-Edwards Act.

Section 27 of this act (section 1196, General Code), as amended slightly in 1929 (113 O. L. 600) states:

"The director, in *all* projects shall make, or cause to be made, a map of the highway in outline and profile, and plans, specifications, profiles, and *estimates* covering the proposed project. When completed the director shall indorse upon such maps, profiles, plans, specifications and estimates his approval of the same and cause one copy thereof to be placed on file in the department of highways and another in the office of the resident district deputy director for *public inspection* at least three days prior to starting the publication of notice to bidders as hereinafter provided. Such copies shall so remain on file until the time of receiving bids." (Italics the writer's).

Section 28 of the act (section 1206, General Code), as amended in 1933, provides that the Director of Highways advertise for bids before entering into *a* contract.

Section 30 of the act (section 1207-1, General Code) states in part:

"The director may, if he deems it expedient, enter into *any contract* authorized by this act upon a unit price basis. \* \* \*"  
(Italics the writer's).

Section 79 of the act (section 1197, General Code) provides in part:

“Before undertaking the construction, improvement, maintenance or repair of a state highway, or a bridge or culvert thereon, the director of highways shall make, or cause to be made, an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, use of equipment and all other items of cost and expense. \* \* \* ”

From the first of the above mentioned statutory provisions, namely, section 1196, General Code, it will be seen that the Director of Highways shall have prepared in *all* projects, among other things, “estimates”, and one copy of the “estimates” shall be filed in the Department of Highways and another copy in the office of the resident district deputy director for *public inspection* before publication of notice to bidders that a project is to be let.

The next section (section 28 of the 1927 act, G. C. 1206) provides for advertisement for bids before contracting. However, it is to be noted that neither in this section nor any other section of the statutes are there any specific requirements that the total estimated cost of the project or any of the estimates of individual items going into the project, be inserted in the form of proposal.

Section 30 of the act (section 1207-1, General Code) gives power to the Director to enter into *any contract authorized by the act* upon a unit price basis. Obviously, if the Director desires to enter into a contract on a unit price basis, such a contract, as any other contract, is subject to the requirements of section 27 of the act (section 1196, General Code), that “estimates” be prepared before publication of notice for bids on the unit price basis.

Section 79 of the act (section 1197, General Code) shows that the estimate of cost required for all contracts, whether or not on a unit price basis, must include the cost of labor, material, freight, fuel, use of equipment and all other items of expense going into the improvement.

With the foregoing in mind, it seems clear that the answer to your general question is that the State Highway Director is not authorized to discontinue the publishing of unit prices, in so far as the filing of the copies of the estimate in the state highway department and the office of the district deputy director constitutes publishing of such estimated cost. However, there is no statutory requirement that the estimated cost be published by insertion in the advertisement for bids or the form of proposal.

Bearing upon your three specific questions, it would appear from the aforementioned statutory provisions that, first, the Department of Highways, in awarding contracts to be paid out of state funds, does not have the authority to discontinue publishing the engineer’s estimates of unit prices entering into the proposal; second, the Department of Highways is not required by the

statutes to publish the total estimated cost of a project in its form of proposal for a given project, as the statutes provide for such publication to be made by the filing of duplicate estimates in two public places before advertising for bids, and the public, which includes bidders for such project, is presumed to have knowledge of such publication and possess the right to have access to such estimates at all reasonable times; and, third, the Department of Highways is unauthorized to refuse to permit inspection by contractors or disinterested individuals of the records showing the estimated cost of items entering into a unit price contract if proper demand is made prior to opening of bids, since the statute (section 1196, General Code) clearly shows that the estimated cost must be open to *public* inspection at least three days prior to starting the publication of notice to bidders, the words "public inspection" clearly including contractors and disinterested individuals.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4931.

FEDERAL CREDIT UNION—STOCK EXEMPT FROM OHIO  
SECURITIES ACT—FEDERAL CREDIT UNIONS NOT RE-  
QUIRED TO OBTAIN OHIO DEALER'S LICENSE.

*SYLLABUS:*

1. *Stock of Federal Credit Unions sold by such credit unions to their members under the provisions of the Federal Credit Union Act (Title 12, Chapter 14, U. S. Code, Annot.) is, under section 8624-3 of the General Code, exempt from the provisions of sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14 of the General Code.*

2. *In selling such stock to their members, Federal Credit Unions are not required, by section 8624-17 of the General Code of Ohio, to obtain a dealer's license.*

COLUMBUS, OHIO, November 23, 1935.

HON. HUGH ADDISON, *Chief, Division of Securities, Department of Commerce, Columbus, Ohio.*

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

"There has recently arisen the question as to whether or not