

obtained a legal settlement in this state, she shall be deemed to be legally settled in the place where her last legal settlement was previous to her marriage.

As was pointed out in my opinion No. 2560, issued to Honorable Mervin Day, Prosecuting Attorney of Paulding County, on September 10, 1928:

"By the terms of Sections 3477 and 3479, as amended, 112 O. L. 157, it is provided that a person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, without relief under the provisions of law for the relief of the poor, or relief from a charitable or benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief, and that a person having a legal settlement in any county in the state shall be considered as having a legal settlement in the township in which he or she last resided continuously and supported himself or herself for three consecutive months, without public relief or relief from a charitable organization such as is described above."

From the foregoing it can not be disputed that the persons in question did not reside in your county without relief from the sources mentioned in Section 3477, supra, in its present form, for a period of twelve consecutive months. It is also believed that the Supreme Court of Ohio in the case of *Commissioners vs. Commissioners, supra*, passed upon an entirely different state of facts inasmuch as the relief furnished to the persons in question in that case did not come within the provisions of Section 3477 of the General Code.

You are specifically advised that the mother and children referred to in your communication can not acquire a legal settlement in your county unless and until they have been supported therein without relief from the sources set forth in Section 3477 of the General Code for a period of twelve consecutive months. Aid furnished to said persons by the State Division of Charities is relief mentioned in said section, and they are not eligible to relief in Tuscarawas County.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2655.

BRIDGE—COUNTY—PLANS AND SPECIFICATIONS OPEN TO PUBLIC
UNTIL REJECTION.

SYLLABUS:

1. *Where a private contractor has filed with the county auditor plans and specifications pertaining to a proposed county bridge, under the provisions of Section 2345, General Code, any person having any interest in the subject matter to which such plans and specifications relate may require the county auditor to permit him to inspect and examine such plans and specifications.*
2. *Where the bid of such private contractor is not accepted, he has the right to have the plans and specifications filed by him returned to him.*

COLUMBUS, OHIO, September 29, 1928.

HON. LOUIS H. KREITER, *Prosecuting Attorney, Bucyrus, Ohio.*

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

“I am herewith respectfully submitting a question for your opinion thereon. The matter came up recently and I was requested by the County Auditor to submit an opinion which I did. There is some controversy as to the correctness of my opinion and I therefore desire to present the matter to your office for final disposition.

(1) ‘May an individual require a County Auditor to permit him to inspect and examine certain plans and specifications filed with the auditor by a private contractor under provisions of Section 2345, General Code, on the proposed building of a county bridge?’

I am enclosing herewith a copy of my opinion over which this controversy arose.

I would like to also respectfully submit the following question for your opinion which question also arose out of this controversy:

(2) ‘When plans are submitted to the County Auditor for the proposed building of a county bridge, whether under Section 2344, G. C., or Section 2345, G. C., and the bid of the contractor submitting said plans is not accepted, has the bidder a right to have said plans and specifications returned to him?’ ”

The questions presented in your communication primarily call for a consideration of the provisions of Section 2345, General Code, which should be read in connection with those of Sections 2344, 2347 and 2350, General Code. These sections read as follows:

Section 2344. “When it becomes necessary to erect a bridge, the county commissioners shall determine the length and width of the superstructure, whether it shall be single or double track, and advertise for proposals for performing the labor and furnishing the materials necessary to the erection thereof. The commissioners shall cause to be prepared, plans, descriptions and specifications for such superstructure, which shall be kept on file in the auditor’s office for inspection by bidders and persons interested, for a period of fifteen days prior to the date for receiving bids, and invite bids or proposals in accordance therewith.”

Section 2345. “The county commissioners may also invite, receive and consider proposals on any other plan at the option of bidders, and shall require that any such plan together with specifications shall be filed in the office of the county auditor for a period of fifteen days prior to the date for receiving bids. Such plans and specifications shall show the number of spans, the length of each, the nature, quality and size of the materials to be used, the length of the structure when completed, and whether there is any patent on the proposed plan, or on any, and if any, what part thereof.”

Section 2347. “The plans and specifications upon and according to which the contracts are awarded, shall be kept on file in the office of the auditor and made a part of the contract with the successful bidder or bidders. When it is necessary to make an addition to, alteration or repairs of a bridge,

the commissioners in making contracts therefor, shall conform to the provisions of this chapter in relation to the erection of bridges as nearly as the nature of the case will permit."

Section 2350. "If the plans, drawings, representations, bills of material, specifications of work and estimates relate to the building of a bridge, they shall be submitted to the commissioners, county auditor and county surveyor. If approved by a majority of them, a copy thereof shall be deposited with the county auditor and kept for the inspection of parties interested."

It does not appear that any serious question as to the matters inquired of in your communication arises with respect to the plans and specifications for bridge superstructure provided for by Section 2344, General Code, above quoted. The plans and specifications therein provided for are those which the county commissioners caused to be prepared and filed, and whether such plans and specifications are prepared by the county surveyor and paid for by the compensation he receives as salary for his services as such officer, or the same are prepared by some private engineer who is compensated therefor by the county, such plans and specifications become the property of the county; *Wright vs. Eisle*, 83 N. Y. Supp. 887; *Leffinger vs. Miller*, 20 Colo. App. 429; *Robison vs. Fishback*, 175 Ind. 132; and aside from the provisions of Section 2344, General Code, that such plans and specifications shall be for the inspection of bidders and persons interested, they would as public files of the county be open to the inspection of all persons interested in the subject to which the plans and specifications relate, if indeed there is any limitation on such right of inspection. 24 Am. & Eng. Ency. Law (2d Ed.) 182, 183; *State ex rel. vs. Dittey et al.*, 12 O. N. P. (N. S.) 319.

A much closer question arises as to the matters inquired of by you with respect to the plans and specifications that are prepared and filed by a bidder on the work of constructing a bridge superstructure, under the provisions of Section 2345, General Code. In the consideration of the provisions of this section with respect to the questions here presented, it is to be noted that a certain significant provision therein was incorporated into said section by a recent amendment thereof (111 v. 416). The particular language incorporated into said section by the amendment above referred to is that "the county commissioners * * * shall require that any such plan together with specifications shall be filed in the office of the county auditor for a period of fifteen days prior to the date for receiving bids."

Aside from said amendatory provision, said Section 2345, General Code, together with Sections 2347 and 2350, General Code, provides that the county commissioners may invite, receive and consider proposals on any plan other than that prepared for the county commissioners at the option of bidders; that such plans shall be submitted to the county commissioners, county auditor and county surveyor and, if approved, a copy thereof shall be deposited with the county auditor and kept for the inspection of parties interested. The further provision is made that plans and specifications upon and according to which the contract is awarded shall be kept on file in the office of the county auditor and made a part of the contract with the successful bidder or bidders.

Leaving the amendatory provision of Section 2345, General Code, above referred to out of the consideration with respect to the question submitted in your communication, it would seem that there would in such case be no such publication of the plans and specifications prepared and submitted by a bidder for the bridge work as would affect the exclusive property right of the bidder in such plans and specifications, or invest the public with any right therein.

Architectural plans and specifications, like other products of intellectual labor, are until the publication thereof the exclusive property of the architect, which right

of property is by the common law entitled to protection against all other persons. Touching this question the following is said in 13 Corpus Juris, at pages 955, 963:

"The property in architectural plans and drawings is protected by the common law. * * * The artistic and literary property in plans and architectural drawings and specifications is in the architect, and until publication he has the exclusive right to license construction from them."

See *Wright vs. Eisle*, supra;
Gendell vs. Orr, 13 Phila. (Pa.) 191.

Like other intellectual products, however, an architect's plans and specifications for a building or other structure may be published in such manner as to destroy his exclusive property right and interest therein and vest the public with a measure of interest in such production.

In 13 Corpus Juris, at page 974, it is said:

"Whenever a literary or other intellectual work is published generally and without restriction, by or with the consent of the author or proprietor, all common law rights therein forthwith terminate, the work falls into the public demand, becomes dedicated to the public, and any person may thereafter publish and use it for his own benefit without let or hindrance by the original proprietor, regardless of intent except so far as protection and control is secured for it under the copyright statutes."

It does not follow from this, however, that every publication of a production of this kind is sufficient to destroy or otherwise affect the exclusive right of the author of the production, whether he be an architect who has prepared plans and specifications for a structure of some kind, or whether he be the producer of some other kind of intellectual production.

In the authority above referred to it is said:

"While an unqualified publication of an intellectual production, such as is made by printing and offering copies for sale, or otherwise, dedicates the work to the public unless the sole right to reproduce is secured to the originator thereof, or to his assignee, under the copyright statutes, there may be a limited publication by communicating the contents by reading, representation, or restricted private circulation, and it is well settled that such limited or qualified publication will not abridge the rights of the owner any further than necessarily results from the nature and extent of such limited use as he has made, or allowed others to make, of his work. Such restricted use of a work as does not amount to dedication thereof to the public will not interfere with the right subsequently to obtain a copyright therefor, nor will it curtail the right to prevent the unauthorized use thereof by another." (13 Corpus Juris, page 977.)

And in this connection it is further said:

"A limited publication is one made under restrictions limiting the use or enjoyment of the subject matter to definitely selected individuals, or to a limited ascertained class, or to some particular occasion or definite purpose."

It seems quite clear that the submission of an intellectual production to the members of a committee or other selected list of persons for their examination, approval and determination as to whether such production shall be selected for a particular

purpose, is not such a publication thereof as will affect the exclusive property rights of the author of such production otherwise than for the purposes of such submission.

Thus, in the case of *Press Publishing Co. vs. Monroe*, 73 Fed. Rep. 196, decided by the United States Circuit Court of Appeals of the Second Circuit, it was held that where the author of a literary production submitted the same to the members of a committee having charge of the arrangements for the opening exercises of the World's Fair or Columbian Exposition in Chicago in 1892, for the purpose of having the members of such committee read said literary production and determine whether or not the same was of sufficient merit to be read and delivered at the opening exercises of said event, there was thereby no such publication of the literary production as affected the author's exclusive right of property therein.

I do not think it necessary to multiply the authorities on this point, and aside from the amendatory language of Section 2345, General Code, above referred to and quoted, I would have no difficulty in arriving at the conclusion that the mere submission by a bidder of plans and specifications for the purpose of an examination thereof by the county commissioners, county auditor and county surveyor, with the view of determining whether such plans and specifications should be approved, would not be such a publication of such plans and specifications as would vest in the public any right to inspect or otherwise use the same without the consent of the person submitting said plans and specifications.

However, as above noted, the Legislature by the amendatory language of Section 2345 above referred to provided that the county commissioners should require such plans and specifications to be filed in the office of the county auditor for a period of fifteen days prior to the date for receiving bids for the bridge work with respect to which such plans and specifications are filed. The Legislature had some purpose in mind in making this requirement with respect to plans and specifications furnished by the bidder, and such purpose was doubtless the same which it had in mind in providing that the plans and specifications which the county commissioners caused to be prepared for bridge work shall be kept on file in the auditor's office for a period of fifteen days prior to the date for receiving bids on such work. It goes without saying that the members of the public are interested in projects such as county bridges, and in both of the sections of the General Code above quoted it is the intention of the provisions therein contained that the public should have a right to inspect the plans and specifications submitted and filed for consideration in connection with bids for county bridge work. And I am inclined to the view that the act of a bidder for county bridge work in filing with the county auditor his plans and specifications for the bridge work upon which he makes his bid gives to such plans and specifications a status similar to that of public documents for the time being, at least, and accordingly, the public has a right to inspect the same.

In the case of *Wright vs. Eisle*, supra, it was held that where an architect filed plans and specifications with the building department of a city for the purpose of permitting the owner to obtain a building permit for the construction of a building according to such plans and specifications, such filing was a publication of the plans and specifications such as destroyed the architect's exclusive right to such plans and specifications.

By way of specific answer to your first question, I am of the opinion that a person having any interest in the subject matter to which plans and specifications filed under the provisions of Section 2345, General Code, relate may require the county auditor to permit him to inspect and examine such plans and specifications.

Your second question does not call for any further discussion and, in my opinion, the same should be answered in the affirmative.

Respectfully,

EDWARD C. TURNER,

Attorney General.