

2824.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE OTIS ELEVATOR COMPANY OF CLEVELAND, OHIO, FOR CONSTRUCTION AND COMPLETION OF NEW ELEVATOR AND ACCESSORIES IN OHIO STATE SCHOOL FOR THE BLIND AT A COST OF \$3,190.

COLUMBUS, OHIO, January 26, 1922.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (five copies) between the State of Ohio, acting by the Department of Highways and Public Works, and the Otis Elevator Company, of Cleveland, Ohio. This contract is for the construction and completion of new elevator, elevator machine and accessories in the Ohio State School for the Blind of the Department of Public Welfare at Columbus, Ohio, and calls for an expenditure of three thousand, one hundred and ninety dollars (\$3,190.00).

Accompanying said contract is a bond to insure faithful performance, executed by National Surety Company of New York.

I have before me the certificate of the Director of Finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2825.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN FULTON COUNTY, OHIO.

COLUMBUS, OHIO, January 26, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

2826.

FIREMEN'S INDEMNITY LAW—CASES OF TOTAL DISABILITY DETERMINED UPON BASIS OF TWO-THIRDS OF SALARY EARNED IN OFFICIAL CAPACITY OF FIREMEN—FIREMEN PERFORMING PART TIME SERVICES ELIGIBLE TO PENSIONS UNDER SAID ACT—HOW COMPUTED.

1. *In cases of total disability, the amount of the firemen's pension provided by section 4647-8 G. C. is determined upon the basis of two-thirds of the salary or*

*average earnings, not exceeding eighteen dollars per week, earned in the official capacity of fireman.*

*2. Firemen performing part time services in the discharge of the official duties of firemen, are eligible to pensions under the provisions of this section, and the sum of two-thirds of the amount of salary or earnings paid them for the performance of such official part time services in cases of total disability, determines the amount of pension payable in such cases.*

COLUMBUS, OHIO, January 27, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

“We are enclosing herewith inquiry from Mr. William H. Brown, City Solicitor, Cambridge, Ohio, relative to construction of section 4647-8 G. C., 109 O. L. 90, as applying to firemen rendering part time services only. We would very much appreciate an opinion from you as we feel this will become a matter of general interest.”

The letter to which you refer reads as follows:

“I am writing for a construction of the following language in section 4647-8 G. C., 109 O. L. page 90, known as the Firemen’s Indemnity Law:

“For the total disability of a fireman, sustained while in the discharge of his duties as fireman, the sum of two-thirds of his salary or average earnings,” etc.

*Question:* Does the above language apply to his salary or earnings as a fireman only, or does it mean his salary or earnings in any capacity in which he might be employed where, as in this city, firemen are paid according to service rendered and make their living in other employment?”

Section 4647-8 G. C. pertinent to the subject of your inquiry, provides:

“The beneficiaries of any such firemen’s indemnity fund shall be members of the fire department or their dependents who shall be entitled to be paid the amounts following:

For the total disability of a fireman, sustained while in the discharge of his duties as fireman, the sum of two-thirds of his salary or average earnings, which shall in no case exceed eighteen (\$18.00) per week, and which shall be fixed and determined by the said board of firemen’s indemnity fund. For partial disability such an amount per week as shall be fixed by the board of firemen’s indemnity fund which in no case shall exceed ten (\$10.00) dollars per week. Provided, however, that no such pension shall be paid to a fireman under full salary during the time of any such disability.

To the widow of any fireman killed while in the discharge of his duties as fireman, or who dies from exposure or injury received while in the discharge of such duty, a sum not to exceed twenty-five (\$25.00) dollars per month, so long as she remain his widow, and the further sum of not to exceed ten (\$10.00) dollars per month for each dependent child under sixteen years of age.

Nothing in this act contained shall be deemed to preclude or limit any municipality from availing itself of the provisions of chapter 1, title 12, division 6 of the General Code of Ohio, and a municipality having a firemen's indemnity fund created and maintained under the provisions of this act may at any time avail itself of the said provisions of the General Code and thereupon the provisions of this act shall not apply to such municipalities."

It is thought that this section of the General Code intends to provide a pension for disabled firemen, and to definitely establish the amount of such pension. The paragraph fixing this amount reads specifically as follows:

"For the *total disability* of a fireman, sustained while in the discharge of his duties as fireman, the sum of two-thirds of his *salary or average earnings*, which shall in no case exceed eighteen (\$18.00) dollars per week, and which shall be fixed and determined by the said board of firemen's indemnity fund. For *partial disability* such an amount per week as shall be fixed by the board of firemen's indemnity fund which in no case shall exceed ten (\$10.00) dollars per week. Provided, however, that no such pension shall be paid to a fireman under full salary during the time of any such disability."

It is believed that the paragraph quoted provides for the pension, in cases of *total disability*, in an amount equal to two-thirds of the salary or average earnings of the fireman in question earned in the capacity of fireman. That is to say, it is thought the official salary or earnings of the fireman in each instance earned or acquired as compensation for the discharge of official duties as fireman, was intended to proportionally determine the amount of such pension in each instance, and that two-thirds of that sum is designated as the amount of the pension payable in cases of total disability.

It is not thought to be reasonably contended that the legislature in providing this section of law pertaining to the firemen's pension fund, could possibly have meant that in cases of total disability a fireman should be entitled to receive an amount equal to two-thirds of any sum he might earn or receive as a salary in the capacity of a private individual, since such a method of computation could not be said to be a fair or just basis of calculating merit or degree of public service rendered by a fireman in a given instance, and it is thought this degree of merit or public service is an underlying principle of the provisions of such a fund. Attention in this particular may again be called to the words of the section reading:

"For total disability of a fireman, sustained while in the *discharge of his duties as fireman*, the sum of two-thirds of his salary or *average earnings*," etc.

It is thought the language herein used clearly comprehends the nature of the employment wherein such salary or compensation is earned, and designates that such employment covers the discharge of his duties as fireman. It is also believed that it is not the intention of the section to require full time service as a fireman as a qualification or limitation to the privileges of a pension, but does require that the compensation or earnings for the time consumed in the discharge of the duties of a fireman should proportionally determine in the case of total disability the amount of the pension payable in that instance.

Upon such considerations, therefore, you are advised that the "salary or average earnings" contemplated by the provisions of section 4647-8 G. C. is that salary or average earning, earned by such fireman in the discharge of his official duties as fireman, and that such compensation or average earnings contemplates cases of partial time services rendered by firemen in the discharge of such duties, and does not include incomes of such firemen derived from private sources.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2827.

COUNTY AGRICULTURAL SOCIETIES—PRIVATE CORPORATIONS—NO PERSONAL LIABILITY UPON MEMBERS OF BOARD OF DIRECTORS WHO VOTE TO WAIVE LIMITATIONS OF SECTION 3819 G. C. WHEN CONSUMMATED IN GOOD FAITH.

1. *County agricultural societies organized under the provisions of section 9880 et seq. of the General Code are private corporations, whose officers and directors in the management of the societies' affairs, are governed by the same rules of conduct as those applied to similar officers of private corporations generally.*

2. *There is no personal liability upon the members of the board of directors of a county agricultural society, who vote affirmatively to waive the limitations afforded by the provisions of section 3819 G. C., when such action is consummated in good faith and is deemed by said directors to be in the best interests of the society.*

COLUMBUS, OHIO, January 27, 1922.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—The receipt is acknowledged of your letter of recent date reading as follows:

"The Columbiana County Agricultural Society have requested me to ask you for an opinion upon the following question:

'Is there any personal liability upon the board of directors of a county agricultural society who vote affirmatively for and subsequently permit the society's funds to be used in payment of a special assessment for the improvement of a street upon which the society's property abuts, where said assessment may be in excess of the benefits conferred and in excess of one-third of the value of the property after the improvement?'

This question arises out of the following

FACTS:

The Columbiana County Agricultural Society was organized more than seventy years ago under statutes which are now G. C. 9880 et seq. It regularly receives the state aid provided for by said section, and also receives the proceeds of a county levy under G. C. 9894. It owns approximately thirty-five acres of unplatted land lying wholly within the corporate limits