

1785.

WILLIAM HENRY HARRISON MEMORIAL COMMISSION — SECTION  
2314 G. C. APPLICABLE TO CONSTRUCTION OF ORNAMENTAL  
GATEWAY BY SAID COMMISSION.

*The provisions of section 2314 et seq. G. C. apply to the erection or construction of an ornamental gateway by the William Henry Harrison Memorial Commission if the aggregate cost thereof is to exceed \$3,000.*

COLUMBUS, OHIO, January 14, 1921.

*The William Henry Harrison Memorial Commission, Cincinnati, Ohio.*

GENTLEMEN:—This department is in receipt of a letter from Hon. Horace Bonser, a member of your commission, requesting an opinion as to whether or not it is necessary for the commission to advertise for bids for the construction of an ornamental gateway costing about \$6,000 to \$8,000. The letter, omitting certain formal and immaterial parts, reads as follows:

“My official capacity is that of member of a commission known as the William Henry Harrison Memorial Commission, appointed by Governor James M. Cox of Ohio, under date of September 23, 1919, pursuant to a provision of an act of the legislature, a copy of which I enclose. The commission is composed of Hon. Alfred G. Allen, Mr. W. W. Symmes and myself, all of Hamilton county, Ohio, and under bond to the state of Ohio, having served in accordance with the provisions of this act.

The property upon which the tomb of William Henry Harrison is situated in Hamilton county has been cleared of all undesirable rubbish, weeds, etc., and the matter of the ornamentation of same is now to be undertaken.

An ornamental gateway, costing about \$6,000 or \$8,000 is contemplated, and for this purpose it is the desire of said commission to be advised of the law which obtains in Ohio with reference to matters of this kind.

The \$10,000 mentioned in the act has been set apart for use of the commission, nor have we had any difficulty whatsoever in having our previous vouchers acted upon at once by the state auditor.

However, we are inquiring of your department and request that you furnish us with an official opinion as to whether or not it is necessary for us before going on with this work to advertise for bids for same and how long it is necessary to advertise for these bids before the work can be given out.

In closing allow me to state that the tomb of William Henry Harrison is located at North Bend, Ohio, which is in the extreme southwestern part of Hamilton county, and is located approximately fifteen miles from Cincinnati itself.

The little experience that we have had in the past, has been that it is a hard matter to get either men or supplies to this point, as the tomb itself is somewhat inaccessible.”

The act referred to is now designated as section 15301-1 to 15301-9, inclusive, of the General Code (108 O. L. Pt. 1, p. 284), and provides for the appointment by the governor of three commissioners to act as the William Henry Harrison

Memorial Commission; and for the re-appointment of the commission every two years upon the inauguration of the governor. The commission is expressly empowered by the act to receive deeds for the property upon which the present tomb of General Harrison is now situated, and also for adjacent lands, "for the purpose of creating a state public park on said property," to be known as the William Henry Harrison Memorial Park. The act also made an appropriation of \$10,000 from the state treasury for the purpose of carrying out its provisions.

The act further provides:

"Section 4. (15301-4). That the commission be, and the same is hereby empowered to draw upon the general revenue funds of the state, not otherwise appropriated, a sum sufficient to place said granted lands in suitable condition for park purposes."

"Section 5. (15301-5). That said commission be, and the same is, hereby empowered to draw upon the general revenue funds of the state, not otherwise appropriated, a sum sufficient for the purpose of placing the tomb and ground upon which the tomb of William Henry Harrison is located in a suitable and decent condition in order that the memory of Ohio's first president and gallant soldier, William Henry Harrison, may be fittingly commemorated."

Section 6 of the act (section 15301-6) empowers the commission to contract for upkeep and repairs at an expense not to exceed in any one year more than \$600.00, "except that the first commission shall not draw any funds whatsoever except as provided in this act."

The authority of the commission to construct and erect an ornamental gateway appears to be authorized by sections 4 and 5 of the act above quoted,—it being my opinion that the provisions thereof empowering the commission to expend funds to place the granted lands, etc., in "suitable condition for park purposes," and in a "suitable and decent condition in order that the memory of Ohio's first president and gallant soldier, William Henry Harrison, may be fittingly commemorated," is ample to confer such authority.

Nowhere in the act is it provided that the commission shall advertise for bids before undertaking to exercise or execute the powers conferred upon it by the act, and the question therefore narrows itself down to whether or not the provisions of section 2314 et seq. G. C. (107 O. L. 453), relating to the erection or construction of buildings or structures for the use of the state, etc., apply.

Prior to the recent amendment of section 2314 G. C. (107 O. L. 453), it was held by a former Attorney-General that certain park and memorial commissions, and buildings erected and improvements made by such commissions, were not within the purview of that section. Thus, in 1915 Opinions of Attorney-General, Vol. 2, p. 1953, it was held that the construction of a boulevard by the Ft. Meigs Park Commission was not included "because said section applies only to the erection, alteration or improvement of a state institution or building. The memorial and property of the state at Ft. Meigs \* \* \* is not an institution or building within the terms of this statute." And in 1916 Opinions of Attorney-General, Vol. 2, p. 1359, involving the erection of the Col. Jennings memorial hall, it was held, that "the erection of this building is not within the purview of section 2314 et seq. G. C., and there is therefore no statutory provision governing the method of awarding the contract other than that found in 103 O. L. 607,"—the latter act providing for the appointment of the commission, the erection of the memorial, and making an appropriation therefor, etc.

When the foregoing opinions were rendered, section 2314 G. C. provided that

"Before entering into (a) contract for the erection, alteration or

improvement of a state institution or building or addition thereto, excepting the penitentiary, or for the supply of materials therefor, the aggregate cost of which exceeds three thousand dollars, each officer, board or other authority by law charged with the supervision thereof, shall make or cause to be made the following:"

(Here follows a detailed statement of things to be done.)

As amended in 107 O. L., 453, and now in force, the section so far as necessary to show its applicability to the question under consideration, provides that

"Whenever any building or structure for the use of the state or any institution supported in whole or in part by the state, \* \* \* is to be erected or constructed, or whenever additions or alterations, structural or other improvements are to be made," etc., "the aggregate cost of which exceeds three thousand dollars, each officer, board or other authority, upon whom devolves the duty of constructing, erecting, altering, or installing the same, hereinafter called the owner shall make or cause to be made, by an architect or engineer whose contract of employment shall be prepared and approved by the attorney general and filed with the auditor of state, the following:

(Here follows a detailed statement of things to be done.)

Whether or not either or both opinions above referred to correctly interpreted and applied the law, may be open to some doubt. But however that may be, it is not believed that the act under consideration can admit of any such construction.

Under the express terms of the William Henry Harrison Memorial act, the title to all land acquired is taken "in the name of the state of Ohio," and their acquisition is stated to be "for the purpose of creating a state public park upon said property." The park is under the control of a commission appointed by the chief executive of the state pursuant to the provisions of the act mentioned, and \$10,000 of the general revenue funds of the state are set aside and appropriated for the use of the commission in carrying out the purposes of the act. That the park, and any improvements thereon, are for the "use of the state," is clearly shown by the considerations just mentioned.

Since, under the authorities, a gateway would, as a general rule, be comprehended in the expression "any building or structure," (See, *Cleveland vs. Painter*, 6 N. P. (N. S.) 129; *Insurance Co. vs. Luce*, 11 C. C. 476; *Lewis vs. State*, 69 O. S. 473, 481; *University of Cincinnati vs. Cincinnati*, 1 N. P. (N. S.) 105, 111; *Bailey vs. State*, 7 C. C. (N. S.) 28, 30; *State vs. Atlantic City*, 59 L. R. A. 947; *Truesdel vs. Grey*, 13 Gray, (Mass.) 311; *Karasek vs. Peier*, 50 L. R. A. 345, 347), it would seem that the provisions of section 2314 et seq. G. C. apply to the erection and construction of the ornamental gateway referred to in your letter,—there being nothing in the act or sections mentioned either expressly or by necessary implication excluding the park commission or the improvement referred to from their provisions. That being true, public notice of the time and place when and where proposals will be received for performing the labor and furnishing the material for the construction of the gateway, etc., should be given, and the provisions of section 2314 et seq. complied with.

In answer to your question as to how long it is necessary to advertise for bids, your attention is respectfully directed to section 2318 G. C., which, among other things, provides:

"That notice shall be published once each week for four consecutive weeks, the last publication to be at least eight days next preceding the day for opening the bids, in such newspaper or newspapers and in such form and with such phraseology as the state building commission shall order."

You are therefore advised that the provisions of section 2314 et seq. G. C. (107 O. L. 453) apply to the erection or construction of the ornamental gateway referred to in your letter, and should be complied with by your commission.

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

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1786.

INHERITANCE TAX LAW—VALUE OF SUCCESSIONS ARISING BY DEVISE OR BEQUEST OF LIFE ESTATE TO ONE PERSON IS DETERMINED ACCORDING TO EXPECTANCY OF LIFE OF LIFE TENANT, REGARDLESS OF ACCIDENTAL DEATH OF LIFE TENANT OCCURRING PRIOR TO DETERMINATION OF TAX.

*The value of successions arising by virtue of the devise or bequest of a life estate to one person, remainder to another, is to be determined for inheritance tax purposes according to the expectancy of life of the life tenant, regardless of the accidental death of the life tenant occurring prior to the determination of the tax.*

COLUMBUS, OHIO, January 14, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The Commission's letter of December 30th to this department is as follows:

"A by will bequeathed \$10,000 to X for life with remainder to Y. At the time of the death of the testator X had an expectancy of life of some twenty years but as a matter of fact met death in an accident before any application had been filed to determine inheritance tax in connection with the estate of A. The usual rule in such cases is to consider only theoretical values. But in a case of this sort what course should be adopted by the court in the determination of tax? Should it be determined without regard to the sudden death of X, or should that fact be taken into consideration in the determination of the tax assessed either against the life estate or against the remainder passing to Y?"

Section 5342 of the General Code provides, in part, as follows:

"The value of a future or limited estate, income, interest or annuity for any life or lives in being, or of any dower interest or other estate or interest upon which any estate or interest the succession to which is taxable under this chapter is limited, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest shall be five per centum per annum. \* \* \*"