

17.

DISAPPROVAL, PROPOSED AGREEMENT BETWEEN DEPARTMENT OF AGRICULTURE AND ONE JOSEPH B. QUAINANCE, BUCYRUS, OHIO, FOR ERECTION OF WIRE FENCE TO PROVIDE WATERING PLACE FOR STOCK ON LANDS TO BE PURCHASED FOR FISH HATCHERY.

SYLLABUS:

The proposed agreement between the Department of Agriculture and one Joseph B. Quaintance, of Bucyrus, Ohio, wherein the Department of Agriculture, at its expense, agrees to erect and maintain a wire fence, and to provide a watering place for field stock on lands to be purchased for a fish hatchery is disapproved.

COLUMBUS, OHIO, January 21, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication of January 11, 1927, which is as follows:

“This department has agreed with one Mr. Quaintance of Bucyrus, Ohio, for the purchase of land located in Bucyrus, Ohio. An agreed consideration will be paid Mr. Quaintance for his property, but as an inducement, this department has agreed to construct a fence on the east line of Mr. Quaintance’s property and allow him the use of an unused corner of the land purchased, as a place to water his field stock.

It is our desire to handle the incidental agreements separate from the deed of conveyance, and submit herewith a proposed written agreement for your examination and approval.”

A copy of which proposed agreement, is as follows:

“AN AGREEMENT TO BUILD WIRE FENCE AND TO PROVIDE WATERING PLACE.

THIS AGREEMENT, made this 5th day of January, 1927, between Joseph B. Quaintance of Bucyrus, Ohio, and the Department of Agriculture of the State of Ohio.

WITNESSETH. That The Department of Agriculture as partial consideration for the purchase of certain lands in Crawford county, township of Liberty, which deed is of record in Book -----, Page -----, of the Crawford county Recorder’s office, agrees to perform the following:

First, that the Department of Agriculture will erect and maintain a wire fence along the east line of the Joseph B. Quaintance land, starting at a point in the Plymouth Road, and running in a southerly direction to the shore of the Sandusky river.

Second, that the Department of Agriculture will provide a watering place to be located near pool No. 6 of the proposed fish hatchery. Said watering place to be used for watering J. B. Quaintance’s field stock.”

You will observe that the matters to be performed by the Department of Agriculture, as contained in the agreement, are not fully and accurately set forth in the letter attached thereto. The agreement requires the Department of Agriculture to

erect and maintain a wire fence, and to provide a watering place for J. B. Quaintance's field stock.

Section 1435-1 provides :

"* * * The secretary of agriculture may also acquire by gift, lease or purchase suitable land for the purpose of establishing state fish hatcheries, and may erect thereon such buildings or structures as he shall deem necessary.

The title or lease to any and all such lands shall be taken by the Secretary of Agriculture in the name of the State of Ohio, and when so acquired, the entire supervision of such lands shall be under the direction of the Chief of the Fish and Game Division.

The lease or purchase price of any and all such land shall be paid for from hunter's and trapper's license funds."

The intent of this section is that the consideration for the lease or purchase price shall be a payment of money out of this particular fund.

The state has, in general, the same power to contract as an individual. The contracts of a state are usually made by duly authorized officers or agents. To create a valid public contract there must be statutory authority to make it. Public officers have and can exercise only such powers as are conferred upon them by law.

The agreement submitted calls not only for the building but also for the maintenance of a fence and watering place. To carry this agreement out as to maintenance on the state's part would require future appropriations by the legislature. Appropriations are made for two-year periods only. No officer can bind the state beyond the two-year appropriation period.

Section 3 of Article VIII of the Constitution of Ohio, provides :

"Except the debts above specified in Sections 1 and 2 of this article; no debt whatever shall hereafter be created by or on behalf of the state."

As you are without authority to bind the state according to the terms of this proposed agreement, I advise that some other arrangement be entered into for the acquisition of this property. However, if you desire to insist upon the present proposed arrangement, the agreement should contain a statement similar to that in the case of *State ex rel. Ross vs. Donahey*, 93 Ohio St. 414, to wit :

"This contract is made subject to the necessary appropriations and authorizations by the state legislature, and the Department of Agriculture and officers thereof are relieved from all personal liability if such appropriation is not made. If appropriations be not made, said Joseph B. Quaintance shall not have the right to assert any lien of any kind or any claim against the lands referred to in the above described deed, nor shall he be entitled to any further payments of any kind."

I will approve the proposed agreement with the foregoing additions. Your papers are returned herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.