

2413.

DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—HAS AUTHORITY TO PREPARE PLANS FOR DEVELOPMENT OF GROUNDS OF STATE INSTITUTION—ALSO SYSTEM OF DRAINAGE IN CONNECTION WITH SUCH GROUNDS—BOARD OF TRUSTEES OF SUCH INSTITUTION WITHOUT AUTHORITY TO EMPLOY PRIVATE ARCHITECTS TO PREPARE SUCH PLANS—SUPERVISING OF WORK INCIDENT TO DEVELOPMENT AND DRAINAGE OF GROUNDS WITH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—VALIDITY OF CONTRACT OF BOARD OF TRUSTEES OF BOWLING GREEN STATE NORMAL COLLEGE DISCUSSED.

1. *Section 154-40 G. C. (109 O. L. 118) vests the department of highways and public works with the power to prepare plans for the development of the grounds of a state institution, and likewise all plans for the construction and perfection of systems of drainage in connection with such grounds. The effect of this provision is to take away from boards of trustees of such institutions the authority theretofore possessed by them to employ private architects and engineers for the preparation of such plans.*

2. *The supervising of the work incident to the development and drainage of the grounds of such institutions is also confided to the department of highways and public works, and boards of trustees of such institutions have no authority to employ private architects and engineers for such work of supervision.*

3. *Validity of contract of board of trustees of Bowling Green State Normal College, dated August 10, 1921, discussed.*

COLUMBUS, OHIO, September 12, 1921.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—In a recent letter to this department you say:

“Enclosed herewith find supplemental agreement between the board of trustees of Bowling Green State Normal College and Louis Brandt, landscape architect, and your opinion is requested on the following:

Can the board of trustees of Bowling Green State Normal College make a supplemental agreement with Louis Brandt, when House Bill No. 249, section 154-40 paragraph four, confers the authority of preparing plans for development of grounds and buildings under state control to the department of highways and public works?

In considering this supplemental agreement, you are sure to make reference to the other agreements which the board of trustees has entered into with Mr. Brandt, and I am therefore enclosing such agreements with this letter.”

The so-called “supplemental agreement” referred to in the first paragraph of your letter is dated August 10, 1921, and is in words and figures as follows:

“By this supplemental agreement the board of trustees of the Bowling Green State Normal College hereby continues and extends the employment of Louis Brandt in connection with contemplated landscape improvements at the Bowling Green State Normal Col-

lege in pursuance of a contract previously entered into long prior to August 1, 1921, with said Louis Brandt.

Party of the first part hereby continues the services of said Louis Brandt to prepare supplemental plans, specifications and proposals for the receipt of bids for additional landscape improvements, including extension of walk system, surfacing part of Wayne street, re-surfacing Court street, construction of service drive, grading about present buildings, drainage, etc., at Bowling Green State Normal College, and to supervise the execution of same, in accordance with plans, and specifications adopted by this board.

Party of first part agrees to pay Louis Brandt a commission of 5 per cent of the sum actually expended for this work, as stipulated in the original agreement above referred to."

In view of the fact that said agreement makes express reference to another agreement between the parties, to-wit "a contract previously entered into long prior to August 1, 1921, with said Louis Brandt", you have enclosed for our consideration what we assume are all the agreements at any time entered into by said board of trustees and Mr. Brandt. Said agreements are four in number, and dated June 23, 1917, September 1, 1917, June 20, 1918, September 22, 1919, respectively.

The agreement of June 23, 1917 reads as follows:

"Agreement between the board of trustees of the Bowling Green State Normal College, Bowling Green, Ohio, and Louis Brandt, landscape architect, Cleveland, Ohio.

The board of trustees hereby commissions Louis Brandt to prepare studies, plans, specifications, reports, and estimates in connection with the landscape development of the college grounds.

The landscape architect will prepare studies and evolve a plan for development which provides not only for immediate development but also for whatever future development that can be foreseen today. This general scheme for development should serve as a guide for the location of future buildings, roads, etc., for the entire property.

The landscape architect will obtain the necessary data, elevations, measurements, etc., on which to base his studies, and will present to the board, studies, plans, specifications, details, reports and estimates, constituting a 'program for development'. These studies, plans, specifications, etc., are to be as complete as possible and adequate for submission to contractors for purposes of bidding on the various work outlined.

The landscape architect will prepare the following program:

1. Preliminary studies for development, showing alternate or various possible schemes. (These studies to be presented to the board by July 10, and subject to revision until a scheme is evolved which is satisfactory to the board.)
2. Finished plan of arrangement. (To be presented to the board by August 10, if possible.)
3. Grading plans about existing buildings, and for areas where existing grades will be affected.
4. Profiles and sections on new roads or reconstructed roads.
5. Drainage plans where necessary. Extension of water mains, location of street washers, for sprinkling purposes.

6. Plan showing positions of standards for campus illumination, conduits, etc.

7. General planting plan.

8. Detailed planting plan for existing buildings and such areas which require a larger scale drawing than the 'general planting plan.'

9. Planting lists to accompany all planting plans, giving botanical and common names of all plant material specified with sizes and quantities.

10. Specifications for roads, grading, planting, drainage, etc., to accompany working drawings.

11. Estimates of probable costs of the various items of proposed development, as outlined in the plans.

12. A report on the condition of the trees and recommendations for the preservation of their beauty and health.

The landscape architect agrees to obtain the necessary information and to prepare plans, specifications, etc., as outlined above and whatever further detailed plans that may be found necessary during a period of not more than two years from date, for the sum of \$1,600.00, payable as follows:

\$200.00 in hand.

\$500.00 on completion and acceptance of preliminary studies for arrangement.

\$500.00 on completion of finished plan of arrangement.

\$400.00 on completion of general and detailed planting plans, planting lists, profiles of roads, specifications and estimates."

The agreement of September 1, 1917, omitting formal parts, says:

"That in pursuance to a former agreement entered into between the above parties and in order to secure the further services of said Louis Brandt to carry out the practical development of the plans, details and specifications for the landscape work on the Bowling Green State Normal College campus, the aforesaid board of trustees hereby employs said Louis Brandt to superintend the landscape improvement work now being constructed by the Finch Engineering Co., and said Louis Brandt agrees to do said work, at and for the sum of five per cent commission on the sum actually paid out for said improvement, amounting to approximately \$1,200; and said board of trustees also employs an engineer to be furnished by said Louis Brandt, at \$150 per month, amounting approximately to \$450.00.

Said Louis Brandt agrees to give frequent and efficient supervision to the aforesaid work and furnish a competent and satisfactory engineer at all times during the progress, and until the completion of the work.

Said employment of both Louis Brandt and the engineer to be recommended by him to continue so long as the services of both, or either, are acceptable and satisfactory to the said board of trustees."

The agreement of June 20, 1918, says:

"That whereas by unforeseen and seemingly unavoidable delay, and particularly because said first party did not provide a sufficient fund for the payment of the services of an engineer, after payments to a former engineer were taken into account, it is hereby stipulated

and agreed that second party shall be allowed and paid the further sum of \$200, to be paid from fund designated as maintenance G-3, grading, walks, etc., 1917-18, for the purpose of furnishing to first party a competent engineer to necessarily guard the interest of the said board, on behalf of the state of Ohio, in the completion of the contract of the Finch Engineering Company; and said Louis Brandt hereby agrees to furnish to first party a competent engineer at the rate of \$150 per month and will release to the first party, and not lay claim to any part of the aforesaid \$200 not required to complete the contract under these terms of employment."

The agreement of September 22, 1919, says:

"The party of the first part hereby agrees to employ the services of said Louis Brandt to prepare proposal blanks for the receipt of bids for certain contemplated improvements on Wayne street, at the Bowling Green State Normal College, to prepare advertisements for said improvements, and to supervise the execution of said improvements in accordance with plans and drawings, under original contract.

Party of the first part agrees to pay Louis Brandt a commission of five per cent of the sum actually expended for this work, amounting to approximately \$236.72."

At the time the last of these agreements, to-wit the agreement of August 10, 1921, was entered into, the new administrative code (H. B. 249, 109 O. L. 105) was in force and effect. Section 154-6 G. C., a part of said code, creates in the department of highways and public works the office of "state architect and engineer", and section 154-40 G. C. gives to said department the power

"(4) To prepare and suggest comprehensive plans for the development of *grounds* and buildings under the control of the state government, or any department, office or *institution* thereof."

Also the power

"(6) To make and provide all plans, specifications and models for the construction and perfection of all systems of sewerage, *drainage* and plumbing for the state in connection with buildings and *grounds* under the control of the state government, or any department, office or *institution* thereof."

Section 154-2 G. C. says that

"the phrase 'departments, offices and institutions' includes * * * every institution or organization which receives any support from the state."

The question is whether the legislature, in giving to the department of highways and public works the power to prepare plans for the development of the grounds and buildings of state institution, and the power of making plans, etc., for the drainage of such buildings and grounds, intended thereby to take away from boards of trustees of state institutions the power they had theretofore exercised of employing architects and engineers to do that work.

Upon reflection the view first stated seems to be the correct one. The underlying intention of the administrative code seems to be to unify, consolidate and co-ordinate the powers and functions of state government, rather than to make for a further distribution of those powers and functions among independent state agencies.

Accordingly, it is believed that the board of trustees of the Bowling Green State Normal College were without authority on August 10, 1921, to enter into a contract involving the expenditure of moneys for the services of a private architect or engineer in preparing plans for the development of grounds, or for such services in the preparation of plans, specifications, etc., having to do with drainage of the grounds of the institution, and that the contract of the board made on that date with Mr. Brandt, was, in attempting to cover these things, invalid.

The same view is entertained by this department respecting that portion of the contract in question which has to do with the work of *supervising* the execution of the various improvements therein mentioned. While the word "supervise", present in the description of powers enumerated under (2), (3), (7) and (11) of section 154-40 G. C., is not found in the description of powers enumerated in (4) and (6), having to do, respectively, with the preparation of plans for development of grounds, and the preparation of plans for the drainage of grounds, it is thought that this difference is one of phraseology only, and that the intent of the legislature was to give the department of highways and public works authority both to plan and supervise the development of grounds of state institutions.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2414.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, WILLIAMS AND COSHOCTON COUNTIES.

COLUMBUS, OHIO, September 13, 1921.

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

2415.

APPROVAL, BONDS OF MUSKINGUM COUNTY IN AMOUNT OF \$149,500 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, September 16, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.