

518.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HUFFMAN-WOLFE COMPANY, COLUMBUS, OHIO, FOR PLUMBING CONTRACT FOR SCHOOL FOR BOYS, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT AN EXPENDITURE OF \$2,330.00—SURETY BOND EXECUTED BY THE STANDARD ACCIDENT INSURANCE COMPANY.

COLUMBUS, OHIO, June 13, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and The Huffman-Wolfe Company, of Columbus, Ohio. This contract covers the construction and completion of plumbing contract for School for Boys, Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of two thousand three hundred and thirty dollars (\$2,330.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has also been submitted a contract bond upon which the Standard Accident Insurance Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1, 1929, and that the original appropriation lapsed before such contract was approved by the Attorney General. However, it will be further noted that the 88th General Assembly, in Amended House Bill No. 203, reappropriated such funds and authorized the expenditure of money for such purposes with the consent and approval of the Controlling Board, which has been obtained.

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

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

519.

PETITION—REQUESTING DETACHMENT OF PORTION OF VILLAGE AND FORMATION OF NEW TOWNSHIP—FILING WITH COUNTY BOARD OF ELECTIONS AUTHORIZED—SECTION 3577-1, GENERAL CODE, CONSTRUED.

SYLLABUS:

*Under the provisions of Section 3577-1 of the General Code the petition provided for therein may be filed with the board of elections, irrespective of whether such board*

*of elections in a given county is designated by statute as "board of deputy state supervisors and inspectors of elections" or "board of deputy state supervisors of elections."*

COLUMBUS, OHIO, June 14, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, which reads:

"Please give your opinion on the following:

'Petitioners are about to file in the office of the Board of Deputy State Supervisors of Elections of Ashtabula County a petition under favor of Section 3577-1, General Code, asking that the question of the detachment of a portion of North Kingsville village and the formation of a new township be submitted to the voters of the affected district. Said statute provides, "That the petition be filed with the Board of Deputy State Supervisors and Inspectors of Elections in said county." The above appears to be the term used throughout the statute.'

When such petition is filed in the office of the Board of Deputy State Supervisors of Elections of Ashtabula County, does this board, under the statute, have any authority to act upon the petition, said Ashtabula County being one of the counties in which the election board is organized by virtue of Section 4803, General Code? I might add that we are of the opinion that another section of our statute covers this matter, but inasmuch as the board of Ashtabula County desires your opinion, we are submitting this question to you.

May I ask that this opinion be furnished at the earliest possible moment for the reason that the board will be compelled to pass upon the question in the very near future."

Section 3577-1 of the General Code, which you mention in your communication, provides:

"The inhabitants residing within any portion of a village, such portion being contiguous to an adjoining township, and comprising not less than one thousand five hundred acres of land, may file with the board of deputy state supervisors and inspectors of elections in said county a petition requesting that an election be held to obtain the sense of the electors residing within said portion of such village upon the question of the detachment of such portion from such village, or, upon the question of the detachment of such portion from said village and the erection of such detached portion into a new township. Said petition shall contain an accurate description of the territory sought to be detached, together with an accurate map or plat thereof, and, if the erection of a new township is also sought, the name proposed for such new township; also, the name of a person to act as agent of the petitioners, and shall be signed by not less than twenty-five electors residing within the territory sought to be detached.

Within ten days after the filing of said petition, with the board of deputy state supervisors and inspectors of elections, said board shall determine whether said petition conforms to the requirements hereof. If it does not, no further action shall be taken thereon. If it does, said board shall order an election, as prayed for in said petition, which election shall be held at a convenient place within the territory sought to be detached on a day named by said board, which day shall be not less than ten days, nor more than twenty

days, thereafter. Said board shall thereupon give ten days' notice of such election by publication in a newspaper of general circulation in said territory, and shall cause written or printed notices thereof to be posted in three or more public places therein. Said election shall be conducted as other elections are conducted, and the judges and clerks thereof shall be designated by said board of deputy state supervisors and inspectors of elections.

The ballots shall contain the words 'for detachment,' and 'against detachment.' If a majority of the ballots cast at such election shall contain thereon the words 'against detachment,' no further proceedings shall be had in relation thereto, but this shall not be a bar to other proceedings for the same purpose. If a majority of the votes cast have thereon the words 'for detachment,' the result of such election, together with the original petition and plat and a transcript of all the proceedings of said board of deputy state supervisors and inspectors of elections in reference thereto shall be certified by said board and delivered to the county recorder, who shall forthwith make a record of the petition, and plat, and transcript of all the proceedings of the board of deputy state supervisors and inspectors of elections, and the result of the election, in the public book of records, and preserve in his office the original papers delivered to him by said board of deputy state supervisors and inspectors of elections, and certify thereon that the transcribed petition and map are properly recorded. When the recorder has so made such record, he shall certify and forward to the secretary of state, a transcript thereof.

The detachment of said territory from said village, shall thereupon be complete, and, if said petition included a request that such territory be erected into a new township, said territory shall thereupon constitute and be a new township, under the name and style specified in said petition. All expense involved in the holding of said election, and in the filing, recording and transcribing of the records herein provided for, shall be defrayed by the petitioners, and said board of deputy state supervisors and inspectors of elections, and said county recorder may require the payment thereof in advance as a condition precedent to the taking by them, or either of them, of any step herein provided for."

Section 4803 of the General Code, to which you also refer, provides :

"Except in counties containing cities wherein annual general registration of electors is required by law, or which contains two or more cities in which registration is required by law, there shall be a board of deputy state supervisors of elections for each county consisting of four members who shall be qualified electors."

It is assumed that your question arises by reason of the fact that throughout Section 3577-1 of the General Code, supra, the term "board of deputy state supervisors and inspectors of elections" is used, whereas, by the terms of Section 4803, a county such as Ashtabula should contain a "board of deputy state supervisors of elections." In other words, Section 4871 of the General Code provides for annual registration in cities having a population of more than 100,000, and Section 4872 provides for quadrennial registration in cities having a population of 11,800 and less than 100,000. According to the last federal census, there is only one city in Ashtabula County which contains a population of more than 11,800, and it does not contain a city of 100,000. It follows that said county, under the provisions of Section 4803, supra, technically speaking, should have a "board of deputy state supervisors of

elections" as contradistinguished from a "board of deputy state supervisors and inspectors of elections." However, it is believed that the distinction between the boards of elections, as heretofore pointed out, is immaterial in connection with the inquiry submitted. Section 3577-1 apparently does not undertake to make any distinction as to the counties in the state in which the residents may petition for the detachment of village territory and the establishment of a new township, except as to the technical designation of the board of elections, as hereinbefore discussed. Section 4802 of the General Code provides:

"In this title and other laws relating to elections, unless otherwise expressly provided therein, the term 'state supervisor' shall apply to the state supervisor and inspector equally with the state supervisor, the term 'deputy state supervisors' shall apply to deputy state supervisors and inspectors of elections equally with deputy state supervisors of elections, the term 'board of deputy state supervisors of elections' shall apply to the board of deputy state supervisors and inspectors of elections equally with the board of deputy state supervisors of elections, and the term 'clerk' shall apply to the clerk of the board of deputy state supervisors and inspectors of elections equally with the clerk of the board of deputy state supervisors of elections."

From the last quoted section it is evident that a board of elections may be designated either as a board of deputy state supervisors and inspectors of elections or a board of deputy state supervisors of elections, and such designation shall be construed to include either of such boards, unless the context of the language in connection with which the term is used clearly and expressly provides otherwise. In Section 3577-1 there is no language indicating that the term used in referring to the board of elections is to be used in any different sense than if the term "board of deputy state supervisors of elections" had been used. In other words, in the enactment of Section 3577-1 the Legislature seemed to be providing a method whereby a new township could be created anywhere in the state under the provisions set forth therein and it was its purpose to authorize a petition to be filed with the board of elections without making the technical distinction that exists between such boards by reason of the fact that a county may contain a city wherein annual registration is required or may contain two cities where quadrennial registration is required.

In view of the foregoing, you are advised, in specific answer to your question, that under the provisions of Section 3577-1 of the General Code the petition provided for therein may be filed with the board of elections, irrespective of whether such board of elections in a given county is designated by statute as "board of deputy state supervisors and inspectors of elections" or "board of deputy state supervisors of elections."

In reaching the above conclusion, no consideration has been given to the action of the 88th General Assembly, which recodified the election laws of this state, and which, unless a referendum should prevail against it, will become effective by the express terms thereof on January 1, 1930.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*