

2170.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE FRITZ-RUMER-COOKE COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF COAL BUNKER AT POWER HOUSE, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$10,550.00—SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, May 28, 1928.

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 Department of Public Works, for the Board of Trustees of the Ohio State University, and The Fritz-Rumer-Cooke Company, of Columbus, Ohio. This contract covers the construction and completion of Coal Bunker at Power House, Ohio State University, Columbus, Ohio, and calls for an expenditure of ten thousand five hundred and fifty dollars (\$10,550.00).

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. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond upon which the Indemnity Insurance Company of North America 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 have been complied with.

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,

EDWARD C. TURNER,
Attorney General.

2171.

ELECTION—QUESTION OF ORGANIZING A MUNICIPALITY AT A SPECIAL ELECTION—HOW CONDUCTED.

SYLLABUS:

1. *Where a petition is properly presented for submitting to the voters the question of organizing a municipality under a specific plan of government as provided in Section 3515-1, General Code, council may provide for submitting such question at a special election to be held on the same day the regular August primary is held.*

2. *Said question so submitted shall be printed on a separate ballot, deposited in a separate ballot box, and said election shall be presided over by the regular judges and clerks of election, under the provisions of Section 5020, General Code.*

COLUMBUS, OHIO, May 28, 1928.

HON. JAMES COLLIER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"It is contemplated to submit the question of a change of government for the City of Ironton to the electors of the city under Section 3515-1 G. C. The Board of Deputy State Supervisors of Election of this county have asked me whether or not the special election provided for in said section of the Code could be held on the same day that the August primary is held. I have been unable to find any reason why it should not be held on the same day of the primary election, but because of the importance of the question, I am asking that you please give us your opinion in the matter."

Section 3515-1, General Code, provides as follows:

"Whenever electors of any municipality, equal in number to ten per centum of those who voted at the last regular municipal election, shall file a petition with the board of deputy state supervisors of elections or board of deputy state supervisors and inspectors of election, as the case may be, of the county in which such municipality is situated, asking that the question of organizing the municipality under any one of the plans of government provided in this act be submitted to the electors thereof, said board shall at once certify that fact to the council of the municipality and the council shall, within thirty days, provide for submitting such question at a special election to be held not less than sixty nor more than ninety days after the filing of such petition. Any such election shall be conducted in accordance with the general election laws of the state except as otherwise provided in this act and the council of any municipality holding such an election shall appropriate whatever money may be necessary for the proper conduct thereof."

The sole question presented by the inquiry is whether or not the special election provided for in the above mentioned section can be held on the same day that the August primary is held. It will be observed that upon a filing of the petition the council of the municipality shall within thirty days provide for submitting such question at a special election to be held not less than sixty nor more than ninety days after the filing of such petition. It also provides that such election when held shall be conducted in accordance with the general election laws of the state except as otherwise provided in the act, and that council shall appropriate whatever money may be necessary for the defraying of the expenses of said election in the municipality.

If the August primary should come within the limitations of time mentioned in the Section, I can see no objection to the holding of such special election on the regular August primary day.

This department has heretofore had occasion to consider the question of holding a special election on the regular primary election day and in an opinion found in Opinions of the Attorney General for 1918, Vol. I, page 981, the first branch of the syllabus is as follows:

"1. Where a vacancy in the office of representative to congress occurs and the governor issues a writ of election directing that a special election be held to fill such vacancy, and in such writ fixes a date for the primary as provided for in Section 4964 G. C.; and where the date so fixed for said primary is the date for holding the regular primary election, the special primary election for nominating candidates to fill the vacancy in the office of representative to congress shall be conducted separately from the regular primary election; that is, there should be a separate ballot, poll books and ballot box for said special election, although conducted by the same election officers."

Section 5020, General Code, provides as follows:

“When the approval of a question, other than a constitutional amendment, is to be submitted to a vote, such question shall be printed on a separate ballot and deposited in a separate ballot box, to be presided over by the same judges and clerks of election.”

Specifically answering your question, therefore, it is my opinion that the special election provided for in Section 3515-1, General Code, may be held on the same day that the August primary is held if that date should come within the statutory limitations therein mentioned. It is also my opinion that such question should be printed on a separate ballot and the votes thereon deposited in a separate ballot box, and that said election should be presided over by the same judges and clerks of election that conduct the regular primary election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2172.

TOWNSHIP TRUSTEES—LIABILITY FOR DAMAGES RECEIVED THROUGH BOARD'S NEGLIGENCE IN DISCHARGE OF ITS OFFICIAL DUTIES, DISCUSSED—NO AUTHORITY TO SPEND MONEY TO INSURE AGAINST INJURY BY TOWNSHIP OWNED MOTOR VEHICLES.

SYLLABUS:

1. *By the terms of Section 3298-17, General Code, a board of township trustees is liable, in its official capacity, for damages received by any person by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties. If an action be brought against a board of township trustees for such damages it must, to succeed, be for a wrong committed or an obligation incurred by such trustees while in the discharge of their official duties.*

2. *Statutes, such as Section 3298-17, General Code, being in derogation of the common law, should not be extended beyond the plain meaning of their terms.*

3. *A board of township trustees is without authority to enter into a contract and expend public moneys for the payment of premiums on "public property" or "property damage" insurance covering damages to property and injuries to persons caused by the negligent operation of township owned motor vehicles and road building machinery.*

COLUMBUS, OHIO, May 29, 1928.

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

GENTLEMEN:—This will acknowledge your letter of May 22, 1928, which reads:

“You are respectfully requested to furnish this department your written opinion upon the following. Section 3298-17, of the General Code, provides that each board of township trustees shall be liable in its official capacity for damages received by any person, firm or corporation, by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties.