

Works, the second floor and a part of the basement of a building located at No. 180 East Long Street, Columbus, Ohio.

With the exception of a discrepancy in the terms of said lease as to the amount of rental to be paid for the six months term thereof, the same appears to be in proper form. The discrepancy with respect to the amount of rental to be paid under said lease arises from the fact that it is therein provided that the lessee shall pay during the term of said lease the sum of \$950.00. The monthly installments of rent therein provided for are specified as being \$150.00 for each of the six months of said term which would aggregate the sum of \$900.00. It is obvious that there is an error in these figures some place, either as to the aggregate sum of rental to be paid or as to the monthly installments that shall be due and payable under said lease.

By reason of this discrepancy in the terms of the lease as submitted, I am unable to approve said lease and the same is herewith returned.

In connection with the consideration of said lease, I note that the same is not signed either by George L. Gugle, Lessor, or by the Director of Public Works. It is suggested that the signatures of the Lessor and of the Director of Public Works be secured to said lease before the same is again returned to this department for approval.

With said lease I herewith return to you Encumbrance Estimate No. 5143 which again should be submitted to this department with the corrected lease.

Respectfully,

GILBERT BETTMAN,

Attorney General.

126.

BIDS—DIVISION OF PURCHASES AND PRINTING—MAY NOT RECEIVE
BIDS AFTER SPECIFIED DATE FOR OPENING.

SYLLABUS:

When the Division of Purchases and Printing specifies in a notice mailed pursuant to Section 196-7, General Code, that bids will be received at the office of the Superintendent of Purchases and Printing on a certain date at a certain hour, proposals received subsequent to such fixed time may not be considered in awarding a contract, notwithstanding the fact that such proposals may have been mailed on the day preceding such time for the opening of bids.

COLUMBUS, OHIO, February 26, 1929.

HON. D. C. RYBOLT, *Superintendent of Purchases and Printing, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“On February 7th, we opened bids on our requirements for paint for the 1930 Auto License Plates.

We are enclosing a copy of the invitation to bid, which was sent to all paint manufacturers who wished to bid.

You will notice that the invitation specifies that the bids were to be opened at 10 o'clock a. m., on February 7, 1929.

One company mailed their bid to us, but their bid was not received until 2 o'clock in the afternoon of the day the bids were to be opened.

Another company sent their bid by air mail and on account of a snow storm the bid did not reach us until the next day.

We decided that we could not receive the bids of any company unless they were here at 10 o'clock as specified on the invitation.

One of the companies whose bid was late, has asked whether or not their bid could not be received because of the fact that it had been put in the mail the day before, and, under ordinary circumstances should have reached us before 10 a. m.

We should like to have your opinion as to whether this bid could be considered by this department.

As the matter will be up for decision within the next few days after a test of the samples have been made, we would greatly appreciate an early reply."

It appears that notices requesting proposals were mailed by you on January 21, 1929, under the provisions of Section 196-7, General Code, such date being at least fifteen days preceding February 7, the time stipulated for the opening of said proposals. While this section does not fix the time and place where the bids shall be opened, it is expressly provided that such a time and place shall be determined and expressly set forth in the notice, which was done. Two proposals were apparently mailed to you on February 6, 1929, and, under ordinary circumstances, should have been received at your office by 10 a. m., February 7, 1929, the time specified for the opening of such proposals. The question here presented is whether or not delays in transit occasioned through no fault of the bidders should exclude their proposals from your consideration, or whether or not the consideration of such proposals would be within your administrative discretion in awarding the contract.

Section 196-10, General Code, provides:

"The state purchasing agent may require that all bids be accompanied by a bond in such sum and with such sureties as he may prescribe, payable to the State of Ohio, and conditioned that such bidder, if his bid is accepted, will faithfully execute the terms of the contract and promptly make deliveries of the supplies or equipment purchased. A sealed copy of each bid shall be filed in the office of the auditor of state prior to the opening of the bids, but shall not be opened by the auditor of state until after the opening of the bids by the state purchasing agent, and no bid shall be considered as a valid bid unless such copy has been filed with the auditor of state. All bids shall be publicly opened in the office of the secretary of state at the time specified in the notice."

In view of the fact that under Section 196-7, General Code, the definite fixing of the time and place for the opening of bids is mandatory, and in view of the provisions of Section 196-10, *supra*, providing that a bond may be required and for the filing of a sealed copy of each bid in the office of the auditor of state prior to the opening of bids, there is apparently an intention on the part of the legislature to provide that all bids must be submitted at the place where they are to be opened prior to such time fixed for the opening thereof. Under this construction, bids which are received subsequent to said time fixed for the opening thereof may not be considered by the Division of Purchases and Printing for the reason that the conditions prescribed by your division, as set forth in the notice inviting bids, mailed under the provisions of Section 196-7, General Code, have not been complied with.

Your attention is directed to the opinion of this department, outlining the form of procedure to be followed by the Division of Purchases and Printing in the purchase of supplies. Opinions of the Attorney General, 1921, Vol. II, p. 935. In commenting upon the requirements to be complied with in the purchase of supplies in the maintenance

of the institutions under the control of the Department of Public Welfare, it was therein held, on page 940, that:

"It will be observed that under this section there are no such detailed requirements as obtained under the other sections referred to. In purchasing supplies needed for the proper support and maintenance of the institutions under the control of the department of public welfare, the department of finance may establish its own rules; it need comply only with the following requirements:

(1) Competitive bidding.

(2) Public opening of bids on the day and hour and at the place specified in the advertisement.

(3) Award of the contract to the lowest responsible bidder, preference being given to bidders in localities wherein such institution for which the purchase is made is located, if the price is fair and reasonable and not greater than the usual price.

(4) Compliance of the bids with the specifications.

Special attention is called to the requirement that bids must be opened at the time and place specified in the advertisement. * * *"

I am, therefore, of the opinion that when the Division of Purchases and Printing specifies in a notice mailed pursuant to Section 196-7, General Code, that bids will be received at the office of the Superintendent of Purchases and Printing on a certain date at a certain hour, proposals received subsequent to such fixed time cannot be considered in awarding a contract, notwithstanding the fact that such proposals may have been mailed on the day preceding such time for the opening of bids.

Respectfully,

GILBERT BETTMAN,

Attorney General.

127.

APPROVAL, BONDS OF GORHAM-FAYETTE SCHOOL DISTRICT, FULTON COUNTY, OHIO—\$98,000.00.

COLUMBUS, OHIO, February 26, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

128.

APPROVAL, BONDS OF MONTGOMERY COUNTY—\$5,000.00.

COLUMBUS, OHIO, February 26, 1929.

Industrial Commission of Ohio., Columbus, Ohio.