

1220.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HUFFMAN-WOLFE COMPANY OF COLUMBUS, OHIO, FOR COMPLETION OF HEATING AND PLUMBING FOR ADDITION TO MEDICAL SCIENCE BUILDING, OHIO STATE UNIVERSITY, AT COST OF \$39,463.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY.

COLUMBUS, OHIO, February 21, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works and The Huffman-Wolfe Company of Columbus, Ohio. This contract covers the construction and completion of heating and plumbing for the addition to the Medical Science Building, Ohio State University and calls for an expenditure of \$39,463.00.

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 further been submitted a contract bond upon which the Fidelity and Deposit 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 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,

C. C. CRABBE,

Attorney General.

1221.

ELECTIONS—FILING OF EXPENSE STATEMENT—HOW VACANCIES IN OFFICE OF COUNCILMAN ARE FILLED—SECTIONS 5175 AND 5092 CONSTRUED.

SYLLABUS:

A candidate for village council whose name was printed on the ballot, and who served as a judge of election at the same election at which he was such candidate, is ineligible to enter upon the duties of the office of councilman to which he was elected.

A commission or certificate of election shall not issue to any person elected to office until his expense statement is duly filed under the provisions of section 5175-8, G. C. In offices where commissions or certificates of election do not issue, if a person so elected enters upon the discharge of the duties of the office without having filed the expense statement required, he shall not receive any salary or emolument prior to the filing of the same.

Three members of a village council, not constituting a majority thereof are without authority to fill vacancies in the office of councilman; a greater number than three, however, are so authorized.

The village mayor is without authority to fill such vacancy until after the council has so failed for a period of thirty days.

COLUMBUS, OHIO, February 23, 1924.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent letter requesting the opinion of this department as follows:

“We are enclosing herewith a communication from the prosecuting attorney of Mahoning county in which he requests an opinion upon the questions submitted in the attached letter from the deputy state supervisors and inspectors of elections of Mahoning county.

Since a portion of the officers are at this time serving it is desired that an opinion be furnished us as early as possible.”

Also attached to your letter is one from the prosecuting attorney of Mahoning county as follows:

“I am enclosing herewith letter received from our local board of elections with request to apply to you for an opinion on the situation discussed by this communication.”

Attached to his letter is one from the deputy state supervisors and inspectors of elections of Mahoning county as follows:

“The board of elections has been asked to make a ruling in reference to the fact of not filing statements of expense of candidates in reference to their assuming and taking office at the time set by law.

In reference to one particular case, would like, if possible to have you secure a ruling from the Attorney General, the same being a situation in the village of New Middletown.

The facts briefly are as follows: The by-laws of the village provide that the second Tuesday of January shall be the date of installation of the newly elected officers. The old council met, as provided by law on said second Tuesday, for the purpose of disposing of unfinished business and it developed that two of the newly elected councilmen were ineligible to be qualified, for the reason that they had failed to file their expense statements with the board of elections, as provided by law, and the third ineligible councilman was a candidate of council and his name was printed on the ballot and was also a judge of elections in the village of New Middletown, in which he was a candidate; the remaining three newly elected councilmen were eligible, but as three could not constitute a quorum, the mayor proceeded to declare the three next highest candidates in said council election eligible to take the place of the three ineligible, and appointed them councilmen for the village of New Middletown. The meeting was then continued to secure a ruling on said procedure from the board of elections.

Another question submitted to us in several school districts is as follows: That different newly elected members have failed to file statements of

expenses as provided by law, and have taken office and are acting as members of these different boards.

Would like to know what the legal status of said newly elected members in said different school districts is? Would the fact that these different candidates would now come in and file expense accounts affect their status?"

Relative to the case of the candidate for councilman whose name was printed on the ballot, and who was also a judge of elections in the village at the same election will say the provisions of section 5092 G. C. are as follows:

"No person, being a candidate for an office to be filled at an election, other than for committeeman or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct, at such election. A person serving as deputy state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election."

It will be observed that the provisions of the above section clearly prevent this candidate from serving in the office to which he was elected.

The provisions of section 5175-2 G. C. requiring an itemized statement of expenditures of every candidate who is voted for at any election or primary election in Ohio are as follows:

"Every candidate who is voted for at any election or primary election held within this state, and every person, committee or association or persons incorporated or unincorporated, who may have contributed, promised, received or expended directly or indirectly, any money or thing of value in connection with any election held in this state, shall within ten days after such election file, as hereinafter provided, an itemized statement showing in detail all the moneys or things of value, so contributed, promised, received or expended, and all liabilities directly or indirectly incurred in connection with such elections; but individuals other than candidates making only contributions, the receipt of which must be accounted for by others, need not file such statement under this section."

Section 5175-8 G. C. provides as follows:

"No board, office or officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any person required by this act to file a statement or statements until such statement or statements have been so made, verified and filed by such persons as provided by this act. No person required by this act to file a statement or statements shall enter upon the duties of any office to which he may be elected until he has filed all statements provided by this act, nor shall he receive any salary or emolument prior to the filing of the same."

It will be observed that no commission or certificate of election shall issue to any person required by the act to file a statement until said statement has been duly filed.

It is probably true that no commission or certificate of election is required to be issued to members of the school board as referred to in your letter.

You state in your communication that some of the elected officials including some members of school boards have entered upon the duties of their office without having filed the expense statement mentioned. It may be and probably would be held that the ten day period of limitation after the election in which to file the expense statement is directory only as to time, and not mandatory, and that the expense statement might be filed after such ten day period, and before entering upon the duties of the office. However, the latter part of the section provides clearly that the officials shall not receive any salary or emolument prior to the filing of the same.

Taking this view of the case we think the two newly elected councilmen who did not file their expense statement would be authorized to file them after the ten day period, or before entering upon the duties of the office, and upon so complying and taking the oath of office would be authorized to assume the duties of their office. This would then give the newly elected council five members, and these five in turn would be authorized to fill a vacancy, if any existed in the membership of the village council.

Section 4236 G. C., which provides for filling a vacancy in a council is as follows:

“When the office of councilman becomes vacant, the vacancy shall be filled by election by council for the unexpired term. If council fail within thirty days to fill such vacancy, the mayor shall fill it by appointment.”

Clearly the mayor was without authority to “declare the three next highest candidates in said council election eligible to take the place of the three ineligible,” and he was without authority to make any appointment at that time. The three duly elected councilmen not constituting a majority could do no more than adjourn the meeting until one or both of the other elected councilmen had filed their expense statements and entered upon the discharge of their duties, when if a quorum were present, council could elect to fill the vacancy. Failing in this for thirty days, the mayor would then be authorized to fill the vacancy by appointment.

More specifically answering your question, if council does not fill the vacancy within thirty days from the second Tuesday in January, the date fixed by the by-laws of this village for installation of its officers, the mayor would then be authorized to make the appointment to fill the vacancy or vacancies.

Inasmuch as the former appointments of the mayor were unauthorized at that time, if council did not fill the vacancy or vacancies within said thirty day period, the mayor should make the appointments or reappointments after the said thirty day period had elapsed, in order that the village may have a legally constituted council.

Respectfully,

C. C. CRABBE,
Attorney-General.

1222.

APPROVAL, BONDS OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT,
WASHINGTON COUNTY, \$1,522.50, TO FUND CERTAIN INDEBTED-
NESS.

COLUMBUS, OHIO, February 23, 1924.

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