

472.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND DAWSON & FINAN, CLEVELAND, OHIO, FOR INDUSTRIAL BUILDING, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT AN EXPENDITURE OF \$32,404.27—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY.

COLUMBUS, OHIO, June 1, 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 Dawson & Finan, Cleveland, Ohio. This contract covers the construction and completion of general contract for Industrial Building, Cleveland State Hospital, Cleveland, Ohio, and calls for an expenditure of thirty-two thousand four hundred and four and 27/100 dollars (\$32,404.27).

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 submitted a contract bond upon which the Aetna Casualty and Surety 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.

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.

473.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF ROBERT J. PRATT, IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, June 1, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting to me abstract of title, warranty deed, encumbrance estimate and Con-

trolling Board's certificate relating to the proposed purchase of a tract of 82 acres of land, more or less, situated in Nile Township, Scioto County, Ohio, which tract of land is owned of record by one Robert J. Pratt and which is more particularly described in Opinion No. 3060 of this department directed to you under date of December 24, 1928.

The above mentioned files are submitted with the request that I give you my further opinion with respect to the same.

As to the title of Robert J. Pratt to the tract of land here in question, I do not see how I can add to what was said by my predecessor in the former opinion of this department, above referred to. The abstract shows that Robert J. Pratt is the owner of record of said tract of land, subject to the lien of the taxes on the lands for the last half of the year 1928 and of the undetermined taxes for the year 1929.

As pointed out in said former opinion, however, said Robert J. Pratt holds his record title to these lands through a forfeited tax sale deed and a subsequent delinquent tax sale deed of which the most that can be said is that the same are only prima facie valid depending in each instance upon the question as to whether the proceedings leading up to the sale of said property at the forfeited land sale and the delinquent land sale were in all respects regular and in conformity to the then existing statutory provisions relating to such sales. If, as pointed out in said former opinion, said sales were in all respects regular, the forfeited tax sale deed and the delinquent tax sale deed executed by the county auditor pursuant to said proceedings each constituted a new and independent source of title and had the effect of investing the purchaser with a fee simple title to the property free and clear of the mortgage executed by George W. Stewart to V. J. Reinke under date of May 6, 1904, to secure the payment of the sum of \$1,500.00 five years from the date of said mortgage.

If, on the other hand, the proceedings leading up to the sale of this property at the forfeited tax sale and the delinquent tax sale were not in all respects regular, and in conformity to the then statutory provisions relating to such tax sales, the title of Robert J. Pratt is not only defective and subject to overthrow at the suit of the person who was the owner of record of said land at the time of the sale of the same at forfeited tax sale, but in such event the mortgage above referred to would be a lien on the land for the reason that the statute of limitations has not yet run against the lien of such mortgage.

The question whether this property should be purchased by your department is one of moral risk, to be decided by your Board of Control. Inasmuch as I am informed a large part of the titles to lands in this and other townships of Scioto County are held by or through either forfeited tax sale deeds or delinquent tax sale deeds or both, it is probable that there is no great moral risk involved in the purchase of these lands. This, however, as has been indicated, is a matter to be determined by the Board of Control of the Ohio Agricultural Experiment Station in the light of the facts set out in this and the former opinion of this department above referred to and a copy of which you have in your files.

In this connection it may be noted as pointed out in said former opinion that the land here in question is subject to the easement of a right of way over said lands pertinent to a tract of land owned by Edward Cunningham.

I have examined the warranty deed tendered by Robert J. Pratt to the State of Ohio and find that the same has been corrected so as to obviate the objections noted to the same in the former opinion of this department. Said deed has been properly executed and acknowledged by said Robert J. Pratt and is in form sufficient to convey to the State of Ohio a fee simple title to the land here in question, free and clear of all encumbrances except taxes for the last half of the year 1928. If this property is purchased by your department some adjustment of these taxes should be made before the transaction is closed.

Encumbrance Estimate No. 4712 and the Controlling Board's certificate relating to the purchase of this property were both approved in the former opinion of this department, above mentioned.

I am herewith returning said abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate for such further action in the premises as you desire to take.

Respectfully,
GILBERT BETTMAN,
Attorney General.

474.

FORFEITED BONDS—CRABBE ACT CASES IN MUNICIPAL COURTS—
DISPOSITION OF MONEY.

SYLLABUS:

Moneys arising from collection of forfeited bonds by the prosecuting attorney in cases brought under the Crabbe Act in the municipal court of Cincinnati, should be paid one-half into the state treasury and the other half into the treasury of the municipality.

COLUMBUS, OHIO, June 1, 1929.

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

GENTLEMEN:—I am in receipt of your letter of April 18, 1929, which is as follows:

"The syllabus of Opinion No. 33, page 54, Opinions of the Attorney General for 1915, reads:

"Under the Cincinnati municipal court law, forfeited recognizances thereunder shall be collected by the prosecuting attorney and paid into the county treasury."

Bonds forfeited in the municipal court of Cincinnati in connection with the prosecutions for violations of the Crabbe Act are forwarded to the county prosecuting attorney. When collected by him, the entire amount is paid into the county treasury and retained for the use of the county.

Question: In view of the provisions of Section 6212-19, G. C., as amended 112 O. L., page 260, is such practice legal?"

As you state in your letter, in 1915 the then Attorney General rendered an opinion reported in Opinions of the Attorney General for 1915, page 54, in which he held that under the Cincinnati municipal court law, forfeited recognizances thereunder should be collected by the prosecuting attorney and paid into the county treasury. In this opinion the Attorney General quotes Section 13 of the act creating the municipal court of Cincinnati, 103 O. L. 283, and then says as follows:

"No other provision has been made in this act whereby the practice prevailing in municipal police courts has been changed. Forms of recognizances are found under Sections 13552 and 13553 of the General Code, and are made payable to the State of Ohio.

Section 13546 of the General Code provides that clerks of police courts shall return forthwith to the county auditor of their respective counties all