

211.

DISAPPROVAL, BONDS OF NAVARRE VILLAGE SCHOOL DISTRICT,
STARK COUNTY—\$96,000.00.

COLUMBUS, OHIO, March 19, 1929.

Re: Bonds of Navarre Village School District, Stark County—\$96,000.00.

GENTLEMEN:—An examination of the transcript relative to the above issue of bonds discloses that advertisements for bids for the construction of this improvement were published for a period of four weeks as provided in Section 7623, General Code. Such notices, however, after stipulating that each bid shall be accompanied by a bid bond as required by paragraph 4 of Section 7623, General Code, provided, in part, as follows:

“The amount of said bond, cash or certified check shall be equal to at least two per cent of the total amount of the bid. * * * .”

Paragraph 4 of Section 7623, expressly provides as follows:

“Each bid must contain the name of every person interested therein, and shall be accompanied by a bid bond or by a certified check upon a solvent bank, as the board may require, payable to the order of the treasurer of the board of education, in an amount to be fixed by the board of education or by an officer designated for such purpose by the board, *said bond or check to be in no case less than five per cent of the amount of the bid* and conditioned that if the bid be accepted, a contract will be entered into, and the performance of it properly secured.”

Pursuant to such notice, it appears that bids were submitted and contracts awarded on February 1, 1929.

Under these circumstances, the question is presented as to whether the board of education could make a legal award of contracts for the construction of the building pursuant to notice to contractors, which notice is not in compliance with the express provisions of Section 7623, General Code. It is presumed that the bids submitted complied with the requirements as set forth in said notice. In the case of *Ross vs. Board of Education*, 42 O. S. 374, the court ruled upon the necessity of complying with the provisions of this section of the General Code as then contained in Section 3988, Revised Statutes, Clause 4. This section then provided that each bid shall be accompanied by a sufficient guarantee of some disinterested person that if the bid be accepted, a contract will be entered into and the performance of it properly secured. A bid was submitted in this case with the words “Sureties, A. E. Taylor” at the bottom thereof. The court held that this was not a sufficient compliance with the above requirement of law, notwithstanding the fact that this section as it then existed, was much broader than in its present form. There now appears an express mandatory provision to the effect that a bid bond shall, in no case, be less than five per cent of the amount of the bid. The requirement of a bid bond, conditioned that if the bid be accepted a contract will be entered into and its performance properly secured, is a requirement for the protection of the taxpayers. “That which the law requires to be done for the taxpayers’ protection is mandatory.” *Herterstein vs. Herrmann*, 6 N. P. 93. Following this reasoning, this office held, in an opinion involving this Section 7623, General Code, as it existed in 1919, as follows:

"The provisions of Section 7623, G. C., in its ten specific paragraphs, must be carried out absolutely and there should be no deviation therefrom."

—Opinions of Attorney General, 1919, Vol. I, p. 1036.

In view of the foregoing, and further in view of the fact that there may be litigation involving the award of the contracts for the construction of the above improvement, I am compelled to advise you not to purchase the above bonds.

Respectfully,

GILBERT BETTMAN,

Attorney General.

212.

APPROVAL, ABSTRACT OF TITLE TO LAND OF GRACE GALLOWAY,
IN XENIA TOWNSHIP, GREENE COUNTY.

COLUMBUS, OHIO, March 19, 1929.

HON. PERRY GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a corrected abstract of title relating to a tract of land in Xenia Township, Greene County, Ohio, the purchase of which is proposed for the use of the fish and game division of your department. The tract of land here in question is more particularly described in former opinion Number 3024, of this department, directed to your predecessor, Hon. Charles V. Truax, under date of December 15, 1928. In said former opinion of this department above referred to, it was found that Grace Galloway had a fee simple title to the tract of land in question, subject to the dower interest of her father, George Galloway therein, and subject to certain exceptions therein stated. One of the exceptions therein noted was, that there was nothing in the abstract then before this department to show that the inheritance taxes due and payable on the descent and devolution of said property on the death of Alice B. Galloway had been determined and paid. As to this there has been submitted to me a receipt signed by the county treasurer of Greene County, showing that inheritance taxes due and payable from Grace Galloway as the heir-at-law of Alice B. Galloway has been determined by the court and paid.

Another exception noted in said former opinion was that the taxes for the year 1928 on said tract of land were not paid and were a lien thereon. I am in receipt of a statement from the county treasurer that the taxes for the year 1928 have been paid.

The third exception noted in the former opinion of this department above referred to, was that there was nothing in the abstract to show that any administration had been granted upon the estate of Alice B. Galloway and that the general indebtedness of said estate had been paid. Nothing has been submitted in writing to me touching this question, but I am reliably informed that although no administration was granted on the estate of said Alice B. Galloway, all indebtedness of said estate has long since been paid; and in as much as it appears from the abstract that said Grace Galloway has a very considerable amount of property other than that which the state proposes to purchase for the use of your department, I am of the opinion that this particular exception can be safely waived, and the abstract approved.

The warranty deed signed by Grace Galloway and her father, George Galloway, was referred to and approved in the former opinion of this department, as was likewise the encumbrance estimate and controlling board certificate.