I do not think the legislature intended to provide that the fifteen cent fee provided in Section 6294 should not be charged in the event an application is made for the registration of a commercial car after April 1 of any year. Such a construction would, however, be necessary if the provision as to the payment of this fifteen cent fee is limited to applications filed under Section 6294 only.

I am informed that over a period of more than four years the provision of Section 6294 as to the payment of this fifteen cent fee has been construed as applicable to Section 6294-1, supra, which provides for the application for the transfer of registration of a motor vehicle. It is also contended that there is as much clerical work entailed in connection with applications of this nature as there is in connection with the filing of an application for an original license. Under these circumstances, conceding that the provisions for the payment of this fifteen cent fee are subject to two interpretations, one that it shall be payable only upon an application for an original application being filed and the other that it applies to all applications for the registration of a motor vehicle, the courts will adopt the construction which has been sanctioned by established administrative practice. *Industrial Commission* vs. *Brown,* 92 O. S. 309, 311, 110 N. E. 744, 745; *State, ex rel.* vs. *Brown,* 121 O. S. 73.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that the fifteen cent fee provided in Section 6294, General Code, to accompany the application for the registration of a motor vehicle, is payable with the application for the transfer of the registration of a motor vehicle made under the provisions of Section 6294-1, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2131.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN CARROLL COUNTY, OHIO.

COLUMBUS, OHIO, July 22, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

2132.

DISAPPROVAL, BID FOR CONSTRUCTION OF CHEMISTRY BUILDING AT MIAMI UNIVERSITY, OXFORD, OHIO.

COLUMBUS, OHIO, July 22, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a communication over the signature of Hon. T. Ralph Ridley, State Architect and Engineer, Columbus, Ohio, requesting my advice

on a matter involving the legality of a bid of one J. W. for the erection of a Chemistry Building at Miami University, Oxford, Ohio.

From the facts submitted in the communication, it seems that the Form of Proposal was prepared by G. and W., private architects, but was formally approved by your department, as required by Sections 2315 and 154-40, General Code. Moreover, it appears that said Form of Proposal has incorporated in it the following paragraphs:

> "(a) It is understood and agreed that all work embodied in this contract and in the Alternates thereto, shall be completed on or before _____ unless an extension of time is granted by the Department of Public Works.
>
> (b) Upon failure to have all work completed by the date above mentioned, the contractor shall forfeit and pay or cause to be paid to the owner, the sum of twenty-five dollars ($25.00) per day for each and every day thereafter the said work remains in an unfinished condition for and as liquidated damages to be deducted from any payment due or to become due to said contractor."

The facts show also that all bidders, with the exception of J. W. mentioned above, filled in the blank space the date of completion as required. J. W., however, left the space blank and failed in any other part of the Form of Proposal to incorporate the date when he would complete the work, provided he was awarded the contract.

The specifications for this building were also drawn up by the same private architects who drew up the Form of Proposal, and were likewise approved by the Department of Public Works in accordance with the sections of the Code heretofore mentioned. It is significant to quote the following from the general heading in the Specifications entitled: "Instructions to Bidders and General Conditions:"

> "6. * * *
> * * *
>
> (h) Requirements of all contracts, including all Alternates and Additions thereto, shall be fulfilled within times as set forth in the Form of Proposal, or as hereinafter required unless an Extension of Time is granted by the Ohio State Department of Public Works."
>
> "7. * * *
>
> (a) The formal contract shall contain the following clause in reference to all contracts:
>
> 'Upon failure to have all work fully completed within the times named in the bid, the Contractor shall forfeit and pay or cause to be paid to the Owner the sum of twenty-five dollars per day for each and every day thereafter the said work remains in an unfinished condition for and as liquidated damages, and to be deducted from any payments due or to become due to said Contractor.'"

From the above wording of the Specifications, it is apparent that the time of completion to be incorporated in the contract of the successful bidder is the time entered in his bid. Therefore, if no time was entered by a bidder in the proposal, obviously, there would be a deviation from the specifications. It may be here stated that there is no statute requiring the time of completion to be incorporated in the

Form of Proposal. There is, however, a section of the Code, viz., 2331, General Code, requiring that such time must be set forth in every contract.

Courts have held that if the time of completion is not incorporated in the contract, the contract is illegal. See *State* vs. *Nieman,* 6 N. P. 419; 8 D. 662, 664; *State ex rel.* vs. *Commissioners,* 1 O. C. C. 194; 1 O. C. D. 106.

While, as stated above, there is no specific statute requiring that the time of completion shall be stated in the proposal, it is to be noted that the legislature has given the authority to your department, or a private architect hired by your department, to draw up specifications for public buildings, and has given your department all powers which were vested in the State Building Commission. See Section 154-40, General Code.

Section 2315, General Code, specifically says that the building commission (Department of Public Works) shall prescribe the form of specifications and proposal and approve them. It is apparent that acting under the above authority, your department has approved the Specifications and Form of Proposal. The duty to incorporate in the contract the date of completion, which has been set forth in the bid, is specifically set forth, as has been heretofore pointed out. Section 2331, General Code, makes the contract illegal if the date of completion is not incorporated. Therefore, since J. W. has not indicated in his bid a time of completion, no date can be entered in the contract in accordance with the Specifications.

It has been several times stated by the courts that slight defects in a bid may be waived by the awarding authority. However, I believe that this defect is material, inasmuch as the contract would be illegal without a date of completion, and the specifications have made it mandatory that the contract date shall be the date which is fixed in the bid. Plainly, the bidders must incorporate a date in the bid. All bidders bid strictly on the specifications, and it would be unfair to other bidders to allow one bidder to deviate from the specifications. I am of the opinion, therefore, that the bid of J. W. is illegal and should not be considered.

I will now take up the proper courses of procedure open to your department. The Code provides that the award shall be made within thirty days of the time of receiving bids to the lowest bidder or bidders. See Section 2319, General Code. House Bill No. 513 of the 88th General Assembly, which made the appropriation for the building involved in this opinion, states in Section 2 that the provisions of Sections 3 to 13 of House Bill No. 510, 88th General Assembly, in so far as applicable, shall govern the appropriations. Section 7 of House Bill No. 510, provides that invoices drawn against any appropriation for labor or material shall show that the same was furnished pursuant to competitive bidding and that the lowest and/or best bidder was awarded the contract.

Hence, it is within the discretion of your department to make an award to the G. Contracting Company, which appears to be the next lowest bidder.

Moreover, Section 2320 provides that if in the opinion of the owner, the acceptance of the lowest bid or bids is not for the best interests of the state, with the written consent of the State Building Commission (Department of Public Works), another proposal may be accepted, or all proposals may be rejected and advertisement made again for bids. Therefore, in your discretion, you may set aside all bids and advertise again for such length of time as is decided upon by you.

It should be here stated that from the facts before me, there does not appear to have been made an award. It is noted that Section 2314, General Code, provides that the board, officer or authority upon whom devolves the duty of constructing, erecting, etc., is the "owner." Section 2319 says that the award shall be made within thirty days by such owner. Plainly, the owner referred to is the owner mentioned

in Section 2314. Under the terms of Section 154-40, General Code, your department is given the power to have general supervision over the erecting and constructing of public buildings erected for an institution of the State, and to make contracts for and supervise the construction of such buildings. Hence, your department is the "owner" who makes the award.

While the facts seem to show that the board of trustees of Miami University has passed a resolution awarding the bid to J. W. and has procured his signature to a contract, yet the facts do not show that your department has actually made the award. Since your department must make the award, as indicated above, it is my opinion that you are at liberty to disregard the action of the board of trustees of Miami University and eliminate the bid of J. W. It is believed that a further discussion is unnecessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2133.

STATE HIGHWAY IMPROVEMENT—CONTRACT BETWEEN STATE AND COUNTY FOR LATTER'S PROPORTION OF EXPENSES—RIGHT OF COUNTY AUDITOR TO AMEND FISCAL CERTIFICATE WHEN ACTUAL COST IS LESS THAN ESTIMATED COST—EXCEPTIONS.

SYLLABUS:

When a board of county commissioners has entered into a contract with the State, agreeing to pay a portion of the cost of a state highway improvement, to which there is attached a certificate of the county auditor as provided by Section 5625-33, General Code, based upon the estimated cost of such improvement, such certificate may be amended so as to cover the county's portion of the actual cost after the State has entered into a contract for the construction of such improvement, and the actual cost has been determined to be an amount less than the estimated cost; provided, however, that the county's portion of the cost of the improvement is not being paid out of a specific permanent improvement fund.

COLUMBUS, OHIO, July 23, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

The county commissioners of Cuyahoga County are, by cooperation with the Director of Highways, proceeding to improve a certain intercounty highway in that county; the estimated cost of the highest priced type of paving was $1,048,000.00, this being a brick construction. Of this amount the county's portion was approximately $314,400.00, and this amount was certified by the county auditor under the provisions of Section 5625-33 G. C. When the contract was let, it was let on concrete construction instead of brick and the amount of the contract was $618,000.00, of which amount the county's portion was about $185,000.00.