

1442.

DISAPPROVAL, BONDS OF GREENFIELD EXEMPTED VILLAGE
SCHOOL DISTRICT, HIGHLAND COUNTY, \$50,000.00.

COLUMBUS, OHIO, May 8, 1924.

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

Re: Bonds of Greenfield Exempted Village School District, Highland
County, \$50,000.00.

Gentlemen:—

I have examined the transcript for the foregoing issue of bonds and find that I cannot approve same for the following reasons:

1. Proceedings were had by the board of education for the issue following the order of prohibition against the use of the present school building by the Department of Industrial Relations, and as a part of said proceeding a bond resolution was passed April 28, 1924, for the issuance of these bonds under the provisions of section 7630-1 G. C. This section as amended in 110 O. L., page 420, now provides that bonds for such purpose can only be issued when approved by the electors of the district.

As this issue has not been so approved, by the electors, I am of the opinion that these bonds do not constitute a legal obligation of the district, and therefore advise your Commission not to purchase the same.

Respectfully,

C. C. CRABBE,

Attorney General.

1443.

CONTRACTS—HOW ORIGINAL CONTRACT PRICE IS TO BE DETER-
MINED IN UNIT PRICE CONTRACT—SECTION 6948 CONSTRUED.

COLUMBUS, OHIO, May 8, 1924.

SYLLABUS:

1. *The original contract price, in connection with contracts let on the basis of unit price bids, mentioned in Section 6948 of the General Code, is to be determined from the unit price bids based upon the estimated quantities of the various items going into the project.*

2. *The provision of Section 6948 of the General Code, providing that no contract shall be awarded for extra work at any price in excess of the original contract unit price, for the same class or kind of work, applies only to extra work in connection with projects which may, under the provisions of said section, be let by private contract.*

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

Gentlemen:—

Receipt is acknowledged of your recent communication and request for an opinion, which reads:

"We respectfully request your written opinion upon the following matters:

"Section 6948 G. C. provides that contracts for extra work shall be entered into only after advertising for competitive bids where the estimate for such work exceeds 5% of the original contract price.

"Question 1. In the case of a unit price contract, how is the original contract price to be determined?

"Section 6948 G. C. also contains the provision that no contract shall be awarded for such extra work at any price in excess of the original contract price for the same class or kind of work.

"Question 2. Does this provision apply to contracts for extra work let after advertising for bids or does it only apply to such contracts for extra work as are let without competitive bidding?

"A concrete illustration is as follows: Under a contract entered into the unit price bid for gutter pavement was 78c per lineal foot. In a contract for extra work, which was let at competitive bidding after advertising, the surveyors estimate for gutter pavement was \$1.00 per foot and a contract was entered into on this basis. The question is whether the provision referred to would apply to such a contract and whether the contract could be legally let for \$1.00 per lineal foot under such conditions?"

The pertinent part of Section 6945 of the General Code reads:

"The contract shall be let upon the basis of lump sum bids, unless the commissioners order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis."

Section 6948 of the General Codes makes provision, in case of unforeseen contingencies, for the entering into of extra work contracts by the county commissioners. The pertinent parts of this section read:

"If the amount of the original contract price is ten thousand dollars or more, the preceding sections relating to advertising for bids shall apply to all cases where the estimate for such extra work exceeds five per cent of the original contract price for such work. If the estimate for such extra work is less than five hundred dollars, in all cases where the amount of the original contract price is less than ten thousand dollars, or if the estimate for such extra work is less than five per cent of the original contract price in all cases where the original contract price is ten thousand dollars or more, the contract for such extra work may be let by the county commissioners at private contract without publication or notice, but no contract shall be awarded for such extra work at any price in excess of the original contract unit price for the same class or kind of work, if such there be, in connection with such contract."

Said section was the subject of an opinion of my predecessor under date of December 3, 1915 (Opinion of Attorney General for 1915, Vol. III, p. 2330), wherein it was held that said section, when read with the then form of Section 6945 of the General Code, did not permit the awarding of a contract on a unit price basis. It will have been noted that since the rendition of said opinion said Section 6945 of the General Code has been amended, as hereinbefore quoted.

In the discussion in the former opinion of this department it was said:

"As pointed out * * * , there would be no way of fixing the amount of the contractor's bond if the contract were let upon the unit price basis, inasmuch as the contract price could not be determined until the work had been completed and the quantities measured."

While the exact amount of money a project, let upon a unit price basis, would cost, could not be determined until the work had been completed and the quantities measured, yet, nevertheless, when it is kept in mind that under the provisions of Section 6911 of the General Code, when the county commissioners have determined to proceed with a project they shall order the county surveyor to make such surveys, plans, profiles, cross-sections, *estimates* and specifications as may be required for such improvement; and under the provisions of Section 6946 of the General Code, no contract for any improvement shall be awarded at a greater sum than the *estimated* cost thereof; and that under these provisions it is apparent that preliminary to awarding a contract for an improvement upon a unit price basis, it would be required that the estimates contain estimates of quantity and price of the various items going into the project; it would follow that when the legislature provided that whether or not an extra work contract was to be let by competitive bidding or by private contract, should be determined from the amount of the original contract price, or a percentage thereof, the legislature no doubt intended that the original contract price should be determined from the price made up from the estimated quantities and the unit price bid upon the various items going into the project.

To hold that the phrase "original contract price" as used in the legislation meant a price exact in amount of the actual cost of the project, would limit in application the provisions of said section to lump sum contracts only, and exclude contracts let on a unit price basis. No such intention is disclosed from the legislation.

In connection with your second question, it is noted that the statute divides extra work contracts into two classes: First, those which are required to be let by competitive bidding; and, Second, those which may be let by private contract.

On the one hand, extra work contracts in those cases (1) where the amount of the original contract price is ten thousand dollars or less, and the amount of the estimate for such extra work exceeds five hundred dollars, and (2) in those cases where the amount of the original contract price is ten thousand dollars or more, and the estimate for such extra work exceeds five per cent of the original contract price for such work, and the work must be let by competitive bidding; while, on the other hand, (1) in cases where the amount of the original contract price is less than ten thousand dollars, and the estimate for such extra work is less than five hundred dollars, and (2) in those cases where the original contract price is ten thousand dollars or more, and the estimate for such extra work is less than five per cent of the original contract price, the work may be let by private contract.

It will be noted that the provisions relating to the first mentioned class of extra work contracts are contained in separate and complete sentences. The provisions relating to the second mentioned class of extra work contracts are contained in a single and complete sentence, which sentence contains the further provision "but no contract shall be awarded for *such extra work* at any price in excess of the original contract unit price for the same class or kind of work, * * * ."

To what *extra work* did the legislature refer in this provision? It is apparent that the legislature, in this provision, was referring to the extra work in the second class of contracts above mentioned, and with which it had been immediately dealing.

In conclusion, I am of the opinion, and you are advised, in answer to your first question, that the original contract price, in contracts let upon the basis of unit price bids, is to be determined from the unit price bid based upon the estimated quantities of the various items going into the project; and in answer to your second question, you are advised that the provisions referred to by you only apply to extra work in connection with projects which may, under the provisions of the section, be let by private contract.

Respectfully,
C. C. CRABBE,
Attorney General.

1444.

BOARD OF BUILDING STANDARDS—AUTHORITY OF BOARD UNDER
SECTION 12600-288 AND 12600-289 G. C.

COLUMBUS, OHIO, May 8, 1924.

SYLLABUS:

1. *Sections 12600-288 and 12600-289 of the General Code, as enacted in 110 O. L. 351, when construed together, authorize the Board of Building Standards to declare an equivalent of a fixture, device, material, system, etc., specified in the sections mentioned in Section 12600-299, irrespective of whether such sections provide for such an equivalent.*

2. *Such board after publication of a notice of a proposed rule under the provisions of Section 12600-290, after the hearing may not legally adopt any rule differing in any material respect from the proposed rule or regulation as published.*

3. *The Board of Building Standards are required to make such publication, and when such publication is made it is believed that there is no valid objection to a petitioner paying for such publication when there are no public funds available for such purpose.*

Department of Industrial Relations, Board of Building Standards, Columbus, Ohio.

Gentlemen:—

You have recently requested my opinion as follows:

"The Ohio Board of Building Standards would appreciate your opinion on the following points of law:

Under the provisions of section 12600-288—Powers and Duties of Board of Building Standards—the board is authorized to determine equivalents for present requirements of the General Code. Has the board the authority to declare an equivalent where the General Code does not specifically mention equivalents?

Has the board authority to make minor corrections and changes in the wording of rules or regulations after their publication and before final adoption?

The advertising of these proposed rules in five newspapers is expensive and has taken the greater part of the fund set aside for this purposes. The petitioners in several cases have offered to pay the cost of the advertising, and the board desires your opinion as to the legality of permitting the petitioner to pay such cost."