

of Public Works, with the approval of the Governor and Attorney General, is authorized to make a rental adjustment on existing canal land leases for a period of one year in advance beginning with the next semi-annual rental payment date, provided for in such leases. Such rental adjustment can be made by the Superintendent of Public Works only upon an application therefor made by the lessee in the manner and form provided for in section 3 of said act, in and by which application, among other things, the lessee is required to set forth the reasons why the annual rental provided for in said lease should be revised. In the application filed by the lessee with you as Superintendent of Public Works, the reason assigned for the reduction in the annual rental provided for in this lease, requested by the lessee, is "economic conditions affecting railroad earnings". Acting upon this application, you have made a finding in and by which you have granted to said lessee a reduction in the annual rental under said lease for the period of time between May 1, 1934, and May 1, 1935, and have fixed the annual rental to be paid by said lessee for this period at the sum of \$144.00.

Upon examination of the proceedings relating to this matter, including the application for the reduction in rental, above referred to, I am inclined to the view that they are in substantial conformity with the statutory provisions outlined in House Bill No. 467 and the same are accordingly hereby approved by me as to legality and form, as is evidenced by my approval endorsed in and upon the resolution of approval which is made a part of the proceedings relating to the reduction of said rental, and upon the copies thereof, all of which, together with the duplicate copies of your finding and the application, are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2704.

COUNTY HOME—SUPERINTENDENT REQUIRED TO PURCHASE SUPPLIES FROM STATE WHEN.

*SYLLABUS:*

*It is necessary for the superintendent of a county home to purchase supplies for the county home, from the state of Ohio, if the supplies desired are manufactured by the state penal or correctional institutions under the department of public welfare, and the prices of such state manufactured articles are not higher than the usual market prices for like articles, and if the state department of public welfare does not give written notice after the superintendent's request to purchase articles that it is unable to supply such commodities, within thirty days from the date of the said request.*

COLUMBUS, OHIO, May 21, 1934.

HON. CARLOS M. RIECKER, *Prosecuting Attorney, McConnellsville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"The Superintendent of our County Home has asked this office to

request an opinion from you relative to the following matter:

The State of Ohio has made demand upon him that he buy all, or practically all, of his supplies from the State of Ohio. He feels that he can secure better prices through the merchants of this vicinity and for that reason would rather continue to purchase supplies at home. Section 2526 G. C. states in part 'that as far as practicable all supplies shall be purchased on competitive bids, except those ordered from the state as required by law \* \* \*.'

I do not quite understand this Section where it states that 'except those ordered from the State as required by law.' I do not know of any other section citing further just what the County Infirmary shall buy from the State.

Is it necessary for the Superintendent of our County Home to purchase supplies through the State or from the State?"

Sections 1845, 1846, 1847, 154-57 and 2526, General Code, are pertinent to consider in connection with your question. Such sections read, in so far as pertinent here, as follows:

Sec. 1845. "The board (the old Ohio board of administration, now abolished) may assign among the correctional and penal institutions the industries to be carried on therein, having due regard to the location and convenience thereof with respect to other institutions to be supplied, to the machinery therein and the number and character of inmates." (Words in parenthesis mine.)

Sec. 1846. "The board, subject to the approval of the secretary of state and auditor of state, shall fix the prices at which all labor performed and all articles manufactured in such institutions *shall be furnished* to the state or *the political divisions* and public institutions thereof, *as is* or may be provided by law, which shall be uniform to all and not higher than the usual market prices for like labor and articles." (Italics mine.)

Sec. 1847. "The board shall, with the advice and consent of the secretary of state and auditor of state, classify public buildings, offices and institutions and determine the kinds, patterns, designs and qualities of articles to be manufactured for use therein which shall be uniform for each class, so far as practicable.

Whenever the board shall give written notice to the state purchasing agent or *other official or officials having lawful authority to purchase such article* or articles that it is prepared to supply them from any institution under its control, *such* state purchasing agent or *other official or official's* shall make any needed purchase of said articles from such institution unless the chief officer thereof, or the board, having been requested to furnish such article or articles shall give notice in writing that the same can not be furnished within thirty days from the date of the request.

Provided, however, that if the state purchasing agent requires such article or articles within thirty days from the day of making such request and so states upon the face of such request, it shall be the duty of the chief officer of such institution or the board to forthwith advise the state purchasing agent whether it will be able to furnish such article or articles within such thirty days. And if it is impossible to furnish such article or articles within such time, the state purchasing agent may pur-

chase such article or articles in the open market as in other cases. The provisions of this section shall not apply to any officer, board or agent of any municipality which maintains an institution that produces or manufactures articles of the kind desired.

Any person knowingly violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not to exceed twenty-five dollars for the first offense nor more than one hundred dollars for each subsequent offense." (Italics mine.)

Sec. 154-57. "The department of public welfare shall have all powers and perform all duties vested in or imposed upon the Ohio board of administration \* \* \*. Wherever powers are conferred or duties imposed by law upon the boards \* \* \* mentioned in this section such powers and duties, excepting as aforesaid, shall be construed as vested in the department of public welfare. \* \* \*"

Sec. 2526. "The superintendent and matron of the infirmary shall require all persons received therein to perform such reasonable and moderate labor, without compensation, as is suited to their age and bodily strength. The superintendent and matron shall make such purchases as may be authorized by the rules prescribed by the county commissioners. As far as practicable, all supplies shall be purchased on competitive bids, except those ordered from the state as required by law, and all supplies of whatever kind purchased and delivered to the superintendent, or to the infirmary, shall be accompanied by itemized bills, showing quantities, qualities and price, which shall be checked by the superintendent as having been received, and the correctness of the bill or claim shall be duly certified by them before the same may be allowed by the commissioners. The superintendent, under the direction of the commissioners, shall sell all products of the infirmary farm not necessary for the use of the infirmary, and pay all moneys arising therefrom into the county treasury, at least monthly, to the credit of the county poor fund. The superintendent shall have full authority to discharge inmates from the infirmary."

After reading all of the foregoing sections together, it is obvious that it is the duty of the superintendent and matron of the county home to make all purchases of supplies needed by the home that are manufactured by the state correctional and penal institutions under the control of the department of public welfare, from the State, unless notice is given, in writing by the chief officer of the penal or correctional institution or the department of public welfare, that the articles ordered can not be furnished within thirty days from the date of the superintendent's and matron's request. The superintendent and matron are authorized to make purchases from local merchants, after competitive bidding, wherever practicable, whenever the supplies are not manufactured by the correctional or penal institutions of the State under the department of public welfare, or the written notice described in Section 1847, supra, is given them, and whenever the price of the articles furnished by the State is higher than the usual market price for like articles.

At least three former attorneys general have rendered official opinions which are in harmony with the foregoing conclusion. In the first opinion, reported in Annual Report of the Attorney General for 1911-1912, Vol. II, Page 41, it was held, as disclosed by the first and second paragraphs of the syllabus:

“Political subdivisions’ as comprehended in the act creating the board of administration, (see G. C. 1846, supra) are *counties*, townships, school districts, and municipalities, all of which are branches of the general administration of the state policy, under the control of and exercising only powers delegated by the legislature.

Under sections 14 and 15 of said act (sections 1846 and 1847, General Code), the board of administration is empowered to compel all such divisions and all state institutions, within the scope of their legal powers to purchase all supplies from the board.” (Italics and words in parenthesis mine.)

In the second opinion, to be found in Annual Report of the Attorney General for 1913, Vol. II, Page 967, it was stated in the syllabus:

“Under sections 1846 and 1847, General Code, the board of administration may compel county and municipal officers to purchase articles manufactured by state institutions under the control of the board, except such officers as maintain institutions which produce the articles themselves. *The price shall be uniform, however, and no higher than the usual market price.*” (Italics mine.)

In the third opinion, reported in Opinions of the Attorney General for 1924, Vol. I, Page 181, it was held, as disclosed by the syllabus:

“Officials of county children’s homes are required, under the provisions of section 1847 of the General Code, to purchase needed articles for such institutions, which articles the department of public welfare is prepared to supply, from the department of welfare, in the event the department of welfare has notified such officials in writing that said department is prepared to supply such articles, unless the department of welfare, having been requested to furnish such articles shall give notice to such officials, in writing, that the same cannot be furnished within thirty days from the date of the request.”

In view of the foregoing discussion, I am of the opinion, in specific answer to your question, that it is necessary for the superintendent of the county home to purchase supplies from the State, if the supplies desired are manufactured by the state penal or correctional institutions under the department of public welfare, and the prices of such state manufactured articles are not higher than the usual market prices for like articles, and if the state department of public welfare does not give written notice after the superintendent’s request to purchase articles that it is unable to supply such commodities, within thirty days after the date of such request.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2705.

COUNTY RECORDER—DUTY TO CHARGE FEE FOR RECORDING WORDS IN DEED, ALSO FOR PLAT OR MAP BY PHOTOSTATIC OR PHOTOGRAPHIC PROCESS.

*SYLLABUS:*

*Where a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, it is the duty of the county recorder to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in section 2779, General Code, for recording a plat or map by the photostatic or photographic process.*

COLUMBUS, OHIO, May 21, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 32-1, General Code, authorizes county recorders to make records of instruments presented for recording by the photographic or photostatic processes.

Section 2778 of the General Code provides the fees of a recorder for recording a mortgage, deed of conveyance, power of attorney or other instrument in writing—twelve cents per hundred words for words actually written or printed on the records. Section 2779 of the General Code provides a fee for recording a plat, not to exceed six lines for \$1.00, and for each additional line ten cents.

In case a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, is the recorder required to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in Section 2779 for recording a plat or map by the photostatic or photographic process?”

Sections 2778 and 2779, General Code, read as follows:

Section 2778. “For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words.

The fees in this section provided shall be paid upon the presentation of the respective instruments for record upon the application for any certified copy of the record.”

Section 2779. “For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar; and for each additional line, ten cents.”