

3353.

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

COLUMBUS, OHIO, June 23, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3354.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE OHIO BELL TELEPHONE COMPANY FOR TELEPHONE SERVICE AND EQUIPMENT FOR THE NEW STATE OFFICE BUILDING.

COLUMBUS, OHIO, June 24, 1931.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain contract by the terms of which the Ohio Bell Telephone Company, for the monetary considerations therein stated, contracts to furnish and provide telephone service equipment and perform telephone service for the new state office building and for the departments of the state government to be quartered in said building.

The telephone service equipment to be furnished by the Ohio Bell Telephone Company is listed in said proposed contract which is in the form of an offer apparently made on behalf of said company by the person occupying the position of general commercial engineer of said company, which offer is to become a contract when the same is accepted by the state of Ohio through you as Director of Finance.

Without further discussion of the provisions of said proposed contract, I am of the opinion that the execution of this contract is one within the authority conferred upon you by section 154-37 of the General Code, which, among other things, provides that the Department of Finance shall succeed to and exercise all of the powers of the State Purchasing Agent in the office of the Secretary of State, and of the Secretary of State and the Auditor of State with respect to the purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions.

It may be observed, however, that if this contract is to be entered into in its proposed form as an offer by the telephone company to furnish this equipment, to be concluded as a contract by the acceptance of said offer by and on behalf of the state of Ohio, such offer should be distinctly made by and in the name of the Ohio Bell Telephone Company, by and through some officer or officers of said company who to your knowledge are fully authorized to represent the telephone company in this transaction. In order to make the terms of said offer, when so made, a valid contract between the state of Ohio and said telephone company, said offer should be accepted by and in the name of the state of Ohio, by and through you as Director of Finance.

In view of what has been said, I feel that I should withhold my approval until the offer on behalf of the telephone company is made in the manner suggested.

With the proposed contract above referred to, you have submitted the form of a contract for telephone switchboard operating service, which contract is in a manner supplemental to that first above mentioned providing for the furnishing of telephone service equipment for the new state office building.

Under the terms of the proposed contract for telephone switchboard operating service here in question, the Ohio Bell Telephone Company agrees to perform the telephone service of operating the centralized telephone switchboard to be located in the state office building, for the period of sixteen hours in each week day from 7:30 A. M. to 11:30 P. M., and for the period of "eight hours" on each Sunday and holiday from 8:30 A. M. to 5:30 P. M., subject to such modifications as to the time of operating said switchboard as may from time to time be ordered in writing by the Department of Finance. In consideration of the services thus to be performed by the telephone company, the state of Ohio, by and through the Finance Department, agrees to pay to the telephone company monthly for the number of operator hours required in the operation of said switchboard, at the average hourly rate of pay from time to time effective for toll operators employed in the Columbus, Ohio, toll office of the telephone company, plus an additional ten per cent of the amount so arrived at to cover Employees' Benefit Plan payments for sickness and accidents, and overhead expenses.

This proposed contract contains a further provision that the telephone company will employ such of the operators now employed by the state on individual switchboards, who would otherwise be taken out of employment by the installation of the centralized system to be operated by said telephone company as aforesaid, and who elect to accept employment with the telephone company and are able to pass the regular physical examinations prescribed by the telephone company, with the understanding, however, that the telephone company shall not be required to assign such operators to the centralized switchboard to be installed by the telephone company in the state office building, and that the tenure of employment of such displaced state telephone operators with the telephone company and their compensation shall depend wholly upon their own ability.

The question of the validity of the proposed contract here in question is one of some difficulty. The provisions of the administrative code of the state which have been carried into the General Code, 154-1 et seq., prescribe in a general way the form of the government of the state, in so far as the same is to be administered by and through the particular departments and the divisions thereof therein created and provided for. Under the provisions of section 154-19, General Code, each department is empowered to employ, subject to the civil service laws at the time of such employment, the necessary employes, and to fix their compensation if the same is not otherwise fixed by law. Section 154-20 provides for the daily hours of service by employes in the several departments of the state government covered by the administrative code. Section 154-21, General Code, provides that, under the direction of the Governor, the directors of the departments shall devise a practical and working basis for co-operation and co-ordination of work; and that, so far as practicable, said departments shall cooperate with each other in the employment of services and for the use of quarters and equipment. This section further provides that the director of any department may empower or require an employe of another department, subject to the consent of the superior officer of the employe, to perform any duty which he might require of his own subordinates.

It can not be doubted that so far as the matter of personnel is concerned, the law contemplates that the manifold duties of state government as carried on by the several departments created by the administrative code, and the services

rendered by officers and employes in the performance of such duties, are required to be done and performed by persons on the payroll of the state and the several departments thereof. In this view it would not be competent for any officer of the state to impose any part of said duties and services upon an employe of a private corporation, or in consideration of the services of such employe to pay to his employer the amount of the compensation paid by the employer to the employe for the services so rendered. Still less would such officer of the state be authorized to bind the state for the payment out of state funds of any amount to and for an employes' benefit plan carried on by or under the auspices of such private corporation for the purpose of making payments to its employes in case of sickness or accidental injuries.

Nevertheless a contract may be properly made by and on behalf of the state for telephone services for the several state officers and departments, and obviously this is true although the particular service to be rendered by the telephone company requires the services of one or more employes of the telephone company in the use of telephone equipment of said company; and if the central switchboard system, referred to in the proposed contract here in question, were set up for the use of the state office building and the state departments quartered therein, in a building owned and occupied by the telephone company, it is not thought that there would be any question about the authority of the proper officer of the state to contract for such centralized switchboard service even though such centralized switchboard were operated by persons in the employ of the telephone company; nor in such case would there be any question as to the power and authority of the state to pay the telephone company the reasonable and proper charges made by the telephone company for such services, without reference to the particular factors which, from the standpoint of the telephone company, operated to determine the amount of such charge. The mere fact that as a matter of convenience and operating efficiency such centralized switchboard system is to be set up and operated in the new office building rather than in the property of the telephone company does not, in my opinion, affect the right of the state to pay for such centralized switchboard service even though such centralized switchboard is to be operated by employes of the telephone company. It is suggested, however, that the monthly charge of the telephone company for such centralized switchboard service should be stated in the contract in terms of money without reference to the factors upon which such charges are based.

In view of the necessity for correction of the contract for telephone switchboard operating service, it is perhaps well to call to your attention the discrepancy existing in the statement in paragraph one thereof in which the company agrees to furnish telephone service at the switchboard for "the period of eight hours in each Sunday and Holiday from 8:30 A. M. to 5:30 P. M." A period of nine hours exists between the times mentioned, and the contract should accordingly be clarified as to whether the service contemplated is for eight hours or nine hours.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3355.

FISHING LICENSE—REQUIRED OF NON-RESIDENT DESIRING TO FISH WITH REEL AND ROD OR A POLE.

SYLLABUS:

1. *A non-resident desiring to fish with reel and rod in Ohio on and after*