

The abstract discloses nothing to indicate that the members of this voluntary organization have requested or consented to the transfer by Hoobler, Beck and Burnett of the property in question.

Either the deed must be signed by members in good standing September 1, 1923, along with the aforementioned trustees, or trustees furnish a certified copy of the request by such members that said trustees shall or may sell the property to the state under the terms of the offer made by the superintendent of public works.

5. The 1926 taxes, which are a lien, are not paid.

6. The abstracters' certificate shows that no examination was made in the United States courts and that examination was made in the name of record owners only and only for the period during which each one respectively held said title.

There is no encumbrance estimate submitted with the abstract and other papers. No deed was submitted, although a blank form of Ohio warranty deed containing a description of the premises proposed to be conveyed was transmitted. Since the encumbrance estimate is missing and since the deed has not been prepared or executed, this department can not pass upon the same.

I am returning herewith the file relating to tract No. 5, including the abstract, deed blank containing the description and other papers. When the corrections and additions indicated shall have been made, I will make such further examination as may be necessary.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

340.

PUBLIC WORKS OF THE STATE—ADVERTISING AND LETTING OF  
CONTRACTS—PROCEDURE UNDER SECTIONS 428 AND 2314 TO  
2332, GENERAL CODE.

SYLLABUS:

1. *The provisions of Sections 2314, et seq., General Code, relating to the construction of various projects on the public works of the state, being later in point of time, supersede the provisions of Section 428, General Code, where inconsistent therewith; and the provisions of Section 2318, General Code, providing for the publication once a week for four consecutive weeks of the notice of intention to receive bids on such projects, the last publication to be at least eight days preceding the receipt of such bids, must be followed where the aggregate cost exceeds three thousand dollars. Where the aggregate cost does not exceed three thousand dollars the provisions of Section 428, General Code, apply.*

2. *The procedure in the advertising and letting of contracts pertaining to the projects in or upon the public works of the state, where the aggregate cost exceeds three thousand dollars, outlined.*

COLUMBUS, OHIO, April 18, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent request for my opinion upon the following:

“The Division of Public Works of the State of Ohio is proposing to advertise for bids for the construction of various projects, the estimated cost

of which vary from \$3,000.00 to \$20,000.00, these appropriations having been made by the 86th General Assembly.

We respectfully ask your opinion on the following:

(1) How long should this work be advertised for bids? In other words, in our advertising and letting of contracts, are we held to the sections in the General Code under the heading 'Public Buildings' or can we go ahead under the sections relating to 'Superintendent of Public Works'?

(2) What is the procedure in advertising and letting of contracts?"

Section 428 of the General Code provides as follows:

"The superintendent of public works of Ohio may enter into contracts with proper persons for the performance of labor, or for the furnishing of materials, or for the construction of any or all structures and buildings necessary to the maintenance, control and management of the public works of the state or any part thereof.

The superintendent of public works shall require bonds, of not less than one-half the contract price, from said contractors, payable to the state of Ohio, and conditioned on the faithful performance of said contract.

Except in cases of extreme exigency or emergency, and when the cost of any proposed improvement or repair exceeds five hundred dollars, the superintendent of public works shall cause notice to be given in a newspaper of general circulation in or contiguous to the county where the contract is to be let and where the work is to be done and may also advertise in such trades journals as will afford full information to the public of the terms of the contract and the nature of the work to be performed and the character of materials required, together with the time of the letting and place and manner of receiving proposals.

Such contract shall be awarded to the lowest and best bidder, and shall be in writing, and shall contain specific prices for each kind of work to be performed, and for materials to be furnished by the parties thereto."

This section provides for the publication, except in cases of extreme public exigency and emergency and when the cost of the proposed improvement or repair exceeds five hundred dollars, of such notice, as will afford full information to the public of the terms of the contract and the sort of work to be done, and the character of the materials required, together with the time of letting and the place and manner of receiving proposals. The section also provides that contracts must be awarded to the lowest and best bidder, and that the superintendent of public works shall require bonds of not less than one-half the contract price from the contractor. No specific time is set out during which publication shall be made, and it would appear that under the terms of this section one publication would be sufficient.

The laws relating to public buildings of the state are contained in Sections 2314 to 2332, General Code, both inclusive. Section 2314 provides in part as follows:

"Whenever any building or structure for the use of the state or any institution supported in whole or in part by the state in or upon the public works of the state that are administered by the superintendent of public works, is to be erected or constructed, or whenever additions or alterations, structural or other improvements are to be made, or heating, cooling or ventilating plants or other equipment to be installed for the use of the state, or in or upon such public works or in or for an institution supported in whole or in part by the state, or for the supply of material therefor, the aggregate cost of which exceeds three thousand dollars, each officer, \* \* \* etc.

Statutes relating to the public works of the state have been in existence in various forms ever since the various canals of the state were constructed. Provisions similar to those contained in Section 428, *supra*, may be found in tracing the early history of said section and said provisions eventually became Sections 218-9 and 218-44 of the Revised Statutes of Ohio.

In the codification of 1910, Sections 218-9 and 218-44 Revised Statutes became Section 428 of the General Code, which was amended and placed in its present form on March 6, 1913 (103 O. L. 119, 121.)

Sections 2314, General Code, *et seq.*, date back to April 3, 1868 (65 O. L. 59). They became Sections 782, *et seq.*, Revised Statutes, and in the codification of 1910 became sections 2314, *et seq.*, General Code. They were amended and placed in their present form on March 30, 1917 (107 O. L. 453).

In the case of Carmichael & Co. vs. McCourt, *et al.*, 6 O. C. C. (N. S.) 561, the second paragraph of the headnotes reads as follows:

"The law relating to canals and to the state board of public works is distinct from and independent of the provisions which in the Revised Statutes are grouped under the caption of 'Public Buildings', and concerning the letting of contracts for work on the canals there is a discretion which is not allowed under the public building code."

However, the above case was decided in April 1905, and at that time Section 782, Revised Statutes, read in part as follows:

"The directors, trustees, commissioners, or other officer or officers to whom is confided by law the duty of devising and superintending the erection, alteration, addition to, or improvement of, any state institution, asylum, or other improvement (excepting the penitentiary), erected, or now being erected, or to be erected by the state, before entering into any contract for the erection, alteration, addition to, or improvement of such institution, asylum, or other improvement, or for the supply of materials therefor, the aggregate cost of which erection, alteration, addition, or improvement and materials therefor, exceed the sum of three thousand dollars, shall make \* \* \*," *etc.*

Your attention is invited to the fact that nowhere in the above quotation from Section 782, Revised Statutes, is there to be found any reference to the public works of the state, and this condition prevailed until the amendment of Sections 2314, *et seq.*, on March 20, 1917, (107 O. L. 453) above referred to.

The language of Section 2314, General Code, as amended on March 30, 1917, clearly indicates that it was within the contemplation of the legislature to make the laws relating to erection or construction of public buildings also apply to any buildings or structures in or upon the public works of the state that are administered by the superintendent of public works, or whenever additions or alterations, structural or other improvements are to be installed upon such public works.

Applying the rule that where the terms of two statutes are inconsistent, the later statute will prevail, it is my opinion that insofar as the terms of Sections 2314, General Code, *et seq.*, are inconsistent with Section 428, General Code, and other sections pertaining to the public works of the state, the provisions of Sections 2314, *et seq.*, must prevail, that the laws relating to public buildings must be followed in the construction of any projects in or upon the public works of the state, and that the provisions of Section 2318, General Code, providing for publication once a week for four consecutive weeks of the notice of intention to receive bids the last publication to be at least eight days preceding the receipt of such bids must be followed.

However, your attention is directed to the provision of Section 2314, *supra*, to the

effect that the statutes relating to public buildings, apply only to cases where the aggregate cost exceeds three thousand dollars. Where the aggregate cost of the work on a project undertaken by the superintendent of public works does not exceed three thousand dollars, the provisions of Sections 2314, et seq., General Code, do not apply and the work shall be done under the provisions of Section 428, General Code, and other sections pertaining to the public works of the state.

A general outline of the procedure to be followed in the advertising and letting of contracts varying in estimated cost from \$3,000.00 to \$20,000.00 or more, is clearly set out in Sections 2314, et seq., General Code. It may be outlined briefly as follows:

1. Preparation of plans, details, bills of material, specifications and estimates of cost (Section 2314, General Code).

2. Approval of such plans, details, etc., and of form of proposal and bond by the director of highways and public works, and the filing of the same in the office of the Auditor of State (Section 2315, General Code).

3. Approval by the Director of Highways and Public Works of form of publication of notice of intention to receive bids and publication of such notice for four consecutive weeks the last publication to be at least eight days next preceding the day for opening the bids. (Sections 2317 and 2318, General Code.)

4. Opening and tabulation of bids and award of contract. Bids to be in sealed envelopes accompanied by bond in form approved by the director of highways and public works in a sum equal to the total sum of the bid. In this connection, if the surety on the bond is a surety company satisfactory showing should be made that the company is authorized to do business in Ohio and it should furnish a financial statement and a properly verified power of attorney showing the authority of the agent or officer signing the bond to execute the same on behalf of the company.

5. Preparation of encumbrance estimate and certification thereon by director of finance (Section 2288-2, General Code).

6. Before contract can be entered into the contractor must furnish a certificate from the Industrial Commission that the workmen's compensation law has been complied with. If the contractor is a foreign corporation the secretary of state must certify that the corporation is authorized to do business in Ohio and if the contractor is a person or partnership non-resident in the state that such person or partnership has filed a power of attorney with the secretary of state designating the secretary of state the agent of such person or partnership to accept service of summons in any actions brought under Section 2316, General Code, or under the workmen's compensation law. (Section 2319, General Code.)

7. Submission of bond, contract and other papers to the attorney general for his approval (Section 2319, General Code.)

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*