

2521.

APPROVAL, BONDS OF TORONTO VILLAGE SCHOOL DISTRICT,
JEFFERSON COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, November 10, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2522.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—\$20,994.26.

COLUMBUS, OHIO, November 10, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2523.

UNEXPIRED TERM—STATE TREASURER—TIME WHEN PERSON
ELECTED TO SHORT TERM MAY ASSUME DUTIES OF OFFICE.

SYLLABUS:

The canvass of the returns of an election to fill an unexpired term in the office of the Treasurer of State should be made by the Secretary of State in the manner provided by Section 4785-155, General Code, and the person receiving the highest number of votes, as shown by the returns so canvassed, should be considered duly elected and should be declared so elected by the Governor.

The person so elected for such unexpired term, may legally qualify for the office and for such term when the returns of the election for such office have been canvassed by the Secretary of State and the person so elected receives a certificate of election from the Governor, as provided for in Section 4785-156.

COLUMBUS, OHIO, November 10, 1930.

HON. H. ROSS AKE, *Treasurer of State, Columbus, Ohio.*

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

“On September 7, 1929, the writer took office as Treasurer of State of Ohio at the appointment of the Governor of Ohio to fill a vacancy created by the resignation of my predecessor.

The period of this appointment, under the provisions of Section 314 of the General Code, extends until such time as ‘his successor is duly elected and qualified.’

At the November election a treasurer of state will be elected for the short term, or the term beginning at such time after the election, as the treasurer-elect may legally qualify.

In order that there may be no misunderstanding as to the legal expiration of the term which I am now serving, we will be greatly pleased to receive your opinion as to the earliest date following the November election on which the Treasurer of State elect for the short term may legally qualify."

By Section 2 of Article XVII of the State Constitution which was adopted November 7, 1905, it is provided that the term of office of the Treasurer of State shall be two years. Sections 1 and 2 of Article III of the State Constitution provide more specifically for the election and tenure of office of the Treasurer of State and other state officers therein named. These sections read as follows:

Sec. 1. "The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places for voting for members of the General Assembly."

Sec. 2. "The governor, lieutenant governor, secretary of state, treasurer, and attorney general shall hold their office for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified."

By Section 2 of Article XVII of the State Constitution above referred to, provision is made for filling vacancies in elective state offices other than that of a member of the General Assembly or of the Governor. This section of the Constitution provides in part, as follows:

"Any vacancy which shall occur in any elective state office other than that of a member of the General Assembly or of governor, shall be filled by appointment by the Governor until the disability is removed or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law. * * * "

It will be noted that this section of the Constitution makes express provision for the election of a person for the unexpired term of a state treasurer or other elective state officer occasioned by a vacancy in such office, and that the person appointed by the Governor to fill such vacancy serves only until his successor is elected and qualified.

No provision is made in the State Constitution for canvassing the returns on the election of a person for an unexpired term for the office of state treasurer or other elective state officer mentioned and provided for in Section 2 of Article XVII, above quoted. In this connection, it is noted that Section 3 of Article III of the State Constitution provides as follows:

"The returns of every election for the officers named in the foregoing section shall be sealed up and transmitted to the seat of government, by the

returning officers, directed to the president of the senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the General Assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the sme office, one of them shall be chosen by the joint vote of both houses."

I am inclined to the view that this section of the State Constitution, which is a part of the Constitution of 1851, has no application to an election for an unexpired term in the office of state treasurer or other elective state offices provided for in Section 2 of Article XVII.

In this connection, it will be observed at the time of the adoption of Section 3 of Article III of the State Constitution and until the adoption of Section 2 of Article XVII as a part of the Constitution of the State that no provision was made in the Constitution for the election of a person to fill an unexpired term in any of the elective state offices named in Sections 1 and 2 of Article III of the State Constitution, above quoted. Touching this point, it is pertinent to note the provisions of Section 18 of Article III of the State Constitution, which is likewise a part of the Constitution as adopted in 1851. It will be observed from this section of the Constitution that no provision was therein made for the election of the person to fill an unexpired term caused by a vacancy in an elective state office, but that by the provisions of said section the person elected at the first general election that occurred more than thirty days after said vacancy occurred took the office for the full term fixed in the second section of Article III of the State Constitution above quoted, which term began on the second Monday of January following such election. It follows therefore, that Section 3 of Article III of the State Constitution, above quoted, is limited in its provisions to the canvass of the returns of the election of the state treasurer and other elective state offices named in Sections 1 and 2 of said article for the regular terms of such officers.

Provision for the canvass of the returns of an election for the unexpired term of the state treasurer or other elective state office provided for by Section 2 of Article XVII of the State Constitution is to be sought therefore in the terms of statutory enactments. Section 4785-152, General Code, enacted as a part of amended substitute Senate Bill No. 2 by the 88th General Assembly, (113 O. L., 378), provides that after each general or special election the board of elections of each county, within five days or sooner, if all returns from election precincts have been made, shall meet at its usual place of meeting to canvass or supervise the canvassing of the returns and prepare the several abstracts required to be made.

By Section 4785-153, General Code, as enacted by said Act of the 88th General Assembly above noted, it is provided in part, as follows:

"When the canvass has been completed the board shall cause to be prepared statements of the results showing:

* * *

2. Upon another sheet an abstract of votes for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, chief justice of the Supreme Court, judge of the Supreme Court, United States senator and for representatives to congress and all other state offices.

* * *

Such statements shall be posted on the bulletin board in the board's office and furnished to the local newspapers. Certified copies of the abstracts of

the votes shall be prepared on forms to be prescribed and furnished by the secretary of state. One copy of each of such abstracts shall be forwarded by registered mail to the secretary of state at Columbus. Duplicate copies of all such abstracts shall be filed in the office of the board."

By Section 154 of said Act (Sec. 4785-154), it is provided :

"The board shall also prepare a separate abstract of the returns of the election for the offices of governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general, which shall be sealed and sent by registered mail directed to the president of the senate, in accordance with Article III, Section 3 of the constitution. During the first week of the session of the General Assembly, the president of the senate shall open the abstracts of votes and declare the results in the presence of a majority of the members of each house of the General Assembly."

It will be noted that the above quoted provisions of Section 4785-154, General Code, follow the provisions of Section 3 of Article III of the State Constitution, and following the construction given to the provisions of Section 3 of Article III of the Constitution, the provisions of the statute above quoted, should, in my opinion, be limited to the canvass of the returns of the election for the regular terms of the elective state officers therein named.

This brings us to a consideration of the provisions of Sections 155 and 156 (Secs. 4785-155 and 4785-156, General Code). These sections read as follows :

Sec. 155. "If such abstracts have not been received from all the counties within ten days after the election, the secretary of state shall call upon the boards in such delinquent counties for such returns, or dispatch a messenger to such counties to secure such abstracts. When the abstracts from all of the counties have been received by the secretary of state and not later than December 15, he shall fix a day and hour and place for publicly canvassing the returns and notify the governor, auditor of state, and attorney general who shall attend. The chairman of the state central committee of each political party, shall also be notified by the secretary of state of the day and hour of such canvass and may attend or appoint one witness to attend such canvass. Publicly and in their presence the secretary of state shall open the returns of abstracts one, two and three herein provided for, and when they are opened cause them to be read aloud. As they are read aloud the secretary of state shall cause the figures to be compiled showing the number of votes given for each person for each such office. The abstracts of the votes on all state issues shall likewise be publicly canvassed and announced."

Sec. 156. "Except in the case of offices included in the abstract submitted to the president of the senate, the person receiving the highest number of votes for each office so canvassed in the abstracts shall be considered duly elected, and shall be declared so elected by the governor. If two or more such persons receive the highest and an equal number of votes, the secretary of state in the presence of such state officers, shall determine by lot which of such persons is duly elected. The governor shall transmit to each person so elected a certificate of his election, which shall be signed by him, sealed with the great seal of the state and countersigned by the secretary of state. The results of the vote on state issues shall likewise be publicly announced. The returns of all such abstracts shall be compiled and printed in the annual report of the secretary of state."

Inasmuch as the returns of the election for an unexpired term in the office of the state treasurer or other state elective office provided for by Section 2, Article XVII are not provided for by Section 3 of Article III of the State Constitution or by the provisions of Section 4785-154, General Code, above quoted, I am of the opinion that the canvass of the returns of such election should be made in the manner provided by Section 4785-155, General Code, above quoted, and when the returns of such election have been canvassed, the person receiving the highest number of votes for the unexpired term of such office should be considered duly elected, and "shall be declared so elected by the Governor."

By way of specific answer to the question presented in your communication, you are advised that the Treasurer of State elected for the short term of said office at the election held November 4, 1930, may legally qualify by taking the oath of office and giving the required bond as soon as the returns of the election for said office and term are canvassed by the Secretary of State, in the manner provided by Section 4785-155, General Code, and he has received from the Governor a certificate of his election as provided for by Section 4785-156, General Code.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2524.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE STRUCK CONSTRUCTION COMPANY, LOUISVILLE, KENTUCKY, AND CINCINNATI, OHIO, FOR CONSTRUCTION AND COMPLETION OF GENERAL STRUCTURAL CONTRACT FOR OHIO STATE OFFICE BUILDING, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$2,622,000.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, November 12, 1930.

HON. CARMI A. THOMPSON, *Chairman, State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by William Green, Elmer S. Landis, Warner P. Simpson, Carmi A. Thompson and William F. Wiley, duly appointed, acting and qualified members of the Ohio State Office Building Commission provided for in Section 1 of House Bill No. 17, of the 88th General Assembly, passed March 14, 1929, (113 O. L. 59), and the Struck Construction Company of Louisville, Kentucky, and Cincinnati, Ohio. This contract covers the construction and completion of general structural contract for Ohio State Office Building, Columbus, Ohio, in accordance with Item No. 1 and Alternate No. 14 of the form of proposal dated August 25, 1930. Said contract calls for an expenditure of two million six hundred and twenty-two thousand dollars (\$2,622,000.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. It is to be noted that the Controlling Board's approval of the expenditure is not required under the act (113 O. L. 59) appropriating the money for this contract. In addition you have submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.