

1938.

APPROVAL, BONDS OF MILFORD TOWNSHIP RURAL SCHOOL DISTRICT, DEFIANCE COUNTY, OHIO, \$5,520.00.

COLUMBUS, OHIO, December 1, 1933.

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

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1939.

APPROVAL, BONDS OF MADISON RURAL SCHOOL DISTRICT, LAKE COUNTY, OHIO, \$11,709.22.

COLUMBUS, OHIO, December 1, 1933.

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

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1940.

STATE BUILDING—DIRECTOR OF PUBLIC WORKS REQUIRED TO MAKE SEPARATE CONTRACTS BASED ON SEPARATE BIDS FOR HEATING, PLUMBING AND ELECTRICAL WORK FOR STATE BUILDING WHEN.

**SYLLABUS:**

*Under the terms of section 2314-2, General Code, as enacted in House Bill No. 162, 90th General Assembly, regular session, the Director of Public Works is required to make separate contracts based on separate bids for the heating, plumbing and electrical work for a state building, when the entire cost of the work covered by each or any of such three trades exceeds one thousand dollars.*

COLUMBUS, OHIO, December 1, 1933.

HON. T. S. BRINDLE, *Director, Department of Public Works, Columbus, Ohio.*

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

“Yesterday, November 14th, bids were received for the construction of two dormitories at the School for the Blind. The following questions concerning the award of the contract I would like for you to answer or give an opinion on at once:

1. Separate bids were received on Item 2, Plumbing Work, and Item 3, Heating Work; also on Item 4, for the combined bid on Plumbing and Heating. Separate bids were also taken on Item 5, for the Electrical work; all in conformity with the provisions of House Bill No. 162, passed June 8th, 1933, and as provided in Section 2364, as amended, and Supplementary Sections 2314-1 and 2314-2, as enacted.

2. The lowest combined bid was in the sum of \$17,942.00 on Item 4, combined Plumbing and Heating, with no separate bids submitted on Item 2, Plumbing, and Item 3, Heating. Two other bidders submitted bids likewise.

3. Four other bidders submitted separate bids on Items 2 and 3; also the combined bid on Item 4, the latter, in all cases, being less than the sum of Items 2 and 3.

4. The lowest combined bid on Item 4, of the four bidders submitting separate bids, was in the sum of \$19,270.00, whereas this same bid on Item 2 was \$14,990.00 and on Item 3 was \$6370.00, or a total of \$21,360.00, as against the \$19,270.00 for combined bid, the latter being the second lowest combined bid.

5. By following the provisions of Section 2314-2 by awarding separate bids, the contracts would be \$3418.00 more than if the lowest combined bid of \$17,942.00 was accepted.

6. In the opinion of the State Architect, Mr. John P. Schooley, and the writer, the proposals as submitted to the bidders were clear in this respect, and the intention of the bidder in submitting the lowest combined bid was also clear and a customary procedure for bidders to submit a lower bid on any combined bid on account of the volume of work involved, than on separate bids, as evidenced in all cases.

7. Since the intention of the bidder is clear, can we award the contract to the lowest combined bidder, or must we award the respective work to separate bidders in separate contracts, in accordance with separate bids as submitted, even if the same does not react to the benefit or saving to the State."

House Bill No. 162, referred to in your communication, passed by the 90th General Assembly at its regular session on June 8, 1933, approved by the Governor on July 1, 1933, filed in the office of the Secretary of State on July 5, 1933, and effective October 4, 1933, provides as follows:

#### "AN ACT

To amend section 2364 and to enact supplemental sections 2314-1 and 2314-2 of the General Code, to provide for separate bidding on mechanical equipment on contracts for the erection or alteration of state buildings.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That section 2364 of the General Code be amended and that supplemental sections 2314-1 and 2314-2 be enacted to read as follows:

Sec. 2364. The contract for doing the work belonging to each separate trade or kind of mechanical labor, employment or business or for the furnishing of materials therefor, or both, shall be awarded by such officer, board or other authority in its discretion, to the lowest and best separate bidder therefor, and shall be made directly with him or them in the manner and upon the terms, conditions and limitations as to giving bond with security and otherwise as prescribed by law, unless it is let as a whole, or to bidders for more than one kind of work or materials. The provisions of this and the preceding two sections shall not apply to the erection of buildings and other structures of less cost than ten thousand dollars, *except as provided in sections 2314-1 and 2314-2 of the General Code.*

Sec. 2314-1. Every department or board, bureau, commission, body or person charged with the duty of preparing plans, specifications, and blue prints for the erection, alteration or repair of any building in the State of Ohio, by the State of Ohio, and every officer or person designated by such department, or board, or bureau, or commission, or body to act for it, and in its stead, and charged with the duty of preparing such plans, specifications and blue prints, which shall provide for the installation of plumbing and gas fitting and all work kindred thereto, or of the steam and hot-water heating, ventilating apparatus, steam-power plant and all work kindred thereto, or the electrical equipment and all work kindred thereto, shall, when the entire cost of the erection, alteration or repair of the plumbing and gas fitting and all work kindred thereto, or the steam and hot water heating, ventilating apparatus, steam-power plant and all work kindred thereto, or the electrical equipment and all work kindred thereto, is to exceed the sum of one thousand dollars, hereafter prepare separate plans, specifications and blue prints for each of the following branches or classes of the work to be performed:

First, plumbing and gas fitting, and all work kindred thereto;

Second, steam and hot water heating, ventilating apparatus, steam-power plant and all work kindred thereto; and

Third, electrical equipment, and all work kindred thereto.

Such plans, specifications and blue prints must be so prepared and drawn as to permit separate and independent proposals and bids upon each of the branches or classes of work in the three above subdivisions.

Sec. 2314-2. Every department, or board, or bureau, or commission, or body, or person charged with the duty of awarding or entering into contracts for the erection, alteration or repair of any building in the state of Ohio, by the state of Ohio, and every officer or person designated by such department, or board, or bureau, or commission, or body to act for it and in its stead, and charged with the duty and duly empowered to award and enter into such contracts, which shall provide for the installation of plumbing and gas fitting and all work kindred thereto, or the steam and hot water heating, ventilating apparatus, steam-power plant and all work kindred thereto, or the electrical equipment and all work kindred thereto, shall, when the entire cost of the erection, alteration, or repair of the plumbing and gas fitting and all work kindred thereto, or the steam and hot water heating, ventilating apparatus, steam-power plant, and all work kindred thereto, or the electrical equipment and all work kindred thereto, is to exceed the sum of one thousand dollars, hereafter award the respective work specified in the subdivisions mentioned in section 2314-1 of the General Code separately to responsible and reliable individuals, firms or corporations.

Section 2. That existing section 2364 of the General Code be, and the same is hereby repealed."

I am informed that the plans, specifications, etc., for this project were filed with the Auditor of State a short time after October 4, 1933, so that there is no doubt but that the new provisions of law are applicable to this project.

In order to determine the question you present, it is necessary to find out the intent of the General Assembly in enacting this law, and it is advisable to quote the provisions of sections 2362 and 2363, General Code, which sections are referred to

in the last sentence of section 2364, General Code, and are under the heading Title IX, "Public Buildings," Chapter I, "Building Regulations," sub-heading "General Provisions" of the General Code. These sections provide as follows:

Sec. 2362. "An officer, board or other authority of the state, a county, township, city, village, school or road district or of any public institution belonging thereto, authorized to contract for the erection, repair, alteration or rebuilding of a public building, institution, bridge, culvert or improvement and required by law to advertise and receive proposals for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct proposals to be made for furnishing such materials or doing such work or both, in their discretion, for each separate and distinct trade or kind of mechanical labor, employment or business entering into the improvement."

Sec. 2363. "When more than one trade or kind of mechanical labor, employment or business is required no contract for the entire job, or for a greater portion thereof than is embraced in one such trade or kind of mechanical labor shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids therefor in the aggregate."

Section 2364, General Code, reads the same, as amended in House Bill No. 162, as it previously read with the exception that the language in italic has been added by said amendment.

It will thus be seen that prior to passage of House Bill No. 162, the provisions of sections 2362, 2363 and 2364, General Code, had no application to buildings and structures costing less than ten thousand dollars. Said sections provided for the submission of separate bids for each trade entering into a given improvement, and required separate contracts with the separate lowest and best bidder for each trade. The lawful exceptions to the mandatory awarding of separate contracts for each trade, and the instances in which a combined bid for an entire improvement of a combined bid of two or more trades could be accepted and contracts entered into thereon, were:

1. When the separate bids did not cover all the trades.
2. When joint bids covering two or more trades were lower than the separate bids therefor in the aggregate.

Obviously, while separate bids had to be called for, it is clear that combined bids could also be submitted.

As has previously been stated, sections 2362 et seq., General Code, did not apply to buildings and structures costing less than ten thousand dollars.

Sections 2314 to 2332, General Code, which are under the same title and chapter of the General Code as sections 2362 et seq., supra, but under the sub-heading "State Buildings," were not changed by House Bill 162. Section 2314, General Code, provides, in short, that when contemplated buildings and improvements for the State will exceed in cost the sum of three thousand dollars, full plans, details, bills, specifications and estimate of costs are to be prepared. Section 2315, General Code, provides that such plans, etc., together with a "form of bidding proposal" shall be prepared in the form prescribed by the building commission and filed with the Auditor of State. The building commission's duties are now performed by the

Director of Public Works. Sec. 154-40, General Code. Section 2317, General Code, provides that the form of proposal approved by the building commission (the Director of Public Works) shall be used, and further provides that:

“Bidders may be permitted to bid upon all branches of the work and materials to be furnished and supplied, or upon any thereof, or alternately upon all or any thereof.”

From the disclosed provisions of sections 2314, et seq., it seems clear that the legislature did not previous to the passage of House Bill No. 162, make it mandatory that separate bids for each trade be accepted on State improvements amounting to over three thousand dollars, and under ten thousand dollars.

Such being the status of the law before House Bill No. 162 was enacted, it now remains to be determined for what purpose such bill was passed. The legislature is presumed to have had in mind all provisions of the existing law relating to the subject on which it legislated.

From the status of the law prior to passage of House Bill 162, there was clearly no requirement that separate bids be received and accepted for State Buildings, structures and improvements when the cost was less than ten thousand dollars. The legislature in the title of House Bill No. 162 discloses that such bill's purpose was “to amend section 2364, and to enact supplemental sections 2314-1 and 2314-2 of the General Code, to provide for separate bidding on mechanical equipment on contracts for the erection or alteration of State buildings.”

It could be argued that the purpose in amending section 2364, General Code, and adding the words “except as provided in sections 2314-1 and 2314-2 of the General Code” was to provide that the provisions of section 2364, General Code, requiring separate bids for trades, and applying to the several named political subdivisions as well as the State, should continue not to apply generally to improvements costing under ten thousand dollars, but there must be separate trade bidding where the entire cost of each or any of the three trades, (plumbing, heating and electrical) entering into State improvements exceed in cost one thousand dollars, and such bidding was to be had in the manner set out in sections 2314-1 and 2314-2, General Code, as enacted. Section 2314-1 as enacted makes it mandatory for any state department having authority to prepare plans for a State improvement to prepare separate plans for the three mechanical trades of plumbing, heating and electrical work, and requires that said plans shall be so drawn as to permit separate and independent bids upon the three such trades.

Section 2314-2, as enacted, requires, in clear and unambiguous language that every state department charged with the duty of awarding contracts for such trades, shall, when the entire cost of each or any of the three such trades exceeds one thousand dollars, award the respective work (the three trades) separately to responsible and reliable individuals, firms and corporations.

It is a general principle of statutory construction that when the language of a statute is clear and unmistakable, there is no authority for the courts to construe such statute. See *Mansfield vs. Brooks*, 110 O. S. 566; *State ex rel. vs. Brown*, 121 O. S. 329; *Swetland vs. Miles*, 101 O. S. 201, and *Ohio S. & T. Co. vs. Schneider*, 25 App., 259.

Now this principle would seem to have application here. The legislature in section 2314-1, General Code, has already made it mandatory for the State to provide for separate bids for the three trades on State improvements exceeding in cost

one thousand dollars. It then provides in section 2314-2, General Code, that the State authority shall, when the entire cost of each or any of the three trades is to exceed one thousand dollars, *award* the work of the trades *separately* to responsible parties. The language seems to clearly provide that the contracts for the trades must be entered into on the basis of the separate bids. While it is true that such a requirement of separate contracting for each trade might oftentimes result in the State having to pay more for the improvement than if combined bids for two or three trades were accepted, which result would be contrary to the public interest, yet the legislature seems to have clearly so provided and its mandate must be followed by the courts. It is stated in the fourth paragraph of the syllabus of the case of *State ex rel. vs. Bushnell*, 95 O. S. 203:

"4. When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience *or accomplishes a result not anticipated or desired* should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment and not by judicial construction."

In concluding that separate bids for the plumbing, heating and electrical trades must be accepted and contracts entered into based thereon, I am not unmindful of the fact that it is possible to give another meaning to the language of House Bill No. 162. It could be advanced that since section 2364, General Code, permits a combined bid for two or more trades to be accepted when the amount of such bid is lower than the separate bids in the aggregate, the legislature in adding the words "except as provided in sections 2314-1 and 2314-2, General Code" did not intend by such words to affect the right of the State authorities to accept a combined bid under the circumstances set forth above, even though the language of section 2314-2, General Code, is inconsistent with such a view. There is some ground for the contention that the only reason for amending section 2364, General Code, by the addition of the aforementioned phrase, was because sections 2362 et seq., therefore had no application to buildings and structures costing less than ten thousand dollars, and as it was thought desirable for said sections to apply to State improvements costing over one thousand dollars, the general provision in the last sentence of section 2364, General Code, had to be amended to make the exception. However, if this had been the intention of the legislature, it could have been very easy for such body to have clearly so shown by adding the following or similar language to the end of section 2314-2, General Code—"unless such work is let as a whole, or to bidders for more than one kind of work or materials, as provided in sections 2363 and 2364 of the General Code."

Certainly the language of sections 2314-2, General Code—"shall \* \* \* hereafter award the respective work specified in the subdivisions mentioned in sections 2314-1 of the General Code *separately* to responsible and reliable individuals, firms and corporations" is explicit.

In concluding, it might be well to point out that section 2320, General Code, provides:

"If in the opinion of such owner, the acceptance of the lowest bid or bids is not for the best interests of the state, with the written consent of the state building commission, they may accept, in their discretion, another pro-

posal so opened or reject all proposals, and advertise for other bids, such advertisement to be for such time, in such form and in such newspaper or newspapers as may be directed by the state building commission. All contracts shall provide that such owner may make any change in work or materials on the conditions and in the manner hereinafter provided."

If you think it is for the best interests of the State, you may reject all proposals for plumbing and heating and readvertise for new proposals, under said section.

In view of the foregoing, I am of the opinion, in specific answer to your question, as set forth in paragraph 7 of your letter, that you, as Director of Public Works, have no authority to award the contract for the heating and plumbing work for the construction of the two dormitories at the School for the Blind to the lowest combined bidder.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1941.

APPROVAL, BONDS OF TRUMBULL COUNTY, OHIO—\$4,000.00.

COLUMBUS, OHIO, December 1, 1933.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1942.

APPROVAL, BONDS OF BEXLEY CITY SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, December 1, 1933.

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

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1943.

APPROVAL, BONDS OF CANTON CITY SCHOOL DISTRICT, STARK COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, December 1, 1933.

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