

of police to enforce all ordinances, he is also required to enforce all orders and regulations of a board of health of a municipality. Therefore, it is apparent that the duties of a chief of police and a sanitary officer are the same insofar as the enforcing of the sanitary and quarantine orders and regulations of city and state boards of health is concerned. Since the chief of police has certain duties to perform which are likewise placed upon a sanitary officer, it could be well said that in a given case he was receiving double compensation for the services performed, and this is contrary to public policy.

Therefore, I am of the opinion that a chief of police cannot hold the office of sanitary policeman at the same time and legally be paid compensation for both positions.

Respectfully,
GILBERT BETTMAN,
Attorney General.

605.

BIDS—RECEIVED BY BOARD OF EDUCATION FOR HEATING SCHOOL BUILDING—MUST CONFORM TO ARCHITECT'S SPECIFICATIONS.

SYLLABUS:

When a board of education has advertised for bids for heating and ventilating a school building, which advertisement states that bids are to be in accordance with the plans and specifications of the architect on file with the clerk of the board, which plans and specifications call for a hot air system of heating, such board of education has no authority, pursuant to such advertisement, to contract for the installation of a steam system of heating for such school building.

COLUMBUS, OHIO, July 9, 1929.

HON. FRANK L. MYERS, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

“This office has been requested to ask for an opinion from your department concerning a local school situation and we will appreciate very much the favor of your decision.

The Marengo school board had advertised in accordance with legal requirements for bids for heating and ventilating the proposed new school building in Marengo. Said bids were to be in accordance with the plans and specifications of the architect on file with the clerk of the board.

Bids were duly received and the lowest bid unanimously accepted by the board. It was subsequently discovered that the architect's plans called for a hot air system of heating and the school board had desired steam heating system and had received three competitive bids for steam heat and had voted to contract for the steam heating system.

Can the school board legally proceed to put in steam heat without re-advertising?”

The advertisement for bids to which you refer was made presumably in accordance

with the provisions of Section 7623, General Code, the first paragraph of which is as follows:

“When a board of education determines to build, repair, enlarge or furnish a schoolhouse or schoolhouses, or make any improvement or repair provided for in this chapter, the cost of which will exceed in city districts, three thousand dollars, and in other districts one thousand dollars, except in cases of urgent necessity, or for the security, and protection of school property, it must proceed as follows: * * * ”

The nine succeeding paragraphs of the section outline the procedure to be followed in the awarding of such contracts under the plan of competitive bidding therein required. It has been held that when publication is made of a notice calling for bids for heating and ventilating a school house without any stipulation made as to the method or system to be used, and bids are submitted covering various types of heating or ventilating systems, the board of education may determine the particular system which will be the most satisfactory and economical and best serve its purpose, although the system determined upon may not be the lowest priced. *State ex rel. Bryce vs. Board of Education of Toledo*, 14 O. C. C. 15; *State ex rel. vs. Board of Education of the City of Cincinnati*, 6 O. C. C. (n. s.) 345.

In the case of *Boren and Guckes vs. Commissioners of Darke County et al.*, 21 O. S., p. 311, the third branch of the syllabus is as follows:

“Where a bidder includes in his proposal, with the labor and materials specified in the advertisement, for which proposals are invited, other labor and materials not therein called for, and the price proposed is an aggregate sum for the whole, under said act it can be regarded only as a proposal for the labor and materials advertised for; and if such price is not lower than that of another bidder whose proposal embraces only the labor and materials called for in the advertisement, he is not entitled to have the contract awarded to him, if the other bidder otherwise complies with the act.”

The language of the court, appearing on page 323, is directly in point, wherein it is said:

“The statute provides ‘that the contract shall be awarded to, and made with, the person or persons who shall offer to perform the labor and furnish the materials at the lowest price.’ The lowest price for what labor and materials? Clearly the labor and materials for which proposals have been called by the notice and specifications, in pursuance of the statute. Any other construction will nullify the statute, and be a fraud upon the bidders.

Construed, then, in the only manner in which the commissioners were, under the law, at liberty to consider the proposal of Rouzer & Rouzer, they did not ‘offer to perform the labor and furnish the materials’ called for ‘at the lowest price.’ ”

Section 7623, in paragraph 6, provides that “the board in its discretion may reject all the bids or accept any bid for both labor and material for such improvement or repair which is the lowest in the aggregate.” The authority to accept the bid here conferred upon a board of education can only mean the authority to accept the bid submitted pursuant to the requirements stated in the advertisement. To hold that a board of education may advertise for bids for a hot air system of heating and pursuant to such advertisement, in the event one or more bids are submitted upon a

steam system of heating, accept such bid for steam heating, would be to effectively avoid the provisions of the law requiring competitive bidding and would open a way of easy evasion of the statute. Under the circumstances, since the board desires steam heating, all bids now submitted should be rejected. The board should then re-advertise for bids for steam heating.

In view of the foregoing, I am of the opinion that when a board of education has advertised for bids for heating and ventilating a school building, which advertisement states that bids are to be in accordance with the plans and specifications of the architect on file with the clerk of the board, which plans and specifications call for a hot air system of heating, such board of education has no authority, pursuant to such advertisement, to contract for the installation of a steam system of heating for such school building.

Respectfully,
GILBERT BETTMAN,
Attorney General.

606.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN
FAYETTE COUNTY.

COLUMBUS, OHIO, July 9, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

607.

TAX AND TAXATION—GASOLINE TAX IMPOSED BY HOUSE BILL
NO. 335, 88TH GENERAL ASSEMBLY—TOWNSHIP'S SHARE.

SYLLABUS:

1. *Under the provisions of House Bill No. 335, enacted by the 88th General Assembly, township trustees shall first use the money derived from the gasoline tax for the purpose of constructing, widening and reconstructing unimproved dirt roads of the county system within the township.*

2. *If there be no unimproved dirt roads of the county highway system within the township, the township trustees may use such funds for the purpose of constructing, widening and reconstructing such township roads as they may designate. In the improvement of such township roads, the township trustees may widen a hard-surface road by grading a surface to be used as a double track adjacent to such hard surface.*

COLUMBUS, OHIO, July 10, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your recent communication reads:

“Where a township road was originally built as a double track, and the