

been disposed to hold, at least as to real estate, that claims for unaccrued rent are not such property as may be separately taxed, it being considered in the case of land that such claims are incorporeal hereditaments—a part of the land itself. *State v. Royal Mineral Association*, 132 Minn. 232. Cooley on Taxation, vol. II, section 575, page 1248. By the force of pointed analogy from which it does not seem best to deviate, it follows, therefore, that claims for unaccrued rent upon *bona fide* installment leases of tangible personalty permanently located in another state are identified with the leased property itself and do not constitute property owned or used in Ohio.

In view of the foregoing, I am of the opinion that:

1. The unpaid balance, whether due or not, upon a conditional sale contract made outside of Ohio by an Ohio corporation in respect to a chattel permanently located in another state, must be included, in calculating the corporation's franchise tax under section 5498, General Code, as property owned by such corporation in Ohio. These items are to be figured at their actual as distinguished from their nominal value. Whether they are collectible or not is a matter going to their value.

2. As to whether the unpaid balances upon an installment lease contract made outside of Ohio by an Ohio corporation in respect to a chattel permanently located in another state must likewise be included for franchise tax purposes as property owned or used in Ohio, it is properly concluded that (a) they must be included if they are due and payable, (b) they must be included, though not yet due and payable, if, as determined by the principles above discussed, the installment lease is really a subterfuge for a conditional sale, and (c) they are not includable, if they are not due and payable, in case the contract, as determined by the rules given above, is a *bona fide* installment lease.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3318.

WHETHER OR NOT BID SUBMITTED BY THE SKINNER ENGINE COMPANY OF ERIE, PENNSYLVANIA, FOR ENGINES WITH AUXILIARY VALVES FOR THE POWER HOUSE AT LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, MAY BE CONSIDERED.

COLUMBUS, OHIO, June 12, 1931.

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

DEAR SIR:—I am in receipt of your communication requesting advice as to whether a bid submitted by the Skinner Engine Company of Erie, Pennsylvania, for engines with auxiliary valves for the Power House at Longview State Hospital, Cincinnati, Ohio, can be considered by the State Architect and Engineer in awarding the contract for such equipment, in view of the fact that said bid was submitted on the substitution sheet of the form of proposal.

From an examination of the specifications for the engines and generators, it seems that bids were invited for the furnishing of two 200 K. W. and one 150 K. W. engine generator units, said engines to be either three single-cylinder horizontal or three multiple cylinder vertical unafrow engines. See page 11 of specifications. It further appears that auxiliary exhaust valves were called for on all engines. See section 14 (c), page 14 of the specifications.

On the first page of the form of proposal prepared by the Department of Public Works for the reception of bids conforming to these specifications, there appears Item I entitled:

“BASE BID FOR ENGINES AND GENERATORS, exclusive of Foundations, for the sum of Dollars (\$.....)”

In the bid in question it appears that the Skinner Engine Company inserted in the blank space under Item I, the amount—\$32,232.00.

From the papers submitted, it seems that after the specifications and form of bidding proposal, above noted, had been filed with the Auditor of State by the Superintendent of Public Works and after advertisement for bids, a change in the specifications was desired, so an “Addenda” was made to them. In said “Addenda” it was provided that auxiliary valves might be furnished if the bidder so desired. In other words, proposals for engines with or without auxiliary valves were invited. Despite this change in the specifications, however, the form of bidding proposal was not changed to conform to the new provisions of the specifications.

An examination of the proposal would seem to indicate that the Skinner company desired to submit a base bid on engines with auxiliary valves but that, since the “Addenda” to the specifications provided in effect that auxiliary valves did not have to be furnished, it was in a quandary as to where to enter its proposal for an engine with auxiliary valves.

Now the laws of Ohio provide that a proposal shall be invalid and not considered unless the form of proposal prepared by the State Department of Public Works is used “without change, alteration or addition.” See section 2317, General Code. This is also clearly set forth in the specifications. See paragraph 2 (f), page 2 of specifications. Supposedly desiring to avoid the possibility of having its bid rejected if the words “with auxiliary valves” were added to Item I of the form of proposal, quoted above, the Skinner company entered the following on the “Substitution Sheet” under the heading “Proposed Substitution”:

ITEM I—Skinner Universal Unaflow Engines (with auxiliary exhaust valves) add to bid—(\$1,928.00) Dollars.”

From the foregoing it might be concluded that the Skinner company desired to make a base bid on engines with and without auxiliary valves and was compelled to place the bid on the substitution sheet as there were no items listed in the proposal form for engines with and engines without auxiliary valves. When the “Addenda” was added to the specifications, Item I of the Form of Proposal should have been amended by adding the words “without auxiliary valves” and another item should have been inserted as an alternate to read:

“If auxiliary valves are accepted, add to base bid for engines and generators (Item I above) the sum of”

In the absence of an alternate item, therefore, it was difficult for a bidder definitely to express his bid. Hence, it might be argued that the Skinner bid on the substitution sheet could be accepted as an alternate item to the base bid (Item I) despite the fact that the substitution sheet is no place for listing alternate items. However, it is not necessary definitely to decide in this opinion whether the Skinner bid could be considered by the State Architect in awarding the contract, inas-

much as there appears to be, from the papers before me, an irregularity in the statutory proceeding required for the letting of a contract, which will prove fatal to the awarding of any contract on the bids submitted.

It seems that the advertisement for the bids was published once on May 5, 1931. It further appears that the "Addenda" was prepared on May 7, 1931, and subsequently copies of this "Addenda" were supplied to bidders. Now section 2317, General Code, provides as follows:

"After the proceedings required by sections 2314 and 2315 have been complied with, such owner shall give public notice of the time and place when and where proposals will be received for performing the labor and furnishing the materials of such construction, improvement, alteration, addition or installation, and a contract or contracts therefor awarded, except for materials manufactured by the state or labor supplied by the Ohio board of administration that may enter into the same. The form of proposal approved by the state building commission shall be used, and a proposal shall be invalid and not considered unless such form is used without change, alteration or addition. Bidders may be permitted to bid upon all the branches of work and materials to be furnished and supplied, or upon any thereof, or alternately upon all or any thereof." (Italics the writer's.)

From the above section of the Code, when read with the provisions of sections 2314 and 2315, it is evident that the plans and specifications and all information to bidders must be filed with the Auditor of State before advertisement for proposals is started. While it is true that the bidders were probably informed of the "Addenda" in the present instance, yet the statutes would seem to prohibit the filing of any supplementary data or amendment of the specifications after advertisement is started. Consequently, it would appear that no valid contract could be entered into by the State with any of the bidders.

The proper procedure at this time is to reject all bids, which the Superintendent of Public Works may do under section 2320, General Code, and readvertise for new bids.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3319.

APPROVAL, BONDS OF DENNISON CITY SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, June 12, 1931.

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

3320.

APPROVAL, CONDITIONALLY, OF ABSTRACT OF TITLE TO LAND OF LAFAYETTE AND VOLNEY S. TAYLOR IN RARDON TOWNSHIP, SCIOTO COUNTY, OHIO.