

Under these circumstances, the executive officers of the state may, with propriety, pursue only one course in justice to the state and its lessees, namely, maintain the state's possession of the islands unless and until otherwise ordered by the legislature or the courts.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1672.

LONGVIEW HOSPITAL—SUPPORTED IN PART BY STATE WITHIN MEANING OF SECTION 2314 G. C. (107 O. L. 453)—BY REASON OF SECTION 26 G. C. THE ABOVE SECTION NOT APPLICABLE TO BUILDINGS TO BE ERECTED ON HOSPITAL GROUNDS—PROCEEDINGS COMMENCED PRIOR TO ENACTMENT OF SAID AMENDED SECTION.

Though Longview Hospital is an institution supported in part by the state, within the meaning of section 2314 G. C., as amended in 107 O. L. 453, that section, by reason of section 26 G. C., does not apply to the new building proposed to be erected on the hospital grounds pursuant to proceedings commenced prior to the enactment of said amended section.

COLUMBUS, OHIO, December 3, 1920.

HON. LOUIS H. CAPELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date relative to the erection of a new building on the Longview Hospital grounds was duly received, and reads as follows:

“In the year 1915 the electors of Hamilton county authorized the issuance of bonds in the amount of \$500,000.00 for the erection of a new building on the Longview Hospital grounds.

On May 10, 1916, the Longview building commission, appointed in accordance with the provisions of section 2333, held its first meeting and thereafter on June 22, 1916, a contract was entered into between the building commission and (certain) architects, for the preparation of plans, profiles, specifications and estimates for the new building.

On March 21, 1917, bids were received and the lowest bid exceeding the estimate, all were rejected and the clerk directed to re-advertise. On April 25, 1917, bids were again opened with the same result, whereupon the commission adopted a resolution determining to defer any action until a more suitable period for construction, inasmuch as the high cost of labor and materials at that time did not justify a re-advertisement.

On October 27, 1919, the commission, at a regular meeting, determined to proceed with the construction of the building, and the architects were directed to revise their plans so that the cost of the structure would fall within the appropriation. The plans have been submitted.

The question now arises as to whether or not it is necessary to have those plans approved by the state building commission, and whether the construction of this building falls within the provisions of the amendatory act contained in 107 O. L. page 453, which provided new procedure for the erection of state buildings and included therein—see section 2314—‘any building or structure for the use of the state or any institution supported in whole or in part by the state.’

Our specific question, therefore, upon which we respectfully request an opinion from your department is whether or not the new building for Longview Hospital is such a building or structure as falls within the provisions of the amendatory act known as House Bill No. 378 as is contained on page 453 of the 107 O.L. In this connection we desire to invite your attention to the fact that the title to the grounds and building of Longview Hospital vests in the county of Hamilton; that the appointment of the Longview building commission was made under the authority contained in section 2333; that the entire procedure so far as it has been carried on has been under the provisions of that section and those following in the code under the heading 'County Buildings' and that prior to the passage of the act amending the sections applicable to state buildings our local commission had organized, incurred obligations and performed many of its duties.

If we are now compelled to operate under the provisions of the state building sections, we desire to invite your attention to the fact that the preparation and approval by the Attorney-General for the contract for employment of the architects as provided for by section 2314 of said act cannot be complied with, inasmuch as the contract under which the present architects are employed was entered into prior to the passage of the amendatory act. Further, Section 1326 provides that after an estimate has been filed with the auditor of state he shall carefully compare it with the contract and 'if he finds such estimate correct, shall number and place it on file, making a record thereof, and draw a warrant therefore to the amount thereof less deductions shown thereon.' This is in direct conflict with the provisions of section 2341, which provides a different procedure for the payment of estimates. We are inclined to believe that the treasurer of Hamilton county will not honor a warrant issued by the auditor of state for the expenditure of county money for the erection of a county building, and in view, particularly, of the conflict in the statutes. There are many other instances of conflict which will be apparent on examination. Our opinion in the matter is that inasmuch as this entire procedure was started prior to the passage of the amendatory act as contained in 107 O. L. its provisions do not apply, and that we are to be guided in this instance by the provisions of section 2333 et seq. If we are incorrect in this view we would appreciate a ruling defining the proper steps to be taken and an explanation as to how we can reconcile the apparent inconsistencies of the sections.

Because of the great need of additional housing facilities at Longview Hospital the commission is very anxious to have the contract awarded so that the work can be commenced in early spring and they and we hope for an early opinion from your department so that we may proceed at once."

The question for determination is whether or not the proposed new building is such a building as comes within the provisions of section 2314 G. C., as amended by the act passed March 20, 1917 (107 O. L. 453). That section, according to its terms, includes not only buildings or structures for the use of the state, but also those for the use of any institution supported in whole or in part by the state, etc. The statute, so far as pertinent or material to the determination of your question, is 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 or 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, board or other authority, upon whom devolves the duty of constructing, erecting, altering, or installing the same, hereinafter called the owner shall make or cause to be made, by an architect or engineer whose contract of employment shall be prepared and approved by the Attorney-General and filed with the auditor of state, the following:” etc., etc.

While it was held in *Chalfant vs. State*, 37 O. S. 60, that Longview Hospital, though a public, was not a *state* institution, it is now and for several years has been an “institution supported * * * in part by the state.” Abundant evidence of such support will be found in the numerous appropriation acts of the general assembly commencing as far back as the act of April 15, 1880 (77 O. L. 249) and continuing down to and including the act passed May 28, 1919 (108 O. L., Part II, pp. 733, 903). See also section 2033 G. C.; *State vs. Oglevee*, 36 O. S. 211; and 1915 Opinions of Attorney-General, Vol. II, p. 1419.

The fact, however, that Longview Hospital is an institution supported in part by the state within the meaning of amended section 2314 G. C., does not necessarily make that section applicable to the proposed new building referred to in your letter, in view of the provisions of section 26 G. C., which provides that the repeal or amendment of a statute shall in no manner affect pending proceedings, unless otherwise expressly provided in the amending or repealing act, and it is not so provided in the act of which amended section 2314 G. C. forms a part.

As was well said in *Cincinnati vs. Davis*, 58 O. S. 225, referring to what is now section 26 G. C.,

“This section relates to no particular subject of legislation. It relates to the operation of the *statutes in general*.”

See also, *Elder vs. Shoffstall*, 90 O. S. 265, 271, where the court say:

“So long as that section remains the law of Ohio *all subsequent legislation* must be construed in accordance therewith.”

The facts stated in your letter with respect to the action taken and proceedings had with a view to the erection of the new hospital building (which I understand were not abandoned, but only temporarily postponed on account of an emergency), in my opinion constituted a pending proceeding at the time of the enactment of amended section 2314 G. C., within the meaning of section 26 G. C. and also bring your case within the doctrine announced and applied in *State vs. Cass*, 13 C. C. (N. S.) 449, 457-460; 32 C. C. Rep. 208. In that case it was held that the proceedings of a commission appointed for the building of a court house, and the work of the commission in carrying out the objects and purposes for which it was appointed, constituted a proceeding within the meaning of section 26 G. C. The case was affirmed by the supreme court without report in 84 O. S. 443.

With respect to the applicability of section 26 G. C., it may further be said that section 2314 G. C. herein involved, is not new or original, but amendatory legislation, and hence the doctrine of *Railroad vs. Railroad*, 72 O. S. 369, 386, 387, and *Railroad vs. Hedges*, 63 O. S. 339, does not apply.

You are therefore advised in answer to your specific question, that though Longview Hospital is an institution supported in part by the state within the meaning of

section 2314 G. C., nevertheless that section does not apply to the case stated in your letter by reason of section 26 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1673.

BOARD OF STATE SCHOOL EXAMINERS—REQUIREMENTS FOR APPLICANTS FOR LIFE CERTIFICATES—HOW CREDIT FOR TWO-YEAR NORMAL COURSE OBTAINED—BOARD MUST DETERMINE WHAT IS SUCCESSFUL TEACHING EXPERIENCE—A RULE THAT THREE MONTHS OF TEACHING IS EQUIVALENT OF ONE MONTH'S SUCCESS IN TEACHING, CONTRARY TO LAW.

1. *Under sections 7807-1 and 7807-2 G. C. the board of state school examiners may or may not require of applicants for life certificates additional requirements or tests or they may require one and omit the other, as they may desire.*

2. *To secure credit for a two-year normal course such course must have been taken in an institution approved by the superintendent of public instruction in any case not specifically otherwise provided by law.*

3. *The state board of school examiners must determine whether or not the experience in teaching had by an applicant for a certificate is successful teaching, experience, the evidence of which must be produced by the applicant. If it be successful teaching experience in the judgment of the board, from the evidence produced, full credit must be given. Such experience may be had in the schools of any state and must be considered by the board.*

4. *A rule that three months of teaching is the equivalent of one month's success in teaching is contrary to the intent and purpose of the law.*

COLUMBUS, OHIO, December 3, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Receipt of the following letter is hereby acknowledged:

"According to section 7807-1 an applicant for an elementary or special life certificate, unless applying under section 7807-6 or 7807-8, must have completed, in addition to certain experience and training 'such additional requirements and tests as are prescribed by the state board of school examiners.'

The wording of section 7807-2 is similar respecting applicants for high school life certificates, section 7807-7 being an excepted section in this case instead of 7807-8.

Section 7807-7 provides that the holder of a degree from a school approved by the superintendent of public instruction, shall upon proof of successful teaching experience, be granted without examination, a state life high school certificate.

Section 7807-6 provides for the granting of life certificates to holders of provisional certificates.

Section 7807 gives some general authority to the state board of school examiners to issue life certificates.

The following questions which arise in connection with the authority and practices of the state board of school examiners, we beg leave to submit to you: