

and that it is claimed that the grandmother, who is over seventy years of age, gives him his board and lodging in winter in exchange for his companionship. These facts, standing alone, would seem clearly to show that the boy stands in the relation of a ward to his grandmother within the meaning of Section 7681, General Code, and that he is entitled to free tuition in the Blanchester schools. However, in your letter you state "The boy is living with his grandmother merely for the purpose of going to school, that is admitted by everyone." If you mean by this that "everyone" includes the family of the boy and the grandmother, then there can be no question but that he has no right to attend the Blanchester schools without paying tuition. If, however, this simply means the gossip of the neighborhood and it still appears that it is the intention of the father and the grandmother that the boy make his permanent home with the grandmother, it is my opinion he is entitled to attend the Blanchester High School without paying tuition.

In this connection your attention is directed to two opinions of the department reported in Opinions of the Attorney General, 1918, Vol. I, page 543, and Vol. II, page 1367.

In the first of these opinions it was held that:

"The term 'ward' should be liberally construed when used in relation to the education of the youth of school age of this state."

In the second opinion cited this language was used:

" * * * any child who lives in a district temporarily, or simply to establish a school residence, or who resides in the district only during the time school is in session, does not establish a residence for school purposes in such district."

As to your second question, and without again setting forth the facts stated in your letter, it is my opinion that you have correctly advised the Blanchester Board of Education that the children referred to in your second inquiry are entitled to attend school in Blanchester without paying tuition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

107.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND CHARLES H. LINDSEY FOR PURCHASE OF TRACTORS AND TRUCKS, \$205,150.00.

SYLLABUS:

Approval of contract for purchase of equipment.

COLUMBUS, OHIO, February 26, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR MR. SCHLESINGER:—I have your communication enclosing a form of contract between yourself and one Charles H. Lindsey and requesting my opinion as to

the legality of such contract and advice as to whether or not the rights of the state as set forth therein are properly safeguarded.

The proposed contract is between the State of Ohio, Division of Highways, first party, and Charles H. Lindsey, second party thereto.

In substance, it provides that the Highway Department is desirous of buying certain tractors and trucks belonging to the United States government; that the second party has had experience in negotiating releases and that he can obtain more advantageous terms from the government than the state itself can, and that it is therefore desirous to contract with the said second party; and that in consideration of the sum of one dollar (the contract does not state which party is to pay the same) the parties mutually agree that the second party will undertake to obtain the release by the United States government of the property in question, and that he shall receive therefor the government release price plus ten per centum (10%) thereof.

The contract obligates the Department of Highways to purchase said property from the second party, if he obtains its release by the government.

The balance of the contract refers to the furnishing of an encumbrance certificate to the extent of \$205,150.00, and provisions relative to the inspection and acceptance of said property and the form thereof, and binds the second party at "his earliest convenience" to make proper settlement with the United States government and obtain clearance of title thereto after the property has been inspected and accepted by the department.

Section 1231 of the General Code in part provides:

"The state highway commissioner, subject to the provisions of law governing the state highway department, shall have power to purchase such equipment * * * as may be deemed necessary to execute any work upon said main market roads * * * ."

In former opinions of this department, it has been held that the above mentioned power was not taken away from the Department of Highways by the provisions of the Administrative Code relative to the Department of Finance making purchases for the various departments of the state, and therefore said power is still vested in the Department of Highways and Public Works.

Without intending to establish any precedent whatsoever, I am going to approve this contract in this one instance with certain minor modifications hereinafter suggested, and for the following reasons:

(1) The prices at which the equipment is offered in the contract are so much below the regular list prices for the various items that it would be very poor business policy to overlook this opportunity if the state really needs the equipment in question.

(2) The following whereases in the contract caused me to make some little investigation, to-wit:

"Whereas, the party of the second part, by reason of his experience, information, previous negotiation and employment, has arranged and is in position to arrange, with the proper officials of the United States, for the purchase and release of the above described material; and

"Whereas, the party of the first part, recognizing that said party of the second part is in position to obtain releases, shipments, and terms more advantageous than the party of the first part can obtain by dealing directly with the United States government, and, therefore, is desirous of contracting directly with said party of the second part;"

I found that Governor Donahey had attempted to open negotiations on your

behalf directly with the government and had received from the office of the Chief Coordinator at Washington, a department supervised by the Director of the Bureau of the Budget, a letter under date of February 18, 1927, reading as follows:

"Please refer to your letter of February 14, 1927, requesting information as to the procedure to be followed by officials of the State of Ohio in procuring Federal surplus property for use in highway construction.

"Our Area Coordinator in Chicago, Commander A. B. Cook, whose address is 577 Federal Building, has been instructed to notify Mr. Schlesinger, Director of Highways in Ohio, in the event that any surplus War Department machinery or automotive equipment which is suitable for highway construction becomes available for purchase. Commander Cook will furnish Mr. Schlesinger with sufficient information to enable him to negotiate directly with the Quartermaster General of the Army.

"No material of this type is available at the present time. In the event that any becomes surplus in the future, I trust that the arrangement outlined above will enable you to take the necessary action for its procurement."

The statement of the Chief Coordinator, H. C. Smither, tends to prove the truth in the above quoted whereas, provided, of course, that Mr. Lindsey is able to deliver according to the terms of the contract.

On account of the great savings which can be effected in the purchase of this equipment by your department, if needed, I approve the submitted "Memorandum of Agreement," subject to the following amendments, to-wit:

In Item Second on page 3, the letter to Joseph T. Tracy, Auditor of State, Columbus, Ohio, should read as follows:

This is to advise you that the State of Ohio, Division of Highways, has inspected and accepted the following described property under its contract of February——, 1927 with Charles H. Lindsey, and at the prices indicated thereon, being the government release price, plus ten per centum (10%), to-wit:

Number	Kind	Government Release Price	Purchase Price
_____	_____	_____	_____

and this will be your authority to pay to said Charles H. Lindsey the total of the foregoing separate purchase price items, to-wit, the sum of \$—— in the following manner, to-wit:

One warrant for the aggregate amount of the government release price shall be given to said Charles H. Lindsey but made payable only to the United States government or to the appropriate department or official thereof, and one warrant payable to said Charles H. Lindsey for an amount equal to ten per centum (10%) of the aggregate government release price.

State of Ohio, Division of Highways,
per Commissioner.

and the five lines immediately following said form of letter should be amended to read:

and that thereupon the said Auditor of State of Ohio shall be and is hereby authorized and directed to deliver to said party of the second part, warrants drawn in conformity with the authorization set forth in the foregoing form of letter on the Treasurer of the State of Ohio for the total amount con-

tained in said acceptance receipt and each subsequent one thereof so executed and delivered hereunder.

At the end of the first paragraph on page 4, being next to the last paragraph in the contract, I suggest that the following time limit be added in the following manner: That a comma be placed after the word "possible," followed by the words "but not later than the first day of _____, 1927," and that a definite time limit be fixed.

I have taken this matter up with both the Governor and Auditor of State in the course of my investigation of the propriety of the arrangement. Of course, much depends upon your inspectors.

Respectfully,
EDWARD C. TURNER,
Attorney General.

108.

DISAPPROVAL, ABSTRACT OF TITLE TO 71.94 ACRES OF LAND, KNOWN AS EYMAN FARM, IN EAST UNION TOWNSHIP, WAYNE COUNTY, OHIO, TO BE USED AS PART OF SITE FOR ADDITIONAL INSTITUTION FOR FEEBLE MINDED IN NORTHERN OHIO.

COLUMBUS, OHIO, February 26, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

In re: Abstract of Title of Charles B. Eyman, et al.

DEAR SIR:—Examination of an abstract, warranty deed and other data submitted for my examination and approval, discloses the following:

The abstract as submitted was prepared by The Wayne County Abstract Company of Wooster, Ohio, and is certified under date of January 23, 1927, and pertains to 71.94 acres situated in the township of East Union, Wayne county, Ohio, to be used as a part of the site for an additional Institution for the Feeble Minded in Northern Ohio, and which real estate is more particularly described in the deeds submitted with said abstract.

(1) At the outset it appears that there is a discrepancy between the abstracter's description and the grantors' description. In describing by metes and bounds an expected tract containing 4.8 acres, the abstracter says on page 3:

"Thence North 89°45', West 457.5 feet to a stake on the *North* line of the property heretofore conveyed to the Village of Apple Creek; thence 11° 15' West along said *North* line 100 feet to an iron pin;"

whereas the deeds designate said italicized lines as "east" lines. By reference to the plat of the property found at Item 59 of the abstract, the description in the deed correctly states the description in question.

(2) Item 13 discloses that an administrator was appointed in 1843 for the estate of John W. Bever. Neither the abstract nor, as the abstracter reports, the records of Wayne county disclose any further administration of his estate. The abstract does not disclose any transfer by John W. Bever or of his property to his heirs. The names