

names of the signers of this counter petition from the remonstrance which had previously been filed. This did not have the effect of adding them to the original petition. No names had legally been withdrawn from the original petition so far as appears.

2. The paper filed on October 13, 1932, had no legal effect whatever.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4845.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, \$119,000.00.

COLUMBUS, OHIO, December 29, 1932.

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

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4846.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE CYCLONE FENCE COMPANY OF WAUKEGAN, ILLINOIS, FOR THE CONSTRUCTION AND COMPLETION OF BOUNDARY FENCE AT URBANA GAME FARM, CHAMPAIGN COUNTY, OHIO, AT AN EXPENDITURE OF \$5067.59—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, December 29, 1932.

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

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Division of Conservation, Department of Agriculture, and the Cyclone Fence Company of Waukegan, Illinois, and Cleveland, Ohio. This contract covers the construction and completion of contract for Boundary Fence, Urbana Game Farm, Section No. 3, Champaign County, Ohio, in accordance with Item No. 1 of the Form of Proposal dated December 23, 1932. Said contract calls for an expenditure of five thousand sixty-seven dollars and fifty-nine cents (\$5,067.59).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also shown that the Controlling Board has approved the expenditure in accordance with Section 1 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond, upon which the United States Fidelity and Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the

laws relating to the status of surety companies and the workmen's compensation have been complied with. A certificate of the Secretary of State shows that the contracting foreign corporation is admitted to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4847.

OFFICES INCOMPATIBLE—JUSTICE OF PEACE AND VILLAGE COUNCILMAN—VILLAGE COUNCILMAN AND DEPUTY COMMISSIONER OF MOTOR VEHICLES—JUSTICE OF PEACE ACTING AS VILLAGE COUNCILMAN, BECOMES A DE FACTO COUNCILMAN.

*SYLLABUS:*

1. *When a justice of the peace is appointed to fill a vacancy in a village council, and does not resign from his office of justice of the peace, he becomes a de facto village councilman and his vote in council has legal effect.*

2. *When a situation such as is presented in paragraph 1 occurs, the village council may declare the office to which the justice of the peace was appointed vacant or ouster proceedings may be instituted in court.*

3. *A village councilman may not act as a deputy commissioner of motor vehicles at the same time.*

COLUMBUS, OHIO, December 30, 1932.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

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

“The following questions have been submitted to me seeking an opinion from your office.

A Justice of the Peace was appointed to fill a vacancy in a village council and he did not relinquish his other office. Is he a member of council and what effect would his vote have therein?

A Village Councilman proposes to sell automobile license tags. Can he legally do this?”

In connection with your first question, your attention is directed to Section 4219, General Code, which reads as follows:

“Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office.”