

counties of the state, is void because repugnant to Section 26 of Article II of the constitution that all laws of a general nature shall have a uniform operation throughout the state. (*Hixon vs. Burson*, 54 Ohio St., 470, and *The State, ex rel., vs. Davis*, 55 Ohio St., 15, approved and followed.)”

The following rule was laid down in *State, ex rel., vs. Spellmire, et al.*, 67 O. S. 77:

“Whenever a law of a general nature having a uniform operation throughout the state, can be made fully to cover and provide for any given subject-matter, the legislation, as to such subject-matter, must be by general laws, and local or special laws cannot be constitutionally enacted as to such subject-matter.”

See also *State, ex rel., vs. Yates*, 66 O. S. 546; *Commissioners vs. State, ex rel.*, 120 O. S. 297; *Commissioners vs. Wiemeyer*, 124 O. S. 103; *County Commissioners vs. State, ex rel.*, 34 O. A. 201.

I am of the view, therefore, that the proposed act if passed would be violative of section 26 of Article II of the Constitution of Ohio, and since the subject of highways has been held to relate to a subject of a general nature, I know of no way in which the proposed act could be changed so that it would be valid and at the same time not have a uniform operation throughout the state.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4111.

CONTRACTOR—NOT REQUIRED TO SECURE AFFIDAVIT PROVIDED FOR
IN AMENDED H. B. NO. 102 WHEN.

SYLLABUS

1. *Where the principal contractor has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, but subsequent to said effective date such contractor purchases or procures, or agrees to purchase or procure, from other persons materials, supplies or services (other than labor) with which to perform the terms of such public contract, he need not secure from such other persons the affidavits provided for therein and file them with the public agencies.*

2. *A principal contractor who has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, and who has agreed to purchase materials, supplies and services (other than labor) from other persons, with which to perform the terms of his contract, prior to said effective date, for delivery subsequent to such date, is not required to secure from such other persons the affidavits prescribed in such act and to file the same with the public agency.*

COLUMBUS, OHIO, APRIL 3, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent request for my opinion reads as follows:

"I desire to submit to you for opinion certain questions arising under House Bill No. 102, passed December 6, 1934, by the 90th General Assembly, second special session, effective March 9, 1935, and particularly with reference to section 5, which is as follows:

'Each person who, during the period prescribed in section 2 of this act, shall have entered into a public contract with a public agency (such person being hereinafter designated as "principal contractor") shall, before purchasing or procuring, or agreeing to purchase or procure from any other person any materials, supplies, or services (other than labor) with which to perform the terms of such public contract, secure from each such other person an affidavit certifying to the same facts, with respect to such person, as are prescribed by section 2 of this act with respect to the principal contractor. Such affidavit or affidavits so secured shall be filed by the principal contractor with the public agency prior to the payment of any compensation to such contractor in connection with such contract.

Any principal contractor who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars for each offense.

A violation of this section shall be sufficient ground for any public agency refusing to award any contract to such violator for a period of two years after his conviction.'

The City of Columbus has several contracts entered into prior to March 9, 1935, and which as yet have not been completed.

Question 1. In cases where the principal contractor has entered into his contract with the public agency prior to the effective date of said House Bill No. 102, but subsequent to said effective date such contractor purchases or procures or agrees to purchase or procure from other persons materials, supplies, etc. with which to perform the terms of his contract, must such principal contractor secure from such other persons the affidavit provided for therein and file same with the public agency?

We note the words, to-wit, 'purchasing or *procuring*' or 'agreeing to purchase or procure' in said section 5.

Question 2. Must a principal contractor who has entered into his contract with the public agency prior to the effective date of said act and who has agreed to purchase materials, supplies, etc. from other persons with which to perform the terms of his contract prior to said effective date, for delivery subsequent to said date, secure from such other persons the affidavit provided for in said act and file same with the public agency?"

To answer your question, it is necessary to quote also from Amended House Bill No. 102 its purpose clause:

"To effectuate the policies and purposes of the national industrial recovery act and the laws of this state supplementary thereto, and of the taxation laws and workmen's compensation laws of this state by requiring persons, firms and corporations desiring to perform public work under contract with the state or any subdivision thereof to, show compliance with such laws."

Attention must likewise be directed to section 2 of the same act, which reads as follows:

"So long as a recovery act shall remain in effect it shall be unlawful for any public agency to enter into a public contract with any person on behalf of the state or a political subdivision in this state or any institution supported wholly or in part by public funds, or to issue permits or licenses to do business to any person, unless and until such person shall have filed with the public agency an affidavit certifying to the following:

(a) That said person, if engaged in an industry subject to an approved code of fair competition, is complying with all the provisions of such code and that he is a registered member of said industry if registration is provided for in said code or by the code authority thereof; and

(b) That such person has listed for taxation all property used in the production of the supplies and materials for which such public contracts are to be let; and

(c) That such person has fully complied with all the requirements of the workmen's compensation act of the state of Ohio."

It is provided in section 3 that no bid shall be considered unless and until such affidavit is so submitted, but it is only in section 5, which you have quoted, that principal contractors having a public contract with a public agency, are specifically considered. This same section prescribes the penalty for violation, which is punishment for a misdemeanor, and that such violation shall be sufficient ground for any public agency to refuse to award any contract to such violator for a period of two years after his conviction.

It requires no citation of authorities to support the accepted canon of construction, which is almost as old as construction itself, that a penal statute must be strictly construed. There is no authority for extending the language of this act. Amended House Bill No. 102 did not become effective until March 9, 1935, and its existence is specifically limited to the length of so-called recovery legislation.

The concluding sentence of the first paragraph of section 5 attempts to provide further disciplinary action against the principal contractor who does not file the affidavits called for by the statute. Even if the provisions of section 5 should not be regarded as exclusively penal in character, we should still be confronted with the question as to whether retrospective operation of this legislation was intended. The general rule of statutory construction is that statutes will be construed to operate only prospectively, unless the intent to the contrary clearly appears. It is said that the law will not be given a retrospective operation unless that intention has been manifested by the most clear and unequivocal expression, by language so clear that it will admit of no other construction. The rule is discussed in Lewis' *Sutherland Statutory Construction*, Vol. 2, 2d. Ed., Sec. 642, page 1157, et seq., and many cases cited in support. See also *State, ex rel. Hasbrook vs. Staley, et al.*, 5 O. C. C. 602; *State of Ohio vs. Cincinnati Tin and Japan Co.*, 21 O. C. C. 218. It is always presumed that the statutes were intended to operate prospectively and all doubts are resolved in favor of such a construction. It has been held that in the absence of plain expression of design, an act should be construed as prospective only, although its words are broad in their literal extent. Consequently, in the absence of anything in the statute showing a contrary intention, the statute is construed to speak as of the date when it comes effective.

The act in question does not require compliance with section 5 by each person having a contract with a public agency who, during the period prescribed in section 2

of this act, shall purchase or procure or agree to purchase or procure from any other person any materials, supplies or services with which to perform the terms of such contract. The requirement of section 5 applies only to "each person who, during the period prescribed in section 2 of this act, shall have entered into a contract with a public agency." The period prescribed in section 2 of the act is "so long as a recovery act shall remain in effect". Since a statute ordinarily speaks as of its effective date, the period prescribed by this section would be the period beginning with the effective date of the act and continuing so long as a recovery act shall remain in effect. Section 5, therefore, in my opinion, does not apply to persons who entered into public contracts with public agencies before the effective date of the statute in question, even though materials, supplies or services with which to perform the terms of such contract were purchased or procured after the effective date of the act.

In specific answer to your questions, therefore, I am of the opinion that:

1. Where the principal contractor has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, but subsequent to said effective date such contractor purchases or procures, or agrees to purchase or procure, from other persons materials, supplies or services (other than labor) with which to perform the terms of such public contract, he need not secure from such other persons the affidavits provided for therein and file them with the public agencies.

2. A principal contractor who has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, and who has agreed to purchase materials, supplies and services (other than labor) from other persons, with which to perform the terms of his contract, prior to said effective date, for delivery subsequent to such date, is not required to secure from such other persons the affidavits prescribed in such act and to file the same with the public agency.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4112.

APPROVAL, TWO BONDS CONDITIONALLY FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS—JOHN S. DENNIS AND R. E. LEVERING.

COLUMBUS, OHIO, APRIL 3, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials, as hereinafter listed:

John S. Dennis, Resident District Deputy Director for Muskingum and Guernsey counties—Globe Indemnity Company.

R. E. Levering, Resident District Deputy Director in Knox County—Hartford Accident & Indemnity Company.