

3661.

APPROVAL, BONDS OF BELLAIRE CITY SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$9,000.00.

COLUMBUS, OHIO, October 15, 1931.

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

3662.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE SKINNER ENGINE COMPANY OF ERIE, PENNSYLVANIA, AND CINCINNATI, OHIO, FOR ENGINE GENERATOR UNITS AND FOUNDATION FOR ENGINE GENERATOR UNITS IN POWER HOUSE, LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT AN EXPENDTURE OF \$35,698.00.

COLUMBUS, OHIO, October 16, 1931.

HON. ALBERT T. CONNAR, *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 department of public welfare, and the Skinner Engine Company of Erie, Pennsylvania, and Cincinnati, Ohio. This contract covers the construction and completion of contract for combined base bid for four valve horizontal engine generator units and foundations for horizontal engine generator units in a building known as Power House and Equipment, Longview State Hospital, Cincinnati, Ohio, according to items 2 and 5 of the form of proposal submitted August 4, 1931. Said contract calls for an expenditure of thirty-five thousand, six hundred and ninety-eight dollars (\$35,698.00).

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 furnished evidence to the effect that the consent and approval of the controlling Board to the expenditure has been obtained in accordance with section 3 of House Bill 596 of the 89th General Assembly. In addition you have submitted a contract bond upon which the National Surety 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. It appears that the laws relating to the status of surety companies have been complied with. A certificate shows that the Skinner Company does not employ three or more men in Ohio and therefore no industrial certificate is required. Evidence is furnished to the effect that the secretary of state certifies that the Skinner Company is authorized to do business in Ohio. It appears, however, from the files submitted that the proposal was received on August 4, 1931, but that the award was not made until October 3, 1931. In the case of *State, ex rel. Elliott Co., vs. Connar*, 123 O. S. 310, it was stated in the syllabus:

"Quaere: Whether, by virtue of the provisions of Section 2319, General Code, the superintendent of the department of public works has authority to enter into a contract with the lowest bidder or any bidder after the expiration of thirty days from the time of opening proposals."

While the court did not pass upon the validity of a contract which is awarded after thirty days from the time of opening the proposals, nevertheless it appears to me that the opinion expresses such doubt on the matter as to cause me to disapprove this contract. I am therefore disapproving this contract on the sole ground that you, as director of public works, did not have jurisdiction to award this contract in this case, under the terms of section 2319, General Code, and am returning all papers submitted in connection with the contracts.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3663.

SCHOOL BUS—COUNTY BOARD OF EDUCATION MAY LICENSE DRIVER WHO HAS NO CONTRACT TO DRIVE—DIRECTOR OF EDUCATION MAY REQUIRE SELECTION OF LOWEST BIDDER AS CONDITION PRECEDENT TO PARTICIPATION IN STATE EDUCATION EQUALIZATION FUND.

SYLLABUS:

1. *The county board of education may lawfully grant a certificate such as is mentioned in Section 7731-3, General Code, to any proper person applying for the same, whether or not such person has at that time a contract to drive a school wagon or motor van within the county.*

2. *By force of Section 7596, General Code, the Director of Education has the power to require a local school board to advertise for bids for drivers for their school wagons or motor vans used in the transportation of school children and to employ the one whose bid is lowest, as a condition precedent to participation in the state educational equalization fund.*

COLUMBUS, OHIO, October 17, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

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

"The York Township Board of Education at a regular meeting employed C. L. for driver at higher salary than bids offered by other competitors. The question whether the local board (York Township Board of Education) could accept the L. bid, to the exclusion of other bids was taken to the State Department of Education. This department suggested that action be brought against York Township Board of Education to prevent its paying the higher bid of L. and furthermore stated that the State Department would not pay L. salary in excess of his nearest competitor.