

caster, Ohio, and calls for an expenditure of twelve thousand, nine hundred and forty-two dollars (\$12,942.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to cover the obligations of the contract. You have also 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. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

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,
EDWARD C. TURNER,
Attorney General.

934.

SALE OF STATE PROPERTY—IN PARTICULAR CASE IS JUSTIFIED.

SYLLABUS:

Under circumstances in this particular case, sale of property which must be removed, justified.

COLUMBUS, OHIO, August 30, 1927.

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

DEAR SIR:—I acknowledge receipt of your letter of recent date which reads as follows:

"Arrangements have been made by the county commissioners of Wayne County for the repaving of a road on the Jameson Farm, a part of the acreage recently purchased by the state near Apple Creek as a site for a new institution for the feeble-minded. In this improvement a certain stretch of road is to be straightened which will necessitate the moving or raising of a house, summer kitchen and barn, as these project over the line of the road as surveyed for relocation. Upon investigation it has been found that these buildings will be of no use as institution property and if torn down the material salvaged would be of little value; that the sale of the buildings would be the better plan. Consequently bids have been received on the sale and removal of this property from state lands as follows:

A. A. Fisher, Apple Creek.....	\$506.00
Alvin A. Manner, Apple Creek.....	400.00

We respectfully ask your opinion as to whether there is any provision of law prohibiting the state from accepting the highest bid and thus disposing of this property."

The legislature in 1925 appropriated money for the purchase of a site for the purpose of erecting a new institution for the feeble-minded. The site selected is that known as the Apple Creek site.

You state that on this site there is a house, summer kitchen and barn, the present location of which will interfere with the relocating and straightening of a road which is being repaved by the board of county commissioners of Wayne County, Ohio, and you further inform me that the Department of Public Welfare has advertised for bids for the sale and removal of these buildings.

You inquire whether there is any provision of law prohibiting the state from accepting the highest of two bids, and thus disposing of this property.

Generally, power over public lands and buildings has been vested by law in the department of public works. These general powers are contained in Section 154-40 and other sections of the General Code. There is no authority expressly given to the Department of Public Works to sell buildings, located upon lands the ownership of which is in the State of Ohio, and I find nothing in the statute from which it may be said that such power is necessarily implied. The Department of Public Works has only those powers over the public lands and buildings of the state as are granted expressly or by necessary implication.

That buildings erected as permanent structures and located upon land, such as houses and barns are fixtures and are therefore a part of the real estate is so fundamental as not to require the citation of authorities.

Section 1891 of the General Code grants to the Department of Public Welfare the control over institutions for the feeble-minded that are now in existence or that may thereafter be added from time to time. However, there is nothing in this section or any other section of the Code which gives to the Department of Public Welfare the right to sell any part of the land or the buildings located thereon.

Your question goes to the matter of affirmative authority given by statute rather than the absence of any statute prohibiting the sale of the buildings in question.

It will be observed from a reading of the several statutes giving the Department of Public Works the right to acquire or lease or sell various lands belonging to the State of Ohio, that the authority therefor has been expressly given by statute, the legislature having from time to time specifically provided for the sale of different parcels of lands or having by statute provided for the sale of lands that fall within a general class such as certain canal lands. Notwithstanding the lack of affirmative authority, it seems to me that in this particular case where the buildings have to be removed, and where there is little or no salvage value to them, it would be only the exercise of common sense and good business judgment to accept these offers.

Therefore, without in any manner attempting to establish a precedent for any other cases, and specifically answering your question, there is no provision of law prohibiting the state from accepting the highest bid and thus disposing of this particular property.

Respectfully,
EDWARD C. TURNER,
Attorney General.