

1737.

APPROVAL, AGREEMENT BETWEEN ADJUTANT GENERAL OF OHIO
AND W. F. BRODBECK—ST. MARYS ARMORY.

COLUMBUS, OHIO, December 27, 1920.

HON. ROY E. LAYTON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter dated December 11, 1920, transmitting for my approval the proposed agreement between you and W. F. Brodbeck, for the St. Marys, Ohio, armory.

Sections 5238 et seq., 107 O. L., 394, define the duties of the adjutant general, as the director of state armories. By section 5238 he is authorized to "provide grounds, armories and other buildings" for Ohio National Guard purposes, and "may purchase or build suitable buildings for such purposes, when, in his judgment, it is for the best interest of the state so to do."

By section 5240, Chapter 1, title, 9, part 1, of the General Code (state building regulations) is made to apply to such buildings.

Sections 2314 et seq. of the same chapter, were amended in 107 O. L., p. 453, and imposing certain restrictions and providing the procedure for making contracts for such buildings. The adjutant general is limited by law to the expenditure of \$40,000 for any one armory.

Among the papers enclosed, it is noted that Mr. Elliott states that there are on file at the auditor's office the following:

"Approved plans
Approved specification
Approved bill of materials
Approved form for advertisement
Approved form for bidding blanks
Affidavits as to publication in the Ohio State Journal of Columbus and the Evening Leader of St. Marys."

The bond submitted has been considered in connection with the provisions of section 2316 G. C., and appears to be in the form and condition according to law, and is also "in a sum equal to the total sum of the proposals," as required by section 2319 G. C. It is noted that the contractor is a resident of St. Marys, Ohio, and for this reason that part of this section, relating to contracts entered into with a person who is not a resident of the state, is inapplicable. The supplemental certificate of the Industrial Commission of Ohio shows that the contractor has paid into the state insurance fund the premium due according to the law and the rules of said commission, as also required by this section.

It is noted that the bid of Mr. Brodbeck is for a larger sum than the amount of the contract submitted, said bid being for \$50,987.57. By private conference and by additional memorandum submitted with your request, it is learned that the Community Welfare Association, of St. Marys, has assumed and agreed to pay the difference between the consideration named in the state's contract, viz., \$40,000, and the amount of the contractor's bid, viz., \$50,987.57, making the amount assumed and agreed to be paid by said association in a separate agreement, \$10,987.57. However, it is noted that in the contract submitted the contractor undertakes and is bound to build and complete the entire structure for the sum of \$40,000 and that his bond to secure the performance of said contract is equal to and greater than the sum for the payment of which the state is obligated, that is, the bond is for \$52,000. While under section 2320 (107 O. L., 455) no express power is given

to the state building commission or to the adjutant general to make a contract for less than the amount paid, or to change the amount of a bid, yet considering the practical effect of this agreement, the procedure proposed in this agreement is not deemed to be in violation of the spirit and intent of the building regulation statutes, and inasmuch as the state is protected by the terms of the contract and the bond to secure its performance, in consideration of the amount appropriated, the availability of which is evidenced by the auditor's certificate hereto attached, it is believed the agreement should be and the same hereby is approved.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1738.

APPROVAL, CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION, THE LIBERTY MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, December 28, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The certificate of amendment to the articles of incorporation of The Liberty Mutual Insurance Company is herewith returned to you with my approval endorsed thereon.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1739.

BOARD OF EDUCATION—MAY SELL SCHOOL HOUSE—DEED TO BOARD WAS "FOR SCHOOL PURPOSES ONLY"—SPECIFIC CASE PASSED UPON.

Under the deeds considered in this opinion the grantee, the board of education, may sell and convey the lands therein described.

COLUMBUS, OHIO, December 29, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Receipt of your first letter and the reply to our letter concerning your first communication is hereby acknowledged. The original letter was as follows:

"Can a board of education sell a rural school house or grounds, or both when the deed to board states that property is for school purposes only, and give title to same when the board abandons rural schools? Some people hold that 'for school purposes only' gives board right to sell and