

Unless a district became a so-called 4740 district in 1914 and had continued as such since that time there has never been any authority for it, by any provisions, to become such a district, and provide for the supervision of its schools by a superintendent of its own hiring. For that reason, the action of the Hudson Township Rural School District in employing a superintendent, on or about May 31, 1928, was unauthorized and illegal, and the district has at all times, and is now, subject to the supervision of the county board of education.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

789.

BOND SALE—BID APPEARING HIGHEST AND BASED ON LOWEST INTEREST RATE NOT INVALIDATED BECAUSE ACCOMPANIED WITH OFFER TO FURNISH BLANK BONDS.

SYLLABUS:

When a bid is submitted for bonds advertised pursuant to the provisions of Section 2293-28, General Code, which bid appears to be the highest bid passed upon the lowest rate of interest, as provided in Section 2293-29, General Code, such bid is not invalidated on account of the fact that there is included therewith an offer to furnish blank bonds.

COLUMBUS, OHIO, August 24, 1929.

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

DEAR SIR:—This is to acknowledge your letter of recent date, containing the following request for my opinion:

"I am writing you for your opinion on the sale of Clermont County bonds for \$25,925.99, offered for sale Friday, July 19, 1929. These bonds were tentatively awarded to the 'A' Company at their bid of \$228.14 premium and accrued interest to the date of delivery for bonds bearing the rate of 5½%.

'B' Company of Cincinnati has protested this sale on the grounds that they were the lowest and best bidders. Their bid was par and accrued interest to the date of delivery for bonds bearing the rate of 5¼% interest, and they also agreed to furnish blank bonds. Inasmuch as no mention was made concerning furnishing bonds we consider the bid of 'B' very indeterminate and that the bid of the 'A' company being specific in its statements was the best bid.

However, we have decided to ask your opinion and award the bonds accordingly."

Copy of the publication of the notice of sale of the above bonds discloses that the bonds are to mature serially over a period of nine years, that they are to bear five per cent interest, but that anyone desiring to do so may present a bid or bids based upon their bearing a different rate of interest than specified, provided that where a fractional rate is bid, such fraction shall be one-fourth of one per cent or multiple thereof.

Section 2293-29, General Code, provides in part as follows:

“ * * * The highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer thereof. * * * . ”

Considering the two bids to which you refer only as to the matter of which bid is highest, or, as in this case, the highest bid based upon the lowest rate of interest, there can be no question but that the bid submitted by “B” Company of par at 5¼% is a higher bid than the bid submitted by “A” Company of \$228.14 premium on 5½% bonds. The offer contained in “B” Company’s bid that they will furnish blank bonds merely results in making “B” company’s bid still higher.

It is, I understand, general practice among bond houses when bidding upon bonds of subdivisions other than the larger municipalities which are constantly issuing bonds, to offer to furnish the bond forms. This is done to assure the bond house that the bonds will be in such form as to paper, size, general appearance, etc., as to insure their marketability. If such offer in connection with a bid were considered a defect, I cannot see where it works any prejudice to the public for whom the taxing authority acts. The matter of defect in a bid was passed upon by the Supreme Court of Ohio in considering an award of a contract by a board of education, in the case of *State ex rel. Ross vs. Board of Education*, 42 O. S. 374, the third branch of the syllabus being as follows:

“The board may waive defects in the form of a bid, where such waiver works no prejudice to the rights of the public for whom the board acts.”

There may be some question as to whether or not the approximate cost of the bond forms may be considered by the commissioners in determining which bid is the highest, but that question is not before me, in view of the facts as above indicated, “B” Company having submitted the highest bid and, in addition thereto, offered to furnish the bond forms.

In view of the foregoing, it is my opinion that under the provisions of Section 2293-29, *supra*, assuming that both bidders are responsible, the bonds should be awarded to “B” Company.

Respectfully,
GILBERT BETTMAN,
Attorney General.

790.

OFFICES COMPATIBLE—COUNTY CORONER AND COMMISSIONER OF
GENERAL HEALTH DISTRICT—CONDITION NOTED—POSITIONS
OF JAIL OR COUNTY HOME PHYSICIAN AND CORONER COMPAT-
IBLE.

SYLLABUS:

1. *The office of county coroner and commissioner of a general health district may be held by one and the same person, except in cases wherein the contract of employment of such health commissioner is so drawn, under the provisions of Section 1261-19, General Code, as to require such health commissioner to devote full time to the*